REGIONAL SURFACE WATER SUPPLY PROJECT

DESIGN-BUILD SOLICITATION

REQUEST FOR QUALIFICATIONS

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Communications and submittal to:

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1.0 INTRODUCTION

1.1 Project Overview

The Stanislaus Regional Water Authority (SRWA), a joint powers authority formed by the Cities of Ceres and Turlock (Cities), is soliciting Statements of Qualifications (SOQs) from interested firms describing their collaborative delivery, technical, and financial qualifications to design, construct, acceptance test, startup, and obtain governmental approvals for an SRWA-owned water treatment plant (WTP) and related facilities in Stanislaus County (collectively, the Project). The Project facilities will be designed and constructed to initially deliver 15 million gallons per day (MGD) of finished water to the Cities. Site planning will accommodate the ultimate WTP capacity of 45 MGD. The Cities will separately construct local facilities to provide for the distribution of the treated surface water to their customers.

The SRWA Regional Facilities consist of the following components:

1. Raw Water Pump Station (Wet Well being constructed under a separate contract)
2. Raw Water Transmission Main
3. 15 MGD WTP (initial capacity)
4. Ceres and Turlock Finished Water Transmission Mains

Attachment A presents a Project overview map that shows the general location of the Regional Facilities.

This Request for Qualifications (RFQ) is the first step in a two-step procurement process. By using a design-build (DB) project delivery approach, the SRWA expects to secure substantial benefits for its customers. These expected benefits include timely, efficient, and cost-effective scheduling; optimal risk allocation; competitive design-build team selection; clear assignment of performance responsibilities to a single contracting entity; and cost savings. Another expected benefit is the full integration of key design, construction, and quality assurance/quality control (QA/QC) personnel in all aspects of the Project development.

Only those firms that respond to this RFQ and are short-listed by the SRWA in accordance with the requirements of this RFQ will be issued a Request for Proposals (RFP) and invited to submit a proposal in response to the RFP. The SRWA intends to short-list three firms as eligible to participate in the RFP stage of this procurement. Failure to submit information in accordance with the requirements of this RFQ may be cause for disqualification.

The SRWA’s intent in developing this RFQ and subsequent RFP is to encourage qualified firms to provide the best solution for the Project within the confines of the SRWA’s requirements as described in the RFQ and RFP documents. The SRWA expects to enter into an agreement (Design-Build Contract) with a private entity (DB Contractor) for the Project. The Design-Build Contract will reflect experience gained on similar DB projects, but will be a document uniquely suited to the needs of the SRWA. Security for the DB Contractor’s payment and performance obligations
under the Design-Build Contract will be provided through performance and payment bonds and, in some cases (as discussed further below), a separate guaranty agreement. The detailed technical requirements for the Project are being developed and will be presented with the RFP. The presentation of the technical requirements in this RFQ is for general understanding only and is not necessarily indicative of the RFP requirements.

The SRWA has developed a procurement strategy to be administered by its Technical Advisory Committee (TAC) that includes the following steps:

RFQ Process

1. RFQ issuance
2. Joint meeting with all potential Respondents
3. Respondent comments on RFQ and addenda issuance on RFQ (if necessary)
4. Receipt of SOQs
5. Evaluation of SOQs and interview of SOQ Respondents
6. SRWA selection of pre-qualified Respondents for receipt of the RFP

RFP Process

7. Issue draft RFP to pre-qualified Respondents (Proposers)
8. Meetings with Proposers to discuss draft RFP comments
9. Proposers comment on draft RFP
10. Issuance of final RFP to Proposers
11. Proposers submit Initial Design Concepts
12. Meetings with Proposers to discuss Initial Design Concepts
13. Issue RFP addenda to Proposers (if necessary)
14. Proposers submit Priced proposals
15. Proposal evaluation by the TAC
16. TAC interviews with Proposers
17. Revised Technical proposal and Price proposal submission by Proposers (if necessary)
18. TAC recommendation to Board of the preferred Proposer to enter into contract negotiations
19. SRWA Board selection of preferred Proposer

Design-Build Contract Process

20. Design-Build Contract negotiations with preferred Proposer
21. Design-Build Contract execution with the successful Proposer

Pursuant to California labor and public works laws, the construction and certain pre-construction components of the work will be considered a public work, and are therefore subject to various labor and public works requirements and limitations, including the requirement to pay prevailing wage rates. In addition, the SRWA plans to finance the project through a loan under the California Drinking Water State Revolving Fund (SRF) program, or through other available state or federal loan or grant funding programs. Proposers should therefore be prepared that it may be necessary to meet federal or state statutory requirements in the event that such funding is obtained for the Project. If the SRWA secures such funding, then the construction and procurement components of the work also would be subject to additional labor and other requirements under the SRF loan (or other loan or grant program(s)), including “cross-cutting” state and federal requirements and conditions, disadvantaged business enterprise requirements, and federal wage requirements under the Davis-Bacon Act.

1.2 SRWA Background

The Cities of Ceres and Turlock are planning to supplement their primary source of water supply from groundwater wells by diverting surface water from the Tuolumne River. The Regional Surface Water Supply Project and scope of the Design-Build Contract include: facilities to convey water from the river infiltration gallery and Wet Well to the treatment plant; a water treatment plant; and finished water transmission mains delivering water to the Cities. To complete delivery of water to their users, each City will also construct improvements to their local distribution facilities. These local facilities will be implemented individually by each City and thus are not part of the Regional Facilities contracted as part of the Design-Build Contract. Once the construction of all Project facilities is complete and acceptance testing is successful, the SRWA intends to conduct the long-term operations.

At this time, the SRWA intends to finance the construction of the Project through SRF loans, revenue bonds, or grant funds, or a combination of these sources. These obligations will be repaid from City water service rates and charges. The total design and construction cost of the Regional Facilities is expected to be in the range of $180 million to $195 million.

In 2011, the Cities created the SRWA to design, build, and operate the Regional Facilities. To provide assistance and advice in the delivery of the Project, the SRWA has created the TAC, composed of the General Manager and staff representatives of each City and Turlock Irrigation District. As part of this RFQ process, recommendations will be made by the TAC that the General Manager will then deliver to the Board of the SRWA. The Board of the SRWA will make the determination of which Respondents will be prequalified under this RFQ process for receipt of the subsequent RFP and submittal of a proposal in response to such RFP.

1.3 SRWA Advisor

The SRWA has retained an advisory team (SRWA Advisor) to serve as its management consultant for this Project. West Yost Associates is the SRWA Engineer of the team. Legal services are provided by Bartkiewicz, Kronick, and Shanahan. Environmental consulting services are provided
by Horizon Water and Environment (Horizon). Financial consulting services are provided by Project Finance Advisory Limited (PFAL). This group is collectively referred to as the SRWA Advisor.

The SRWA Advisor will provide assistance to the SRWA (Robert Granberg is the SRWA General Manager) and the TAC in preparing the RFQ and RFP, evaluating SOQs and proposals, and negotiating the Design-Build Contract. The SRWA Advisor will also provide Project oversight, including design reviews, Design-Build Contract compliance, and monitoring during construction and acceptance testing. Horizon will provide environmental compliance oversight.

1.4 Definitions

The following terms when used in this RFQ shall have the following meaning:

- “SRWA Advisor” is defined in section 1.3 of this RFQ.
- “City” or “Cities” means either the City of Ceres, California or the City of Turlock, California, or both.
- “DB Contractor” means the selected Respondent with which the SRWA enters into a Design-Build Contract to design, construct, acceptance test, and obtain governmental approvals for the Regional Facilities.
- “Design-Build” or “DB” means a project delivery system where the SRWA contracts with a single entity (DB Contractor) for the implementation of the Project services.
- “Design-Build Contract” means the contract executed by the SRWA and the DB Contractor.
- “Guarantor” is defined in section 2.6.1 of this RFQ.
- “Project Engineer” is responsible for technical management of the Project and is Lindsay Smith of West Yost Associates.
- “Project” or “Regional Surface Water Supply Project” means the design, construction, acceptance testing, and obtaining of governmental approvals for the Regional Facilities to treat and deliver up to 15 MGD of drinking water to the Cities.
- “Proposer” means a Respondent that is short-listed by the SRWA pursuant to this RFQ and issued an RFP by the SRWA for the Project.
- “Regional Facilities” means the water treatment plant, raw water pump station, raw water transmission main, and finished water transmission mains, which are the subject of this procurement.
- “Respondent” means an entity submitting an SOQ in response to this RFQ.
- “Stanislaus Regional Water Authority” or “SRWA” means the Project owner, created pursuant to a Joint Powers Agreement between the Cities, dated December 15, 2015.
1.5 Acronyms and Abbreviations

- Cal/OSHA – The Division of Occupational Safety and Health
- CEQA – California Environmental Quality Act
- DB – Design-Build
- DBO – Design-Build-Operate
- DBP – Disinfection By-Product
- DDW – Division of Drinking Water
- EIR – Environmental Impact Report
- Horizon – Horizon Water and Environment
- IESWTR – Interim Enhanced Surface Water Treatment Rule
- LT2ESWTR – Long-Term 2 Enhanced Surface Water Treatment Rule
- MGD – Million Gallons per Day
- No. – Number
- NPDES – National Pollution Discharge Elimination System
- OTC – Operations Technology and Cybersecurity
- PE – Professional Engineer
- PFAL – Project Finance Advisory Limited
- PLC – Programmable Logic Controller
- PST – Pacific Standard Time
- QA/QC – Quality Assurance/Quality Control
- RFP – Request for proposal
- RFQ – Request for Qualifications
- RMPPs – Risk Management and Prevention Programs
- SCADA – Supervisory Control and Data Acquisition
- SEC – Securities and Exchange Commission
- SOCs – Synthetic Organic Compounds
- SOQ – Statement of Qualifications
- SRWA – Stanislaus Regional Water Authority
- SRF – State Revolving Fund
- SWRCB – State Water Resources Control Board
- SWTR – Surface Water Treatment Rule
- TAC – Technical Advisory Committee
- TOC – Total Organic Carbon
- U.S. – United States
- WTP – SRWA’s Regional Water Treatment Plant
2.0 PROJECT SPECIFIC INFORMATION

2.1 Project Background and Need

The Project concept results from many years of planning prompted by concerns about long-term water supply reliability for the region. Many options were analyzed throughout the planning process, with the Regional Surface Water Supply Project emerging as the best, most feasible among them. The primary driver for the Project is that water from the Cities’ municipal water wells has increasing concentrations of nitrates, total dissolved solids, arsenic, and trichloropropane.

Both the Cities of Turlock and Ceres have long histories of delivering affordable and reliable drinking water to their customers, but new investments are needed now to meet increasingly restrictive public health and environmental regulations and to ensure that the Cities can continue to deliver safe water to customers and to meet all applicable water quality standards.

The primary objectives of the Project are to: 1) improve drinking water quality; 2) provide environmental benefits to Tuolumne River aquatic species by increasing flows in the Tuolumne River downstream of Don Pedro Reservoir; 3) improve supply reliability by diversifying the water supply portfolio of the Cities; 4) provide in-lieu aquifer recharge to support groundwater sustainability; and 5) increase operational flexibility. These objectives were developed in response to challenges posed by aging water systems, increasingly stringent drinking water standards, and projected water demands consistent with adopted land-use plans.

In addition, Project costs and environmental impacts will be reduced through the construction and operations of shared Regional Facilities.

2.2 Introduction to Scope of Services

The DB Contractor shall provide the SRWA with the following integrated design-build services, the details of which will be outlined in the RFP:

- Pre-Development
- Design
- Construction
- Start-Up and Testing

2.2.1 Pre-Development

- Conceptual design of all Regional Facilities
- Precise WTP siting and pipeline alignments
- Permit acquisition responsibilities
- Compliance with California Environmental Quality Act (CEQA) mitigation measures, in coordination with and supplementary to work completed by the SRWA
- Project communications plan supplemental to the SRWA’s existing program
2.2.2 Design

- Design of the WTP and storage, which includes clearwells
- Design of the raw water pump stations and associated facilities to be located above and adjacent to the Wet Well
- Design of raw water and finished water transmission mains and related connections including coordination with current and planned City local facilities
- Support and collaboration during the SRWA design review process and the SRWA communications program

2.2.3 Construction

- Construction of the Regional Facilities and related connections
- Compliance with all SRWA and industry construction standards
- Compliance with all environmental mitigation, permitting and regulatory requirements
- Assistance in implementing the communications program, including landowner outreach and response to citizen concerns

2.2.4 Start-Up and Testing

- Process testing and commissioning in preparation for acceptance testing
- Successful completion of all required equipment, treatment, and transmission main facility acceptance tests
- Training of SRWA operations staff and transition of operation and maintenance responsibilities to the SRWA

2.3 General Treatment Requirements

The basic objectives for the performance of the WTP are to reliably meet all present and anticipated future drinking water standards. In general, the Regional Facilities should provide a high level of public health protection and quality that is acceptable to consumers in both communities. The required water quality Acceptance Test performance guarantees will be detailed in the appendices to the Design-Build Contract and may impose stricter requirements for water quality than prevailing regulations. Proposers shall be required to fully comply during the testing and startup phase of the Design-Build Contract with all applicable federal and state drinking water regulations (including water quality regulations) and the required water quality performance standards specified in the Design-Build Contract. Some examples of water quality parameters to be addressed during performance testing are listed below:

- **Turbidity** – This parameter is a measure of the cloudiness of water that results from the presence of both inorganic and organic particles. Elevated turbidity levels negatively affect the appeal of the water to the consumer and reduce the effectiveness of disinfection. Turbidity is a State and Federally regulated parameter, and its presence is an indicator of the effectiveness of pathogen removal through treatment.
Total Organic Carbon (TOC) – TOC is a concern because of the role it plays in disinfectant byproduct (DBP) formation.

Final Disinfection (Residual Maintenance) – Final disinfection is required for maintenance of a residual disinfectant in the finished water. The SRWA is requiring free chlorine final disinfection, and is thus not allowing the use of chloramine. Finished water free chlorine residual must be compatible with the distribution system configuration of each city.

Microbial Contaminants – The Interim Enhanced Surface Water Treatment Rule (IESWTR) requires public water systems using surface water to provide 3-log Giardia removal/inactivation, 4-log virus removal/inactivation, and 2-log Cryptosporidium removal. Pursuant with the SWRCB Division of Drinking Water (DDW) Surface Water Treatment Rule (SWTR) guidance document, additional Giardia and virus treatment may be required by DDW in accordance with measured total coliform bacteria levels in the source water, as per monitoring requirements also established in the IESWTR. Based on the first year of monitoring, levels of total coliform in the source water indicate 4-log Giardia removal/inactivation and 5-log virus removal/inactivation will be required.

In addition, the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) requires two years of source water monitoring for Cryptosporidium to determine if additional treatment for Cryptosporidium is required. Based on the first year of raw water Cryptosporidium data, the source water falls into “Bin 1”, so the new treatment facility may not be required to provide additional Cryptosporidium treatment unless later samples result in greater required removal/inactivation.

Corrosion Control – A surface water/groundwater integration study will be performed by the Cities in parallel with the DB procurement process and Project design phase. The Integration plan will assess:

— Lead and Copper Rule – Adjustments in treatment and/or chemical addition may be required to meet the lead and copper rule.
— Colored Water – Adjustments in treatment may be required to prevent colored water (i.e., red or black) in the Cities’ distribution systems.

Synthetic Organic Compounds (SOCs) – Removal of SOCs is an important concern (e.g. pharmaceuticals, endocrine disruptors and pesticides).

Aesthetic Quality – While not necessarily an indicator of harmfulness, aesthetic quality problems may cause customers to subjectively consider the water undrinkable. Accordingly, the following treatment steps may be required:

— Taste and odor elimination
— Iron and manganese removal from the source water, per secondary standards
— Prevention of red water (iron) or black water (manganese) due to corrosion in the distribution systems
The SRWA has identified a conventional treatment train that includes intermediate ozone as the preferred treatment process. The SRWA has determined that direct filtration, with granular media or membranes, is not applicable. The treatment process must be amendable to storm-related TOC increases and turbidity fluctuations and have the ability to minimize DBP formation. The SRWA’s overall design objective is an uninterrupted water supply, except for reduced flow periods during planned maintenance. Other requirements will include requirements such as: redundancy, noise control, and air quality standards compliance.

2.4 Selected Sites, Permitting and Available Information

2.4.1 Facilities Description and Contractor Responsibilities During Construction

Feasibility studies have described the following Regional Facility characteristics: 1) raw water will be diverted from the Tuolumne River through the existing infiltration gallery and new Wet Well (constructed under separate contract), as described below; 2) raw water will be conveyed from the Wet Well to the WTP through a single 60-inch diameter transmission main; 3) the WTP will be located on an approximately 47.9-acre site located east of the City of Ceres; 4) treated water will be conveyed westward to the City of Ceres through a single 30-inch diameter finished water transmission main; and 5) treated water will be conveyed southward to the City of Turlock through a single 42-inch diameter finished water transmission main. The aforementioned sizing of the pipelines is preliminary and subject to further development in the DB process. For purposes of this RFQ, it shall be assumed that all necessary rights-of-way and property acquisitions will be provided by the SRWA. However, for the pipelines to be installed within county and city road rights-of-way, the DB Contractor will be required to obtain necessary county and city encroachment permits, as described in detail in the RFP.

The DB Contractor will be responsible for obtaining all temporary electrical power supplies and will work diligently with the SRWA to provide all technical support necessary to obtain electrical power supplies for construction of the Project. The DB Contractor may utilize existing temporary power at the Wet Well site for construction of the raw water pump station, if the existing temporary power is sufficient to meet construction demands. The DB Contractor will also be responsible for construction of human and process waste disposal facilities. On site water usage at the Wet Well site will be designed by the DB Contractor to achieve regulatory compliance and long-term efficiency.

The construction of the Wet Well facility, which will divert water from the Tuolumne River to the Raw Water Transmission Main, will begin in July 2018. The DB Contractor will be responsible for design and construction of all other elements of the SRWA raw water pump station, including the pumps, infiltration gallery air purge equipment, motors, motor control centers, instrumentation and controls, standby power, and any other needed appurtenant facilities. The DB Contractor will also be responsible for coordination of construction activities with the Wet Well contractor.

The DB Contractor will also be responsible for design, installation, and programming of the Regional Facilities’ Operations Technology and Cybersecurity (OTC) systems, which include instrumentation, Programmable Logic Controllers (PLC), control panels, signal terminations, servers and computer hardware, network security equipment and Supervisory Control and Data Acquisition (SCADA) software.
2.4.2 Permitting

Although some permit requests have been and will be initiated by the SRWA, the DB Contractor will be responsible for identifying, preparing applications, obtaining and maintaining all necessary approvals, certifications, permits, and utility services for the Project. The following is a preliminary list of permits identified for the Project:

- Electrical power service during construction and for constructed facilities (as applicable)
- Telephone and broadband internet service during construction and for constructed facilities (as applicable)
- County and City road right-of-way encroachment permit(s) (as applicable)
- Compliance with the California Building Standards Code, including applicable building, plumbing, mechanical, electrical and fire codes and applicable Fire Marshall approvals
- National Pollutant Discharge Elimination System (NPDES)/State Water Resources Control Board (SWRCB) storm water discharge permits (as applicable)
- Central Valley Regional Water Quality Control Board/NPDES Permit and/or Waste Discharge Requirements for disposal of construction dewatering and acceptance test water
- SWRCB DDW Domestic Water Supply Permit
- San Joaquin Valley Air Pollution Control District permits (as applicable)
- The Division of Occupational Safety and Health (Cal/OSHA) construction activity permits (as applicable)
- Material hauling and landfill disposal permits (as applicable)
- Risk Management and Prevention Programs (RMPPs)
- Compliance with federal and state Endangered Species Acts
- California Department of Fish and Wildlife Streambed Alteration Agreement
- Various pre-development and CEQA compliance/mitigation measures (to be identified)
- Burlington Northern Santa Fe Railroad encroachment permit
- California Wildlife Conservation Board/Stanislaus County Department of Parks and Recreation Fox Grove Park Access permit
- Central Valley Flood Protection Board encroachment permit

The list provided above is not all-inclusive and should not be relied upon by Respondents as being indicative of the full-range of RFP permitting requirements. The SRWA will be the permit holder for all permits that remain in force after completion of construction. The SRWA will also be responsible for obtaining the water supply for the Project.

DDW staff agreed that each Proposer, accompanied by SRWA staff and/or representatives, may meet with DDW one time for up to an hour during the proposal preparation process.
2.4.3 Available Untreated Water Quality Data

In anticipation of treatment process selection and permitting, a water quality monitoring program began in October 2016 and will continue through December 2018. Each Respondent is solely responsible for determining the adequacy of the untreated water quality data and any process performance data to be used as the basis for design of the Project. A statement shall be included in the SOQ documenting the adequacy (or any concerns with the quality or quantity of information provided) of the raw water quality data and process performance data. Two reports are available in which existing Tuolumne River water quality data are compiled and discussed: 1) a summary of historical water quality data covering the period from 2005 to 2015; and 2) a summary of year-long sampling program orchestrated by the SRWA and covering the period from October 2016 to October 2017. In a third document, the two datasets were combined, and a statistical summary was presented. The untreated water data provided in these reference documents do not necessarily represent the full range of future untreated water quality conditions, nor are they representative of changes in water quality that may occur as raw water enters the sub-surface infiltration gallery intake.

2.4.4 Geotechnical Investigations

The SRWA has conducted an investigation that addresses the geotechnical aspects of the transmission main and WTP components of the Project. Reports summarizing the results of these investigations will be made available to the Respondents in accordance with Section 2.7 of this RFQ.

The Design-Build Contract will require the DB Contractor to agree that the geotechnical conditions are acceptable and suitable for the construction and operation of the Project. The SRWA will provide each Proposer with opportunities to visit the Sites, review referenced technical memoranda, including geotechnical reports, to satisfy themselves of the nature and extent of the Design-Build Work.

2.4.5 Cultural Survey

The SRWA has completed a Cultural Resources Survey of some portions of the Project area. The results of this survey are summarized in the Stanislaus Regional Water Authority Surface Water Supply Project Draft Environmental Impact Report (EIR), January 2018, State Clearinghouse No. 2017022077. A cultural resources survey of the WTP site must be completed by Horizon before construction can begin. The Draft EIR is available to the Respondents on the SRWA website (www.stanrwa.org/documents). The Final EIR is expected to be certified by the SRWA Board on August 6, 2018.

1 Trussell Technologies, Inc. September 2016. Tuolumne River Historical Water Quality Assessment
2.4.6 Biological and Wetlands Delineation Surveys

The SRWA has completed a Biological Survey and Wetland Delineation of the Project area. The results of these surveys are summarized in the Stanislaus Regional Water Authority Surface Water Supply Project Draft EIR January 2018, State Clearinghouse No. 2017022077. Pre-construction surveys for a variety of species must be completed by Horizon before construction can begin. The following two regulatory permits are in process: Section 1602 Agreement (California Department of Fish and Wildlife) and Endangered Species Act Section 10 authorization (United States (U.S.) Fish and Wildlife Service).

2.5 Project Ownership and Financing

The SRWA will, at all times, own the Project site and Regional Facilities, except for the raw water facilities, which are owned by Turlock Irrigation District and leased by the SRWA, and which include the Wet Well, raw water pump station, and raw water transmission main. The Project will be financed using SRWA or City debt instruments, the majority of which is planned to be SRF financing. The SRWA will provide more information with respect to the financing plan in the RFP.

2.6 Business Terms and Conditions

The successful DB Contractor will enter into a Design-Build Contract with the SRWA to design, construct, acceptance test, and obtain governmental approvals for the Regional Facilities. A preliminary draft of the terms of the Design-Build Contract is included in Attachment B. Because it is preliminary, Attachment B should not be considered as all-inclusive or definitive as to the form or substance of the final contract provisions. The SRWA seeks Respondent input regarding the draft Design-Build Contract. The final proposed Design-Build Contract will be included in the RFP. The following sections describe several important elements of the SRWA’s overall risk posture for business terms and conditions for the Project.

2.6.1 Guarantor

Section 4.3.3 requires Respondents to identify the legal design-build entity (the DB Contractor) that will sign and be a party to the Design-Build Contract with the SRWA. The DB Contractor must have sufficient financial capability and net worth to assure the SRWA that it is capable of performing its obligations under the Design-Build Contract both competently and on-time. The SRWA may require the DB Contractor to provide a separate guaranty from its parent company (or a substantially capitalized affiliate company) as additional security to guarantee performance under the Design-Build Contract if the SRWA determines (in consultation with its financial advisor Project Finance Advisory Limited) that a) the DB Contractor is a newly formed or limited purpose joint venture, limited liability company, limited partnership, or similar entity with limited net worth or design and construction experience, or b) the DB Contractor may be undercapitalized or may lack sufficient net worth (relative to the size of the Design-Build Contract) to support and perform its obligations under the Design-Build Contract and that a separate guaranty is appropriate to adequately protect the interests of the SRWA and the Cities and to assure the competent and timely completion of the Project. If the SRWA determines that a separate guaranty will be required, the Respondent will be so informed when it is selected as one of the Proposers. If required, the guaranty agreement would
need to be approved and signed concurrent with the Design-Build Contract. The draft Design-Build Contract (Attachment B) assumes that a separate guaranty will be needed and it includes the form of the guaranty agreement that would be required. If the SRWA determines that the DB Contractor is substantially capitalized so as to assure the competent and timely performance and completion of its obligations under the Design-Build Contract, then the contract would be revised to delete the provisions concerning the separate guaranty agreement. A Respondent will not be pre-qualified pursuant to this RFQ based on financial information provided for an entity that will not have a contractual relationship with the SRWA.

2.6.2 Performance and Payment Bonds

The DB Contractor shall also provide as additional security for its design, construction, and acceptance obligations under the Design-Build Contract, a Bond for Faithful Performance (Performance Bond) and a Payment Bond issued by a California admitted surety company: 1) having received a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; 2) listed in the United States Treasury Departments Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties of Federal Bonds and as Acceptable Reinsurance Companies”; and 3) holding a valid certificate of authority to transact surety business in the State of California. The Performance Bond and the Payment Bond are each required to be in an amount equal to the DB Contractor’s fixed design-build price for the Project.

As described in Section 4.23.6.2, Respondents are required to furnish evidence of their ability and intention to provide these security instruments. The SRWA reserves the right to require other security enhancements in addition to, or to delete any of, the foregoing instruments.

2.6.3 Insurance Requirements

The DB Contractor shall obtain the following insurance coverage:

- Commercial general liability
- Automobile liability
- Workers’ compensation
- Excess or umbrella liability
- Professional errors and omissions liability
- Pollution liability

In addition, the SRWA may consider requiring an all risk (Special Form) Builders’ Risk policy and may specify coverage for earthquake, machinery & equipment (including testing) or other enhancements. The RFP will address these and any additional requirements if necessary.

2.7 Reference Documents Available

Respondents may access the project reference documents indicated in this RFQ by submitting a Letter of Interest (described in Section 4.1). Reference documents will be made available on the
Request for Qualifications

Project procurement SharePoint website (as described in Section 4.1). A current draft reference document list can be found in Attachment F, however, the list provided on the Project procurement SharePoint site will be updated as additional reference documents are added. Respondents should recognize that the SRWA, through the DB solicitation process, seeks private-sector expertise in the development of the Project. The reference documents indicated in the RFQ are being provided to Respondents solely for their informational purposes and this list shall not be considered an appropriate or exhaustive list of all the information necessary for a Respondent to meet the DB Contractor’s obligations under the Design-Build Contract. These documents do not represent the optimal and specific Project features that will be included in the RFP and the Design-Build Contract.

The recommendations, conclusions, findings, analyses, results, or views expressed in the reference documents have not been approved or endorsed by the SRWA, and accordingly should not be construed as representing the policy of the SRWA.

The SRWA neither makes any representation or warranty with respect to nor assumes any responsibility for the appropriateness, completeness, or the accuracy of this RFQ or any reference documents or other materials provided to the Respondents or made available on the Project website. Respondents are solely responsible for conducting their own independent research and due diligence for the preparation of SOQs and the subsequent delivery of services under the Design-Build Contract. No information derived from any part of the reference documents, the RFQ, or the SRWA, or any of its agents, employees, contractors, advisors, or consultants (including the SRWA Advisor) shall relieve the DB Contractor from any risk or from fulfilling all terms and conditions of the Design-Build Contract.

2.8 Legal Authority

This procurement process and Design-Build Contract are authorized and will be governed by California Public Contract Code Sections 22160-22169, as may be amended (the “Authorizing Statute”) and other applicable California laws regarding public works contracts. The Authorizing Statute provides that the SRWA may select a design-build entity through a best value selection method as described in the statute.
3.0 PROJECT PROCUREMENT

3.1 Procurement Objectives

It is the SRWA’s intent to contract directly with a single DB Contractor for the design, construction, and startup of the Regional Facilities. This entity will be the single point of contact and have contractual responsibility for all services contracted by the SRWA for the Project. In order to receive proposals from qualified parties, the SRWA will implement a competitive procurement process to select a highly qualified, financially sound team for the planning, design, construction, and startup of the Regional Facilities. The DB process has been used in the U.S. to harness the innovation and efficiency of the private sector. In contrast to traditional approaches, the DB process links project design and construction responsibilities, encouraging the formation of multi-discipline teams that address the project as a whole. By combining the responsibilities within a single team, consortiums and individual firms are able to deliver high-quality services, assume substantial risk, and provide significant project schedule and cost efficiencies.

3.2 Procurement Process

As indicated on Figure 3-1, the SRWA is implementing a qualification and best value-based procurement process to select the most qualified DB Contractor for the design, construction, and startup of the Regional Facilities. The SRWA will follow a two-step procurement process designed to achieve the SRWA’s goals for the implementation of the Project. This RFQ is the first step in the procurement process for the Project. In order for a Respondent to be eligible to submit a proposal in response to the forthcoming RFP, the Respondent must submit an SOQ in response to this RFQ and the Respondent must be pre-qualified by the SRWA, in accordance with the procedures and standards set forth herein.

The RFQ process requires Respondents to achieve a superior ranking to continue in the selection process.

The SRWA intends to prequalify three Respondents to receive the RFP.

Only those Respondents that have been pre-qualified by the SRWA under this RFQ process will receive the RFP and be allowed to submit a proposal. The RFP will include a detailed description of the Project, as well as DB performance requirements to be addressed and met by the DB Contractor. The draft Design-Build Contract, included in Attachment B of this RFQ, provides terms and conditions for all elements of the Project. Specific economic and non-economic evaluation criteria will be presented in the RFP, and may include, but are not limited to, the following:

- Technical reliability and redundancy of solution
- Project implementability (i.e., ability to secure all approvals from third parties)
- Environmental requirements (i.e., conformance with EIR mitigation measures and applicable permits, etc.)
- Proposer’s experience as a team
Request for Qualifications

- Technical qualifications of individuals assigned to the Project
- Approach to collaboration with the SRWA
- Financial qualifications
- References
- Acceptance of Design-Build Contract provisions and risk posture
- Approach to training of and transition to SRWA operations and maintenance staff
- Project schedule
- Capital costs
- Energy consumption guarantees
- Life-cycle costs

The SRWA desires to optimize creativity and cost-competitiveness in the DB process and therefore will provide flexibility, within the guardrails identified in the RFP, to Proposers with respect to the design, construction, and operation of the treatment processes. The Regional Facilities shall be subject to all required regulatory approvals.

During the procurement process, the SRWA staff will, at a minimum, seek Board approval for the following specific milestones:

- Selection of the short-listed Respondents to receive the RFP
- Draft RFP and Technical Appendices
- Selection of Proposer for Design-Build Contract negotiations
- Final Design-Build Contract
Figure 3-1. Procurement Process
3.3 Rights of the SRWA

The issuance of this RFQ constitutes only an invitation to present qualifications. The rights reserved by the SRWA, which shall be exercised in its sole and absolute discretion, include, without limitation, the rights to:

1. Require additional information, including financial information, from one or more Respondents and to conduct discussions with Respondents at any time to supplement or clarify the SOQs submitted.

2. Conduct investigations with respect to the qualifications and experience of each Respondent, request additional evidence to support any such information, and take such other action as may be appropriate to verify the information provided by the Respondent.

3. Visit and examine any of the projects referenced in the SOQs and to observe and inspect the operations of such projects.

4. Waive any defect, technicality, irregularity, or informality in any SOQ received or in the procurement process.

5. Determine which Respondents are best qualified to be pre-qualified to receive the RFP and submit proposals in response to the RFP.

6. Reject any SOQ found to be irregular, incomplete, conditional, not in compliance, or otherwise not responsive with respect to the requirements and instructions contained herein. An SOQ will be found to be irregular or nonresponsive for reasons including, but not limited to: failure to strictly comply with the criteria stated herein; failure to submit information needed to evaluate the SOQ based on the evaluation criteria; failure to provide or complete required forms; improper signatures; submittal of more than one SOQ by the same firm; or evidence of collusion.

7. Supplement, amend, or otherwise modify this RFQ prior to the date of submission of the SOQs, or allow a Respondent to correct an error or omission.

8. Receive written questions concerning this RFQ from Respondents and to provide such questions, and the SRWA’s responses, to all Respondents.

9. Cancel this procurement process in whole or in part with or without substitution of another RFQ for any reason whatsoever.

10. Take any action affecting the RFQ process, the RFP process, or the Project that would be in the best interests of the SRWA.

11. Reject any and all SOQs, or part of any and all SOQs, or withdraw the RFQ if it is deemed in the best interest of the SRWA.

12. Change or alter the schedule for any events associated with this procurement process.

13. Amend any of the services set forth herein to remove services or to include services not currently contemplated at any time prior to execution of the Design-Build Contract.
14. Simultaneously negotiate with two or more Proposers.

15. Request revised proposals or best and final offers from Proposers following receipt of all proposals.

16. Determine that any or all Respondents will not be pre-qualified for further consideration.

17. Decide not to award a Design-Build Contract as a result of this procurement process for any reason whatsoever.

### 3.4 Communications Protocol

The SRWA is committed to a fair, open process for interested parties to receive information about the Project and the competitive procurement process that the SRWA is using for selection of a DB Contractor and award of the Design-Build Contract. All questions concerning this procurement process must be directed in writing to the Project Engineer:

Lindsay Smith, PE  
Project Engineer  
SRWA Regional Surface Water Supply Project  
2020 Research Park Drive, Suite 100  
Davis, CA 95618  
530-756-5905  
lsmithSRWA@westyost.com

All communications to the Project Engineer must be submitted in writing.

Any contact with SRWA staff, Board members, City employees or representatives, the SRWA Advisor (other than the Project Engineer), or other key Project stakeholders by a Respondent concerning any matter relating to this procurement may result in a Respondent’s disqualification from eligibility for the procurement, unless a meeting is scheduled where such aforementioned individuals are present and Respondents are invited to attend and participate. The foregoing relates only to discussions, issues, comments, and other communications related to this procurement process, and is not intended to limit unrelated contact with any of the individuals identified above. If a Respondent has any reason, not related to the Project, to contact any of the above parties, Respondents are required to specifically disclose to that party that they are a Respondent in this solicitation. Failure to adhere to these requirements may result in disqualification from the solicitation process. The SRWA Advisor (other than the Project Engineer) is not permitted to solicit or answer questions or to provide information or advice to any Respondent/Proposer during the procurement process concerning any matter related to this procurement.

### 3.5 RFQ and Qualifications Submittal

As described in Section 3.2, this RFQ is the first step in the procurement process for the selection of a firm to design, construct, perform acceptance testing, and obtain governmental approvals for the Regional Facilities. In order to be eligible to submit a proposal in response to the forthcoming RFP, a response must be received to this RFQ, the Respondent must be pre-qualified, and an RFP issued to the Proposer by the SRWA. Only those persons or firms who have obtained an official copy of this
RFQ from the SRWA or have notified the SRWA of their intent to participate in the solicitation process in accordance with Section 4.1 of this RFQ will receive official addenda (if necessary) to this RFQ.

Submission of a responsive SOQ requires Respondents to affirmatively declare their intention to participate in the RFP and proposal process. SOQs shall comply with Section 4 of this RFQ.

3.6 Pre-SOQ Workshop

On August 23, 2018, the SRWA will hold a pre-SOQ workshop located at the Ceres Community Center at 9:00 a.m. Pacific standard time (PST). Attendance at the pre-SOQ workshop is not mandatory. All SRWA responses to questions submitted in writing will be issued via addendum to the RFQ. The RFQ addendum, if necessary, is expected to be released September 4, 2018.

Written questions related to the RFQ are encouraged and can be submitted in advance for clarification during the pre-SOQ workshop or can be asked at the pre-SOQ workshop. The SRWA will continue to accept comments through August 28, 2018 until 5:00 p.m. PST. Questions should be submitted to Lindsay Smith, Project Engineer, according to the Communications Protocol described in Section 3.4.

3.7 SOQ Evaluation

Using the qualification criteria established in Section 5 of this RFQ, the SRWA will evaluate the technical, financial, and other qualifications of Respondents based on SOQ submittals, as well as any clarifications submitted by Respondents in response to SRWA requests, project and personnel references, and analysis of other publicly available information. The SRWA expects to pre-qualify three Respondents to receive the RFP.

3.8 Procurement Schedule

A preliminary and approximate schedule of the major activities associated with this DB solicitation process is presented in Table 3-1 below.
Table 3-1. Design-Build Tentative Milestones

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 7, 2018</td>
<td>Issuance of Request for Qualifications</td>
</tr>
<tr>
<td>August 23, 2018</td>
<td>Letter of Interest due to the SRWA prior to pre-SOQ Workshop</td>
</tr>
<tr>
<td>August 23, 2018</td>
<td>Pre-SOQ Workshop</td>
</tr>
<tr>
<td>September 18, 2018</td>
<td>SOQs due to the SRWA</td>
</tr>
<tr>
<td>November 2018</td>
<td>Completion of DB Team Pre-Qualifying</td>
</tr>
<tr>
<td>November 2018</td>
<td>Issuance of Draft RFP</td>
</tr>
<tr>
<td>December 2018</td>
<td>Issuance of RFP</td>
</tr>
<tr>
<td>January 2019</td>
<td>Meetings with Proposers to discuss Initial Design Concepts</td>
</tr>
<tr>
<td>May 2019</td>
<td>proposals due to the SRWA</td>
</tr>
<tr>
<td>May 2019</td>
<td>Conduct Proposer Interviews</td>
</tr>
<tr>
<td>June 2019</td>
<td>Completion of proposal Evaluation Process/DB Team Recommendation</td>
</tr>
<tr>
<td>July 2019</td>
<td>Commencement of Design-Build Contract Negotiations</td>
</tr>
<tr>
<td>September 2019</td>
<td>Completion of Design-Build Contract Negotiations/Board Award of Design-Build Contract</td>
</tr>
<tr>
<td>November 2022</td>
<td>Completion and Acceptance of Regional Facilities</td>
</tr>
<tr>
<td>November 2022</td>
<td>Commencement of Regional Facilities Operations</td>
</tr>
</tbody>
</table>

Any and all of the activities and dates listed in Table 3-1 are subject to modification by the SRWA at its sole discretion at any time during this procurement process.

3.9 Information Disclosure to Third Parties

All SOQs and subsequent proposals received in response to the procurement documents shall become the property of the SRWA and shall not be returned. The SRWA shall have the right to copy, review, discuss, retain, and dispose of each SOQ and related materials. All information submitted to the SRWA in response to this RFQ shall be confidential and not open to public inspection under the California Public Records Act (Government Code Section 6250 et seq.), except for information provided that is otherwise a public record (see Public Contract Code Section 22164(b)(4)).

Notwithstanding the foregoing, each Respondent recognizes (and in submitting an SOQ agrees) that the SRWA will not be responsible or liable in any way for any loss that the Respondent may suffer as a result of any disclosure of information or materials by the SRWA to third parties.

3.10 Honorarium

An honorarium will not be paid to Respondents for responding to this RFQ, nor will an honorarium be paid to Proposers for responding to the RFP. All costs of response and SOQ preparation shall be borne by the Respondent. The SRWA shall not be liable for any pre-contractual expenses incurred by the Respondent, including any time and costs associated with the preparation and submission of the SOQ and any meetings.
3.11 Local Outreach

The SRWA is not including a goal or requirement for the inclusion of local businesses and workers in the Project. However, Proposers will be required to propose and (upon selection) execute an outreach program for local hiring and local procurement of materials and services. “Local” is defined as within Merced, San Joaquin, and Stanislaus Counties. Proposers shall require their subcontractors to participate in the same outreach program.
4.0 SUBMITTAL OF QUALIFICATIONS

4.1 Letter of Interest

Potential Respondents to this RFQ should indicate their interest by submitting a letter addressed to the Project Engineer prior to the scheduled SOQ pre-submittal workshop on August 23, 2018. Firms that intend to submit SOQs should notify the SRWA of their intent as soon as possible by email to the Project Engineer in accordance with Section 3.4 of this RFQ. At a minimum, the following information must be provided in connection with such notification: i) contact name and title; ii) Respondent name and location, including mailing address; and iii) contact phone number and email address. Upon receipt of this letter of interest, the SRWA will provide each team with access to the Project procurement SharePoint website. The SharePoint site will include reference documents noted in Section 2.7, addenda, SOQ submittal forms, and all other information made available to all of the Respondents. The SharePoint site will also include confidential pages for each Respondent to submit their SOQ, proposal, and other necessary electronic submittals (see Section 4.2 for submittal requirements).

The SRWA cannot assure that Respondents who have not submitted notification will receive communications from the SRWA regarding the procurement process or, upon notification, that they will receive any communications from the SRWA that were transmitted prior to notification. The SRWA will make an effort to notify potential Respondents by email of the posting of addenda; however, it cannot guarantee that every potential Respondent will be notified each time. Therefore, it is the responsibility of all Respondents to check the Project SharePoint website periodically for addenda and to obtain this information in a timely manner.

4.2 General Instructions

Firms interested in providing the requested services for the Project are invited to submit a SOQ. Four (4) hard copies of the SOQ, one unofficial electronic version on CD, and one electronic version (see posting instructions below) are required for a SOQ submittal to be considered complete. The electronic SOQ shall be posted to the SRWA’s confidential SharePoint website, on the bidder’s private page, at or before 3:00 p.m. PST on September 18, 2018. SOQs received after this deadline will not be considered and will be returned unopened. Sealed hard copies and CD SOQs must also be addressed and submitted at or before 3:00 p.m. PST on September 18, 2018 to:

        Lindsay Smith, PE
        Project Engineer
        SRWA Regional Surface Water Supply Project
        2020 Research Park Drive, Suite 100
        Davis, CA 95618

        Re: Statement of Qualifications for the SRWA Regional Surface Water Supply Project

Respondents shall include the following information on the outside of the sealed envelope(s) or box(es): 1) name of Respondent, and 2) “Statement of Qualifications for the SRWA Regional Surface Water Supply Project.” SOQs will not be opened publicly.
Requests for interpretation or clarification by any Respondent must be made in writing to the Project Engineer, as described in Section 3.4 of this RFQ. Any and all such interpretations and clarifications will be made in the form of written addenda to this RFQ. No interpretation or clarification of the meaning of any part of this RFQ made orally by the Project Engineer, the SRWA Advisor, or the SRWA to any potential Respondent will be binding on the SRWA. Receipt of all addenda shall be acknowledged by Respondents in its SOQ transmittal letter. Each Respondent shall be responsible for obtaining all addenda from the Project SharePoint website prior to submitting an SOQ.

4.3 Information Requirements of Qualifications Submittal

The SOQ must be separated, by tabs, into eight sections as follows:

1. Transmittal Letter
2. Table of Contents
3. Respondent Team Composition
4. Technical Qualifications
5. Relevant Project Experience and References
6. Financial Qualifications
7. Completed SOQ Submittal Forms
8. Comments on Project Concepts (optional)

The format of the SOQ shall be as indicated above. Narrative pages are to be 8-1/2 inches by 11 inches and shall be bound into the applicable section. A minimum of 12-point font size and 1.25 line spacing is required for text. The SOQ and all information contained therein shall be in the English language. In addition, all financially-related numeric amounts shall be in U.S. dollars and shall include the exchange rate used for such conversion, if applicable. A clear and concise presentation of information is encouraged. A page limit of 30 pages is set for the SOQ, not including the Transmittal Letter, SOQ Submittal Forms, resumes of key Project staff, and financial information and supporting data. Audio-visual materials including audio tapes, video tapes, and CD presentations will not be accepted. Additional information concerning the submittal requirements to this RFQ is set forth below.

Respondents are urged to be complete, yet concise in their responses. Respondents are instructed to limit the information included in the SOQ to the information necessary to demonstrate their technical and financial qualifications for the Project and any other information specifically requested herein. The SRWA is not interested in receiving marketing brochures, generic narratives, or lists of experience unless directly related to the SOQ and referenced in the text. Technical experience and financial strength will constitute the principal proposal evaluation factors, and Respondents will be required to submit detailed experience and updated financial information in their proposals.
4.3.1 Transmittal Letter

The SOQ must include a signed transmittal letter on the Respondent’s letterhead containing, at a minimum, the name, title, address, telephone number, and email address of the Respondent and its principal contact person. The transmittal letter shall also include a complete listing of all companies that form the Respondent’s team. The transmittal letter must be substantially in the form of and contain the information in Attachment C-1 (Transmittal Letter Form and Certification). The Respondent may include other relevant information in the transmittal letter.

The transmittal letter must be signed by a representative of the Respondent who is authorized to sign such material, to certify the accuracy of the SOQ’s contents, and to commit the Respondent to the obligations contained in the SOQ (the “Designated Signatory”). If the Respondent is a partnership, the transmittal letter shall be signed by one or more of the general partners. If the Respondent 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 Respondent is a joint venture, an authorized representative of each firm in the joint venture shall sign the transmittal letter. All forms that require the signature of the Respondent shall be signed by the Designated Signatory.

Failure to include acknowledgment of all addenda may be cause for rejection of the SOQ. Respondents shall state in its transmittal letter that it has received all addenda issued on the Project SharePoint site (Facilities Procurement – General Information site) through the date of the SOQ.

4.3.2 Table of Contents

A Table of Contents shall be included in the SOQ itemizing the contents of the Respondent’s submission.

4.3.3 Respondent Team Composition

The SOQ shall indicate the form of business structure (corporation, partnership, joint venture, limited liability company, etc.) that will serve as the DB Contractor and provide single-entity responsibility for the Project. A Respondent organization chart is required. All shareholders, partners, or members of Respondent who will perform work on the Project shall be listed. If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, the proposed DB Contractor shall submit a copy of the organizational documents or agreement committing to form the organization. If the proposed DB Contractor is a partnership or joint venture, all members of such DB Contractor shall be listed. Additionally, the SOQ shall identify the portions of the work that will be undertaken directly by the DB Contractor and what portions of the work will be subcontracted to which firms. At a minimum, the SOQ shall identify the parties that will undertake the responsibilities for public relations, permitting, design, construction, and startup and testing of the Regional Facilities.

The proposed contractual relationships between the Respondent and all major partners and subcontractors (responsible for greater than five percent of the total Project effort) identified at the time of the SOQ submittal, relative to the various phases of the Project (e.g., design, construction) shall be outlined in the SOQ. The Respondent shall describe the history of the relationships among the team members including a description of past working relationships and a clear, definitive
statement of the number of years the Respondent and its Project team members have been in the business of providing design and construction services for water treatment, pumping and conveyance facilities.

The history, ownership, organization, and background of the Respondent (and proposed DB Contractor, if different from the Respondent) shall be provided. If the Respondent is a joint venture, the required information shall be submitted for each member of the joint venture firm and the SOQ shall indicate which partner will manage the joint venture during each phase of the Project.

If the DB Contractor anticipates that the SRWA may require it to provide a separate parent company guaranty (as discussed above in section 2.6.1), then the SOQ also may include the identity of the proposed guarantor together with financial information about the guarantor.

4.3.4 Technical Qualifications

Respondents shall demonstrate their ability to undertake the Project by providing evidence of the technical experience and qualifications of the Respondent, its subcontractors, and any additional team members related to the design, construction, acceptance testing, and obtaining of governmental approvals for treatment and conveyance projects comparable to the Project. The SRWA reserves the right to conduct an investigation of the Respondent’s and its team members’ technical qualifications by contacting project references or accessing public information. Additional information may be requested during the technical qualifications review. As a minimum, the Respondent shall provide the following information to demonstrate technical qualifications:

1. **Design Experience** – The Respondent shall provide a detailed summary of its engineering and design experience for the development and implementation of water treatment facilities serving the public and incorporating similar treatment processes to those contemplated for the Project. The information submitted should demonstrate experience with pipeline and design and construction engineering as reflected on completed, currently operating projects. It should include familiarity with water treatment unit processes, and understanding of the interrelationship between design, construction, and operation of water treatment facilities. The information shall include projects similar to this Project where the design was completed in the last ten years in which the individual team members identified in the SOQ have been involved. Information on any innovative approaches incorporated in these designs should be presented. Design experience shall be demonstrated by design firms and key Project staff for relevant treatment processes capable of achieving the preliminary performance standards presented in Section 2.3 of this RFQ. Emphasis shall be placed on design experience in connection with DB projects and on design experience with water treatment facilities of similar or greater capacity to the Project. The Respondent shall identify the team member responsible for key aspects of the design (i.e., architectural, structural, mechanical, process, instrumentation, QA/QC, etc.) and indicate current licenses and registrations.

2. **Regulatory Compliance and Permitting Experience** – The Respondent shall submit a detailed summary of its team’s experience with permitting and regulatory
compliance. The Respondent shall describe experience in obtaining the permits and approvals such as those listed in Section 2.4.2. If the experience in obtaining these permits is not local (i.e., not issued by the same agency as would issue the permit for the Project), the Respondent shall describe in detail how it would approach obtaining the permits and approvals. Demonstration of this experience shall include:

— Identification of state regulatory agencies that Respondent has worked with for the regulation of public water treatment plants. Experience should include the duration and record of regulatory dealings and the comparability of regulatory issues handled to the Project. Local and State of California experience shall be highlighted.

— Demonstration of ability in both achieving and on-time achievement of final regulatory approval of project plans that support capital improvement projects.

— Experience and capability in permitting new water treatment plants.

— Evidence of compliance with EIR mitigation measures, permits, licenses, approvals, consent decrees and agreements, and other regulatory actions applicable to water treatment plants and systems.

— Corrective actions taken.

Emphasis shall be on experience with projects in the United States and with state and local permitting agencies in efforts relevant to this Project.

1. **Construction Experience** – The Respondent shall provide its experience with construction management, construction and maintaining quality control of construction on water treatment facilities and large diameter pipelines completed in the last ten years. The Respondent shall provide information on its record of budget and schedule performance for projects performed or being performed and significant disputes that have risen during the design or construction of the project. Additionally, the Respondent shall provide information on any litigation and shall describe philosophy and experience with preparation and implementation of quality control plans and procedures. The Respondent may also provide descriptions of relevant experience related to other types of major processing facilities, including but not limited to wastewater treatment facilities. Types of construction experience shall be identified with each project presented, i.e., construction only, DB, design-build-operate (DBO), etc. Emphasis shall be placed on construction experience in connection with DB and DBO projects, and on construction experience with pipeline and water treatment facilities of similar or greater capacity to the Project. Respondent shall provide its experience with safety programs established and the safety records accumulated by the members of the Respondent DB team. Identify any safety awards obtained in the last five years.
2. **Start-up and Acceptance Testing Experience** – Respondents shall provide a description of startup and acceptance testing procedures and protocols employed on similar facilities, including a description of the procedures employed to ensure optimal efficiencies of the facilities. Respondents shall demonstrate the ability to perform 30-day startup and commissioning of the Regional Facilities, including experience in the start-up of similar facilities, problems encountered, and methods of resolving the problems. Respondents shall also demonstrate experience with developing procedures for and implementing final acceptance testing of similar facilities.

3. **DB Experience** – The Respondent shall provide a general description of its individual member and collective experience in DB project delivery methods, and other collaborative project delivery methods, especially for drinking water treatment and wastewater treatment facilities serving the public, and for other environmental management and processing facilities. When describing projects, the project name, project delivery method, type of project and the size of the project shall be identified. The Respondent shall demonstrate an understanding of the interrelationship between design and construction of water treatment facilities under the DB project delivery approach.

4. **Key Project Staff** – The Respondent shall provide the relevant qualifications of all key staff assigned to this Project. Utilizing the SOQ Submittal Form C-3 in Attachment C, the Respondent shall, in Section 7 of its SOQ, provide the qualifications of all key Project staff, including, but not limited to: Project Manager, Design Manager, lead Engineer(s) for each major design segment, Construction Manager, Construction Superintendents (if identified), QA/QC Manager(s) (design and construction), Start-Up and Testing Manager, and Safety Manager. The Project Manager is expected to be available for in-person meetings in Ceres and Turlock on a regular basis and often without much advance notice during both design, construction and startup phases of the work.

Information on the key individuals shall include length of time practicing in profession, licenses and certifications, familiarity with water treatment plant permitting, design, construction, testing, and DB or DBO projects, and proposed project leadership. Respondents shall also indicate which team members will be involved in each phase of startup and acceptance testing from initial startup through final acceptance testing. The SOQ shall include the information for all key Project staff of the contracting firm, its parent (if applicable), partner firms, and major subcontractors. For all key personnel, Respondents shall provide full resumes containing the relevant qualifications as an attachment to the SOQ. For each of the key Project staff identified, Respondents shall indicate on which of the projects identified pursuant to Section 4.3.5 of this RFQ that individual played a key role and identify the role.

Respondents must recognize that its key Project staff, along with subcontractors and their key employees included in the SOQ, shall be used as a basis for determining pre-qualified Respondents for eligibility to submit responses to the RFP. Any changes to Respondent teams, including major subcontractors and key employees, shall not be allowed except for extenuating circumstances such as corporate takeovers, buyouts, and other unforeseen changes. Respondents shall be evaluated based on the strength of “key project staff” as well as the depth of experienced staff resources available within the Respondent’s structure. Respondents may strengthen their teams prior to
substitution of their proposals by adding additional experienced personnel and subcontractor members. The SRWA shall have the right to determine, in its sole discretion, the acceptability of any changes in the Proposer’s proposed team as prescribed in its SOQ. Any changes to the Proposer’s proposed team found to be unacceptable by the SRWA may result in disqualification of the Proposer.

5. **Licenses** – The Respondent shall list the licenses, registration, and credentials required to design and construct the Project, and shall also include information on the revocation or suspension of any license, credential, or registration.

### 4.3.5 Relevant Project Experience and References

In addition to providing technical qualifications and experience, the Respondent shall provide a list of up to ten (10) directly relevant projects completed within the past ten years that the Respondent has been involved with as a designer, builder, or combination thereof. A brief description of these selected projects shall be provided, including a description of the Respondent team’s specific involvement in these projects and their relationship to the relevant experience information provided in accordance with Section 4.3.4 of this RFQ. Although these projects may be located in the United States or abroad, emphasis shall be on experience in the United States. In the projects presented, the Respondent must demonstrate qualifications and experience consistent with the development and implementation of the Project. These projects will be used as references and will be considered by the SRWA in the evaluation of the Technical Qualifications under Section 5 of this RFQ. Respondents are required to complete the SOQ Submittal Form C-2 in Attachment C that provides detailed information about the relevant project experiences described in this Section and provide such forms in Section 7 of its SOQ.

### 4.3.6 Financial Qualifications

The SOQ shall include the following subsections related to financial qualification:

- Financial information
- Security requirements
- Previous experience with and willingness to accept the risk allocation set forth in the Preliminary Design-Build Contract included as Attachment B
- Experience in providing project guarantees
- Liability insurance that the Respondent has normally provided for a project of this scope and size

#### 4.3.6.1 Financial Information

The Respondent shall provide full disclosure of the financial position of the proposed DB Contractor proposed to guarantee all the DB Contractor’s obligations under the Design-Build Contract. To assist in the evaluation of financial information, Respondents shall include a completed Financial Resources Data Form (SOQ Submittal Form C-4 in Attachment C) for the proposed DB Contractor. The Respondent shall include a hard copy of Form C-5 in their submission, as well as an electronic
completed version of the Microsoft Excel spreadsheet provided as part of the SOQ. The following additional financial-related information shall be included as part of the SOQ:

A. Financial Statements and Highlights

The Respondent shall provide a covering summary, highlighting key features pertinent to its financial qualifications. The Respondent should consider supplementing this summary with additional commentary which may not be fully articulated in the Financial Statements such as:

— The DB Contractor’s backlog and business outlook;
— A review of any significant changes or trends over the last five (5) years impacting the financial profile of the DB Contractor.

This summary should be no longer than two (2) pages.

The SOQ must also include copies of the most recent five (5) years of audited annual reports filed with the Securities and Exchange Commission (SEC) on Form 10-K, supporting documents, and all quarterly reports filed with the SEC on Form 10-Q since the last 10-K was filed. If 10-K or 10-Q reports reference other reports that describe the Proposed DB Contractor's financial condition, copies of such reports shall be provided to the SRWA by the Respondents as part of the SOQ.

If the proposed DB Contractor is not required to make periodic filings with the SEC, the Respondent shall submit for the proposed DB Contractor, as applicable: a) audited financial statements for the past five (5) fiscal years, including income statements, balance sheets, and a statement of changes in financial position; and b) copies of the latest quarterly financial reports for the prior three (3) months.

All financial information requested herein shall be prepared in accordance with Generally Accepted Accounting Principles (or equivalent) and be provided in U.S. dollars. If the audited financial statements provided with the SOQ are not in the English language, then a certified English translation shall be provided for this project.

B. Credit Ratings

If the Respondent has short-term or long-term obligations rated by Moody’s Investors Service, Standard & Poor’s or Fitch Ratings, or similar such ratings shall be provided on SOQ submittal Form C-4 in Attachment C.

C. Insurance

Respondents shall specify the limits of liability insurance that they normally provide for a project of this scope and size, including the amount of any deductibles or self-insured retentions. The Respondent shall provide evidence of coverage, or evidence of the ability to secure insurance coverage, at those limits.

Respondents shall provide a letter from the Respondent’s proposed insurance company acknowledging, among other things, that the Respondent’s insurance company has reviewed and understands the requirements of this RFQ and that the insurance company intends to furnish the required insurance set forth in Section 2.6.3.
of this RFQ for the Project in the event an acceptable Design-Build Contract is negotiated between the DB Contractor and the SRWA based on this RFQ, the RFP, and the proposal. Such letter shall be included in Section 7 of the Respondent’s SOQ.

D. Direct Financial Questions

The purpose of this subsection is to elicit information pertaining to unfavorable factors or events that have the potential to adversely impact the proposed DB Contractor’s ability to honor its contractual commitments. To the extent that any of these questions are answered in a manner that indicates that any of these unfavorable factors or events are present or have occurred, it is the Respondent’s sole responsibility to: 1) describe in detail the unfavorable factor or event; and 2) provide sufficient information to demonstrate to the SRWA that the unfavorable factor or event will not adversely impact the proposed DB Contractor’s ability to honor its contractual commitments.

Each Respondent shall provide responses to each of the following questions concerning the proposed DB Contractor during the past five (5) years (except where otherwise noted):

1. Material Adverse Changes in Financial Position

   a) Describe any material historical, existing, or anticipated changes in financial position of the proposed DB Contractor including, but not limited to, any material changes in the mode of conducting business, mergers, acquisitions, takeovers, joint ventures, and divestitures.

2. Bankruptcy

   a) Has the proposed DB Contractor ever filed for bankruptcy? If so, state when and where and describe the circumstances and the impact it could have on the ability to honor contractual commitments.

3. Liabilities and Potential Liabilities

   a) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) and any contingent liabilities (i.e., financial or performance commitments, open letters of credit, and guarantees) in which the proposed DB Contractor, or any parents, affiliates, and subsidiaries of the proposed DB Contractor was or is a party that could adversely affect the proposed DB Contractor’s financial position or ability to honor its contractual commitments to the SRWA.

   b) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) in which the proposed DB Contractor, or any parents, affiliates, and subsidiaries of the proposed DB Contractor is or was a party within the last ten (10) years concerning projects of a similar nature, including DB and DBO projects.

   c) List and briefly describe any threatened, pending, or past legal proceeding and judgment (or settlement) and any contingent liabilities (i.e., financial or
performance commitments, open letters of credit, and guarantees) in which any other member of the Respondent’s proposed Project team, or any parents, affiliates, and subsidiaries of the such team members was or is a party that could adversely affect the such team member’s financial position or ability to honor its contractual commitments in relation to the Project.

4. Completion of Contracts

Briefly describe any situation in which the Respondent, proposed DB Contractor, or any other member of the Respondent’s proposed Project team failed to complete any construction or public works contract or had any such contract terminated by the other party due to alleged poor performance, default, or litigation.

5. Violation of Laws

Has the Respondent, proposed DB Contractor, or any other member of the Respondent’s proposed Project team been convicted of any criminal conduct or, in the past ten (10) years, been found in violation of any federal, state, or local statute, regulation, or ordinance or court order concerning antitrust, public contracting, employment discrimination, public works, or labor or prevailing wage requirements or limitations? If so, describe the circumstances.

6. Debarred from Bidding

Has the Respondent, proposed DB Contractor, or any other member of the Respondent’s proposed Project team been debarred, or are under consideration for debarment, or determined to be non-responsible, for public contracts by the federal government or by any governmental entity in California or any other state? If so, describe the circumstances and explain whether the decision is under review or was upheld by formal legal or grievance process.

4.3.6.2 Security Requirements

Respondents are required to furnish evidence of their ability and intention to provide the Performance Bond and the Payment Bond as discussed in Section 2.6.2.

Respondents shall provide a letter from the Respondent’s proposed surety company acknowledging, among other things, that the Respondent’s surety company has reviewed and understands the requirements of this RFQ and that the surety company intends to furnish the Performance Bond and Payment Bond set forth in Section 2.6.2 of this RFQ in favor of the SRWA as security for the performance of the DB Contractor’s design-build work obligations, in the event an acceptable Design-Build Contract is negotiated between the DB Contractor and the SRWA based on this RFQ, the RFP and the proposal. Such letter shall be included in Section 7 of the Respondent’s SOQ.
4.3.7 Conflicts of Interest

The SRWA has adopted a conflict of interest policy concerning this procurement (see Attachment D). The Respondent, the proposed DB Contractor, and their affiliates will be subject to, and must comply with, this policy. In the SOQ, the Respondent must confirm that it is, and will be, in compliance with the policy. In addition, list and describe all engagements: 1) between the Respondent, the proposed DB Contractor, or any of their affiliates, with any of the persons and firms listed in Section 1.3 of this RFQ; and 2) between any other member of the Respondents proposed Project team, or any of their affiliates, with any of the persons and firms listed in Section 1.3 of this RFQ.

4.3.8 Skilled and Trained Workforce Requirement

California Public Contract Code 22164(c) provides that the SRWA cannot short-list a Respondent unless the Respondent: 1) provides an enforceable commitment to the SRWA that the Respondent and its subcontractors at every tier will use a “skilled and trained workforce” (as defined at Public Contract Code Section 2601) to perform all work on the Project; or 2) has entered into a project labor agreement (as defined at Public Contract Code Section 2500) that will bind the Respondent and all of its subcontractors to use a skilled and trained workforce. Therefore, the Respondent must sign the certificate form included in Attachment E to: 1) commit itself and all subcontractors to use a skilled and trained workforce to perform all work on the Project and acknowledge that the requirement will be incorporated in the Design-Build Contract; or 2) confirm that the Respondent is a party to an applicable project labor agreement. The skilled and trained workforce requirement generally means that all the workers performing work in an apprenticeable occupation are either skilled journeypersons or apprentices registered in an apprenticeship program and that at least a certain specified percentage of the skilled journeypersons on the job are graduates of an apprenticeship program. See Public Contract Code Sections 2601-2602 for more detail concerning this requirement. To be considered for the short-list, a Respondent must include the signed certificate form in Attachment E in its SOQ. If a Respondent certifies that it is a party to an applicable project labor agreement, then it also must submit a copy of the agreement. A Respondent will be disqualified as nonresponsive if the certificate is not completed, signed, and submitted.

4.4 SOQ Submittal Forms

Respondents must complete and submit SOQ Submittal Forms C-1, C-2, C-3, C-4, and C-5 in Attachment C and include all such forms in Section 7 of the SOQ. An electronic version of the SOQ Submittal Forms has also been posted to the Project SharePoint site. In addition, Respondents shall include the letters from insurers and sureties required by Sections 4.3.6.1(c) and 4.3.6.2, respectively, in Section 7 of the SOQ.

4.5 Comments on Project Concepts

Respondents may, but are not required to, provide comments concerning the SRWA’s Project approach, Project schedule, contractual concepts, or other elements of the Project described in this RFQ. The comments should reflect the Respondent’s suggestions that in the opinion of the Respondent might improve achievement of the SRWA’s objectives. Comments provided by Respondents will be considered under the terms of Section 5 and may be helpful to the SRWA in
developing the Project procurement process. All such information will be considered confidential until a Design-Build Contract with the successful proposer is executed (except as otherwise provided by Section 3.9).

In particular, the SRWA may incorporate reasonable suggestions in the RFP and draft Design-Build Contract, regardless of whether the SRWA awards the Design-Build Contract to the Respondent who made the suggestions. All such comments shall be included in Section 8 of the Respondent’s SOQ.

Respondents are encouraged to provide comments related to any or all of the following:

- Treatment processes that are reasonable and worthy of consideration
- The need for pilot testing
- Key process issues that could affect long-term performance and economic efficiency, while maintaining flexibility to accommodate changing water quality requirements
- Additional Project site related information needs
- Phasing and flexibility
- Design-Build Contract security requirements as discussed in this RFQ and the Preliminary DB Contract
- Risk sharing as presented in the Preliminary DB Contract
- Regional Facilities communication systems and concepts
- Other

Comments on the evaluation and selection criteria for the RFP will not be considered.

A statement shall be included in the SOQ documenting the adequacy (or any concerns with the quality or quantity of information provided) of the raw water quality data and process performance data as described in Section 2.4.3.
5.0 EVALUATION AND RANKING OF SUBMISSIONS

The preceding sections of this RFQ have outlined the Project and the qualifications that will be used to create a short-list of prequalified Respondent proposers that will receive an RFP for the Project. The SRWA intends to review the SOQs for responsiveness to the requirements of this RFQ and to evaluate all responsive SOQs according to the following criteria and weighting:

1. **Team Composition** (40 percent)
   - Team organization
   - Previous working history as a team
   - References (related to project delivery)
   - Key staff experience, including alternative delivery experience, and startup/testing
   - Key staff percent of time available to the Project (design phase and construction phase)
   - History (for proposed team) of meeting project budgets and schedules
   - Interview performance

2. **Approach to Project Delivery** (30 percent)
   - Approach to collaboration with the SRWA
   - Approach to providing training and a smooth transition to the SRWA operations and maintenance staff
   - Organization and presentation of the SOQ

3. **Technical Qualifications** (30 percent)
   - Technical experience relevant to the project, including identified subcontractors
     - Design
     - Construction
     - Permitting
     - Start-up and testing
   - Management of multi-discipline teams on complex water projects
   - References (related to treatment facility reliability and performance, and pumping and conveyance systems)

4. **Financial Qualifications and Safety Record** (Pass/Fail)
   - Respondent financial stability
   - Claims history
   - Bonding capacity
   - Insurance requirements
   - Willingness to sign Contract (allowing for reasonable changes)
   - Safety record of construction team
   - Ability to comply with the SRWA’s conflict of interest policy
   - Ability to certify the use of “a trained and skilled workforce”
Request for Qualifications

The evaluation of the qualifications will be based on the submittals received as required by Section 4 of this RFQ and correspondence with Respondent teams and personnel references and analysis of other publicly available information and information otherwise made available to the SRWA.

5.1 Team Composition

The criteria for the evaluation of the Respondent’s team composition will include:

1. Respondent DB team information:
   - Team structure, management and working history
   - Team and Project organization
   - Work to be performed by Respondent and work to be subcontracted
   - Proposed staffing and description of staff working together on existing and past projects
   - Key staff experience, including collaborative delivery experience and startup/testing
   - Key staff percent of time available to project (design phase and construction phase)
   - Project history (for proposed team) meeting budget and schedule
   - Interview performance. The following team members will be required to attend the interview:
     - Project Manager
     - Design Manager
     - Construction Manager
     - Construction Superintendent
     - Start-Up and Testing Manager

In addition to the required five (5) team members listed above, the Respondent may bring an additional three (3) team members to the interview.

2. DB experience and performance on similar projects:
   - Extent of past experience with DB and DBO and references related to project delivery
   - Understanding of interrelationship between design, construction, and operation of water treatment facilities

5.2 Approach to Project Delivery

The criteria for the evaluation of the Respondent’s Approach to Project Delivery will include:

- Approach to collaboration with the SRWA
- Approach to training and providing a smooth transition to the SRWA operations and maintenance staff
- Organization and presentation of the SOQ
5.3 Technical Qualifications

In evaluating technical qualifications and experience, the SRWA will give most consideration to experience related to drinking water treatment projects providing service to the public, particularly in the United States and the State of California. Non-United States experience will be considered where demonstrated by the Respondent to be comparable and of equivalent value to United States experience in achieving objectives similar to the Project.

The criteria for the evaluation of the Respondent DB team’s technical qualifications will include:

1. Design and Permitting Experience
   - Design experience and past performance on similar projects, including:
     ▪ Similar projects completed in the last ten (10) years in which individual team members have been involved
     ▪ Experience with innovative design solutions for issues similar to those for the Project
     ▪ Experience designing aesthetically pleasing facilities
     ▪ Design experience in DB and DBO projects
     ▪ Key design staff experience and ability
   - Permitting experience and past performance on similar DB projects
     ▪ Experience obtaining permits and approvals or types of permits and approvals listed in Section 2.4.2 of this RFQ, including California regulatory agencies worked with and comparability of issues handled to this Project
     ▪ Record in achieving, and on-time achievement of, final regulatory approval of facility plans supporting water or wastewater treatment plant projects
     ▪ Key permitting staff experience and ability

2. Construction Experience
   - Construction experience and past performance on similar projects, including:
     ▪ Similar projects completed in the last ten (10) years in which team members have been involved as builder
     ▪ Construction experience in DB and DBO projects
   - Experience with preparation and implementation of quality control plans and procedures
   - Construction safety programs established and construction safety records accumulated, including:
     ▪ Adequacy of safety programs established
     ▪ Accumulated safety records
     ▪ Safety awards obtained in last five (5) years
     ▪ Current worker’s compensation rate for construction team members
   - Key construction staff experience and ability
   - Start-up and acceptance testing experience and past performance on similar projects
5.4 Financial Qualifications and Safety Record

In this section, regarding financial qualifications and safety record, the Respondent’s capabilities and financial strength (and, if submitted by the Respondent, financial information provided for the proposed guarantor) will be evaluated with respect to the performance of the Design-Build Contract over its entire term. The criteria for the evaluation of the Respondent capabilities and team financial qualifications will include, but not be limited to:

1. **Respondent**
   - The experience and management capability of the Respondent to integrate the required expertise for the overall benefit of the Project
   - Experience and management capability of the Respondent’s key personnel

2. **Financial Resources**:
   - Liquidity
   - Leverage
   - Cashflow/Debt Service Coverage; and
   - Profitability

3. **Security, Insurance, and Credit Ratings**:
   - Evidence of ability to meet the security requirements described in this RFQ
   - Evidence of ability to provide the insurance coverage described in this RFQ
   - Bond, credit, and other ratings

4. **Responses to Direct Financial Questions**

Various analytical techniques will be used to assess the financial strength and stability of each proposed DB Contractor, focusing on profitability and growth, solvency, efficiency, market strength, and ratings from credit agencies. The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are directly comparable among Respondents and Guarantors. Other factors that may influence the financial position of a proposed DB Contractor or that provide additional evidence of the financial strength of a proposed DB Contractor will also be assessed.

When performing the financial evaluation, the SRWA will place an emphasis on those financial criteria that relate to the proposed DB Contractor’s and Guarantor’s financial strength and solvency, including such factors as Total Net Worth, Current Liability Coverage, and Market to Book Ratio, as well as bond and credit ratings. Respondents are advised that information indicating inadequate financial strength for the Project or evidence of financial distress or potential financial distress may prevent the Respondent from advancing to the next stage of the selection process.

In addition to the financial evaluation, the safety record of the construction team will be considered, including the adequacy of established safety programs. Safety records will be evaluated against the criteria described in California Public Contract Code 22164(b)(3)(g).

The Respondent’s ability to comply with the SRWA’s conflict of interest policy and to certify the use of “a trained and skilled workforce” are required.
Project Overview

Stanislaus Regional Water Authority
Regional Surface Water Supply Project
ATTACHMENT B

Preliminary Design-Build Contract
DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

between

STANISLAUS REGIONAL WATER AUTHORITY

and

XXX

Dated

____________________, 2019
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THIS DESIGN-BUILD CONTRACT is made and entered into as of ________, 2019, between the Stanislaus Regional Water Authority, a joint powers authority organized and existing under the California Joint Exercise of Powers Act (the “SRWA”), and __________, a ______________ organized and existing under the laws of the State of __________ and authorized to do business in the State of California (the “Company”), who agree as follows:

RECITALS. This Contract is made with reference to the following background recitals:

(A) SRWA is a joint powers authority established pursuant to the Amended Drinking Water Supply Project Joint Exercise of Powers Agreement Between the Cities of Ceres and Turlock for the Purpose of Creating a Joint Powers SRWA Responsible for Decisions in Certain Matters Pertaining to the Municipal and Industrial Water Supply Programs for the Aforementioned Public Entities a Joint Powers Agreement dated December 15, 2015, as amended __________, 2018, for the purpose of jointly pursuing the development and implementation of the Regional Surface Water Supply Project that will provide a new supply of treated surface water to customers of the Cities to help meet existing and future water needs, improve drinking water quality, and aid the sustainable management of the groundwater basin.

(B) The Regional Surface Water Supply Project will consist of the design, construction, start-up and testing of a new regional water treatment plant, raw water pump station, raw water transmission main, finished water transmission mains, and all appurtenant and related facilities. The Tuolumne River will be the source of water for the Project. SRWA will provide the water supply pursuant to the Amended Water Sales Agreement between SRWA and Turlock Irrigation District dated __________, 2018.

(C) In 2002-2003, Turlock Irrigation District constructed an infiltration gallery (i.e., subsurface perforated pipes that collect river water) within the riverbed of the Tuolumne River. SRWA will divert river water from an intake/diversion facility that will consist of two major structures: a wet well (i.e., a large, buried concrete “box” used to hold water drawn from the infiltration gallery) constructed in connection with the existing infiltration gallery; and a pump station structure (with pumps, piping, electrical, and other equipment) that will be constructed above the wet well. SRWA constructed the wet well and associated improvements in 2018-19 pursuant to its separate, but related Raw Water Pump Station, Phase 1 project (aka Infiltration Gallery Testing Project).

(D) SRWA plans to enter into a contract with a private design-build entity for the design, permitting, construction, start up, commissioning, initial testing, and acceptance testing of the remaining Project facilities (defined below as the Regional Water Facilities).

(E) Public Contract Code Sections 22160-22169 authorizes SRWA to conduct a design-build procurement process utilizing best value as a method to select the design-build entity to provide the services described in this Contract.

(F) SRWA issued a Request for Qualifications in August 2018 to interested design-build entities capable of designing and building the Project. Following evaluation of the statements of qualifications submitted in response to the request for qualifications and based upon the criteria set
forth in the Request for Qualifications, SRWA selected three firms for receipt of the Request for Proposals (RFP).

(G) The RFP was issued by SRWA to the three prequalified teams in 2018. RFP addenda were issued on _, 2018. Proposals submitted in response to the RFP were received by SRWA in _, 2019. The proposals were reviewed by SRWA Technical Advisory Committee and evaluated based on the criteria set forth in the RFP. Based on the evaluations of the proposals and discussions with the proposers, the Technical Advisory Committee determined that the proposal submitted by the Company offers the best value (as described in the RFP and Public Contract Code Sections 22161 and 22164) to the public and it recommended to SRWA Board of Directors that the Board authorize this Contract with the Company.

(H) Certain significant Project background and reference documents were attached to and referenced in the RFP and, through the RFP, SRWA disclosed these documents and their contents and information to the Company. The Company had the opportunity to review and consider these documents as it evaluated and developed its Proposal.

(I) On _, 2019, SRWA Board of Directors adopted a resolution approving and authorizing the execution, delivery, and performance of this Contract.

(J) ____, an Affiliate of the Company, will guaranty the payment and performance of the obligations under this Contract pursuant to a separate guaranty agreement executed concurrently with this Contract.

(K) Prior to approving this Contract, SRWA certified an environmental impact report for the Project in accordance with the California Environmental Quality Act.
ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. As used in this Contract, the following words and terms shall have the meanings set forth below:

“Acceptance” means demonstration by the Company in accordance with Article 5 (Testing, Start-up, and Acceptance) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) that the Acceptance Tests have been conducted, the Acceptance Test Procedures and Standards have been achieved, and all other Acceptance Date Conditions have been achieved.

“Acceptance Date” means the date on which Acceptance of the Project occurs or is deemed to have occurred under Article 5 (Testing, Start-up, and Acceptance).

“Acceptance Date Conditions” has the meaning specified in Section 5.5 (Acceptance Date Conditions).

“Acceptance Test” means the testing for Acceptance to be performed by the Company in accordance with Article 5 (Testing, Start-up, and Acceptance), Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), and the Acceptance Test Plan.

“Acceptance Test Plan” means the testing protocols, procedures and processes for the performance of the Acceptance Tests prepared and documented by the Company and approved by SRWA in accordance with Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

“Acceptance Test Procedures and Standards” means the test procedures and standards for Acceptance set forth in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person, (b) is controlled by or is under direct or indirect common control with the specified Person, or (c) is an officer, director, or senior management employee of the Person. For purposes of this definition, “control” means (a) the power to directly or indirectly control or direct the management or policies of the specified Person, whether through the ownership of voting rights, partnership or limited liability company interests, contract, or otherwise, or (b) direct or indirect ownership of 50% or more of the voting securities or interests of that Person.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Contract, and identified as such in the Table of Contents. The Appendices are part of the Contract.

“Applicable Law” means (1) any federal, State or local statute, law, code, regulation, court decision or order; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case applicable from time to time to the permitting, design, acquisition, construction, equipping, start-up, testing, and initial operation of the Regional Water Facilities, or any other transaction or matter contemplated by this Contract (including, without limitation, any of the foregoing that pertain to water treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). Applicable Law includes the California Building Standards Code.
(California Code of Regulations Title 24), including applicable building, plumbing, mechanical, electrical, and fire codes, OSHA requirements, and Environmental Mitigation Measures.

“Assumed Approval Issuance Date” has the meaning specified in subsection 4.6(J) (Governmental Approval Dates).

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S. Code Section 101 et seq., as amended from time to time and any successor statute. “Bankruptcy Code” also includes (1) any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

“Base Design-Build Price” has the meaning specified in Section 6.2 (Design-Build Price).

“Base Design-Build Price Adjustments” has the meaning specified in Section 6.2 (Design-Build Price).

“Board of Directors” means the Board of Directors of SRWA.

“Business Days” means Monday through Friday, excluding holidays recognized by the City of Turlock.

“Ceres Finished Water Transmission Main” means the transmission main for the conveyance of Finished Water from the Plant to the Ceres Water Supply System, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Ceres Finished Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Ceres Finished Water Transmission Main is to be constructed by the Company.

“Ceres Water Supply System” means the City of Ceres wells, pump stations, treatment facilities, reservoirs, pipes, mains and all other facilities, equipment and structures used by the City for the production, storage, treatment and conveyance of drinking water in the City of Ceres.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of either party:

1. except as provided below, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

2. except as provided below, the order, decision, or judgment of any Governmental Body issued on or after the Contract Date enforcing any Change in Law described in subsection (1) of this definition to the extent such order, decision, or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of SRWA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order, decision, or
judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence;

3. except as provided below, the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of SRWA, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence; or

4. a Change in Law pertaining to Taxes, the effect of which is the adoption of a new or increased State or local Tax imposed on building materials used in the construction of the Regional Water Facilities.

However, none of the following shall constitute a Change in Law:

1. acts, events and circumstances with respect to the Governmental Approvals, to the extent that the Company has expressly assumed the permitting risk under Section 4.6 (Design-Build Work Permitting Responsibilities);

2. acts, events and circumstances with respect to the New Domestic Water Supply Permit or an Interim Operations Approval, to the extent that the Company has expressly assumed the permitting risk under Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit);

3. a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Contract Date;

4. any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date; and

5. any act, event or circumstance that would otherwise constitute a Change in Law but that does not change the requirements imposed on the Company by the Contract Standards in effect as of the Contract Date.

“Change Order” means a written order issued by SRWA and agreed to in writing by the Company prior to Final Completion making a Design and Construction Requirement Change (whether made at Company request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of SRWA), making a Base Design-Build Price Adjustment, adjusting the Scheduled Acceptance Date, or making other change to the terms and conditions of this Contract.

“Cities” means the City of Ceres and the City of Turlock.

“City of Ceres” means the City of Ceres, California, a municipal corporation organized and existing under and by virtue of the laws of the State.

“City of Turlock” means the City of Turlock, California, a municipal corporation organized and existing under and by virtue of the laws of the State.
“City Property” means any buildings, structures, improvements, equipment, alarm systems, wastewater and water mains, valves, pumping systems, hydrants, hydrant connections, duct lines, lamps, lampposts, monuments, sidewalks, curbs, trees, lawns, roadways, utilities or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by either City.


“Company” means __________, a ________________ organized and existing under the laws of the State of ____, and its permitted successors and assigns.

“Company Construction Superintendent” means the employee of the Company or a Subcontractor who is primarily responsible for the construction of the Regional Water Facilities, as designated in Section 4.19(B) and Appendix 10 (Key Personnel and Approved Subcontractors).

“Company Contract Representative” means the individual specified in writing by the Company as the representative of the Company from time to time for all purposes of this Contract.

“Company Engineer” means a professional engineer licensed in the State in good standing who is designated as such by the Company, and acceptable to SRWA, acting reasonably, and is responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to the Design-Build Work.

“Company Fault” means any breach (including the untruth or breach of any Company representation or warranty herein set forth), failure, non-performance or non-compliance by the Company with respect to its obligations and responsibilities under this Contract to the extent not attributable to any Uncontrollable Circumstance or SRWA Fault, and which materially and adversely affects SRWA’s rights, obligations or ability or costs to perform under this Contract.

“Company Senior Supervisors” has the meaning specified in subsection 10.5(A) (Company Representatives).

“Construction Date” means the date, following satisfaction of the Construction Date Conditions by the Company, upon which the Company shall have the right to proceed with the physical construction of the Regional Water Facilities as determined in accordance with Section 4.2 (Construction Date Conditions).

“Construction Date Conditions” has the meaning specified in subsection 4.2(A) (Construction Date Conditions Generally).

“Contract” means this Design-Build Contract for the Regional Surface Water Project between the Company and SRWA, including the Appendices and the Transaction Forms, as the same may be amended or modified by the parties from time to time.

“Contract Administration Memorandum” has the meaning set forth in subsection 10.3(B) (Contract Administration Memoranda).

“Contract Date” means the date this Contract is fully approved, executed and delivered, as set forth at the top of page 1 of the Contract.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) Design and Construction Requirements, (3) Secondary Technical Criteria; (4) Performance Guarantees; (5) Good Engineering and
Construction Practice; (6) Good Industry Practice; (7) Design-Build Quality Management Plan; (8) applicable written equipment manufacturers’ specifications and recommendations; (9) all Insurance Requirements; (10) the Appendices; and (11) any other standard, term, condition or requirement specifically provided in this Contract to be implemented or complied with by the Company.

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 10.8 (Cost Substantiation of Work Already Performed).

“DDW” means the Division of Drinking Water of the State Water Resources Control Board, or any predecessor or successor State agency responsible for permitting and regulation of public water systems.

“Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Company to SRWA pursuant to this Contract, including the Design Documents.

“Design and Construction Requirements” means the requirements designated as the “Design and Construction Requirements” in Article 4 (Permitting, Design, and Construction) and Appendix 5 (Project Technical Requirements) with which the Company must comply.

“Design and Construction Requirement Change” means a change in the Design and Construction Requirements made by a Contract Administration Memorandum or a Change Order pursuant to Section 4.10 (Design and Construction Requirements; Changes) or a Unilateral Change Directive pursuant to Section 4.12 (Unilateral Change Directives), (1) as a result of a Company request agreed to by SRWA, (2) on account of Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Governmental Body, or (4) at the direction of SRWA.

“Design-Build Price” means the sum of the Base Design-Build Price and any Base Design-Build Price Adjustments.

“Design-Build Quality Management Plan” means the Company’s plan for quality assurance and quality control in implementing the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 4 (Design-Build Quality Management).

“Design-Build Work” means everything required to be performed and furnished for and relating to the design, permitting, construction and Acceptance of the Regional Water Facilities by the Company pursuant to this Contract. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, bonds, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company’s design, engineering, construction, start-up, Acceptance Testing, obtaining and maintaining Governmental Approvals and related obligations with respect to the design and construction of the Regional Water Facilities under this Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Company’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under this Contract pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and includes any Design and Construction Requirement Changes and variations in the final design from the Secondary Technical Criteria authorized by a Contract Administration Memorandum, Change Order or Unilateral Change Directive.

“Design Documents” means the Company’s plans, technical specifications, Drawings, Record Drawings and other design and construction documents prepared in connection with the Design-Build Work.
“Differing Site Conditions” means (1) subsurface or latent conditions at one of the Sites that differ from those described in the geotechnical baseline conditions set forth in Appendix 5 (Project Technical Requirements) or otherwise indicated by information about the Sites made available to proposers prior to the deadline for submitting Proposals, or (2) unknown physical conditions at one of the Sites of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. Differing Site Conditions shall not include subsurface groundwater levels or other subsurface water conditions as described in Section 4.4(B) (Differing Site Conditions).

“Disinfection Plan” means the Company’s plan for cleaning and disinfecting those portions of the Regional Water Facilities that are in direct contact with Finished Water, prepared in accordance with Appendix 5 (Project Technical Requirements).

“Document Submittal Plan” has the meaning specified in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures).

“Drawing” means any drawing, diagram, illustration, brochure, schedule or other data prepared by the Company, any Affiliate or any Subcontractor to illustrate specific portions of the Design-Build Work.

“Encumbrances” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project, other than Permitted Encumbrances.

“Environmental Mitigation Measures” means the mitigation measures set forth in Appendix 9 (Governmental Approvals and Utility Coordination).

“Event of Default” means, with respect to the Company, those items specified in Section 7.2 (Events of Default by the Company) and, with respect to SRWA, those items specified in Section 7.4 (Events of Default by SRWA), which may lead to termination of this Contract upon election of the non-defaulting party.

“Extension Period” means the period commencing on the day after the Scheduled Acceptance Date and ending 180 days following the Scheduled Acceptance Date, or in the event of one or more delays caused by Uncontrollable Circumstances occurring during such period, the date determined by adding to such 180-day period the aggregate number of days of delay caused by such Uncontrollable Circumstances.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other Persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Completion” means completion of the Design-Build Work in compliance with the Technical Standards, Drawings, and the applicable requirements of this Contract, as more particularly described in Section 4.23 (Final Completion).

“Final Punch List” has the meaning specified in Section 4.22 (Final Punch List).

“Finished Water” means water that has been treated at the Plant in accordance with the Contract requirements, including Appendix 6 (Performance Guarantees), and delivered to the City Water Supply Systems.
“Finished Water Transmission Mains” means the Ceres Finished Water Transmission Main and the Turlock Finished Water Transmission Main.

“Finished Water Pumping Station” means the pumping station (to be located at the Plant site) for the conveyance of Finished Water to each City Water Supply System, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Flow Rate” means the aggregate rate of flow of Finished Water volume delivered to the Ceres Water Supply System and the Turlock Water Supply System, as measured by the water meters at each City point of interconnection (adjusted for any Finished Water withdrawn for use at the Plant).

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning and testing practices for the design, construction and improvement of capital assets in the municipal water treatment industry as followed in central California.

“Good Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal water treatment industry as observed in central California.

“Governmental Approval Application Date” has the meaning specified in subsection 4.6(J) (Governmental Approval Dates).

“Governmental Approvals” means all orders, decisions, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any Person with respect to the Design-Build Work, and include the permits, licenses and approvals described in Appendix 9 (Governmental Approvals and Utility Coordination).

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental agency, department, board, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Guarantor” means ________, a _____________ organized and existing under the laws of the State of __________, and its successors and assigns permitted thereunder.

“Guaranty Agreement” means the Guaranty Agreement entered into concurrently with this Contract from the Guarantor to SRWA in the form set forth in the Transaction Forms, as the same may be amended from time to time.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous substances” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. Code Section 9601 et seq., and applicable regulations promulgated thereunder, and “hazardous waste” as defined in the Resource Conservation and Recovery Act, 42 U.S. Code Section 6901 et seq., and applicable regulations promulgated thereunder, and California Health and Safety Code Section 25117, as the same may be amended from time to time.
“Hazardous Materials Management Plan” means the Company’s plan for safe storage, containment, and disposal of chemicals and Hazardous Materials during the performance of the Design-Build Work, prepared in accordance with Appendix 9 (Governmental Approvals and Utility Coordination).

“Insurance Requirement” means any rule, regulation, code, policy condition, or requirement issued by any insurance company which has issued a policy of Required Insurance under this Contract, compliance with which is a condition to the effectiveness of such policy.

“Interim Operations Approval” has the meaning set forth in Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit).

“Joint Powers Agreement” means the Amended Drinking Water Supply Project Joint Exercise of Powers Agreement Between the Cities of Ceres and Turlock for the Purpose of Creating a Joint Powers SRWA Responsible for Decisions in Certain Matters Pertaining to the Municipal and Industrial Water Supply Programs for the Aforementioned Public Entities a Joint Powers Agreement dated December 15, 2015, as amended __________, 2018, and as may be further amended by the Cities from time to time.

“Key Personnel” means any individual identified by the Company as having a lead capacity or a high level of authorization in a supervisory capacity, as set forth in Appendix 10 (Key Personnel and Approved Subcontractors).

“Legal Proceeding” means every action, lawsuit, litigation, arbitration, administrative proceeding, claim, and other legal or equitable proceeding having a material bearing upon this Contract or the performances of the parties hereunder, and all appeals therefrom.

“Lien” means any and every lien or encumbrance against the Regional Water Facilities or any of the Sites or against any monies due or to become due from SRWA to the Company under this Contract, for or on account of the Design-Build Work, including mechanics’, materialmen’s, and laborers’ liens.

“Loss and Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, Tax, expense, or Fees and Costs relating to any claim or Legal Proceeding for which the Company is obligated to indemnify an SRWA Indemnitee hereunder, except as excluded or limited under this Contract.

“Materials Price Adjustment” has the meaning specified in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations).

“Materials Price Adjustment Date” has the meaning specified in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations).

“Material Subcontract” means any Subcontract between the Company and a Significant Subcontractor.

“New Domestic Water Supply Permit” means the domestic water supply permit to be issued by DDW to SRWA following Substantial Completion, authorizing SRWA to use the Project and Finished Water as a source of potable water for public consumption.

“Notice of Completion” means the SRWA notice of completion filed in the Office of the Stanislaus County Recorder pursuant to Applicable Law and standard public works project practices.

“Operation and Maintenance Manual” means the Operation and Maintenance Manual to be prepared by the Company as required by Appendix 5 (Project Technical Requirements).
“OSHA” means applicable federal and State statutes and regulations regulating and governing occupational, worker, and workplace safety and health, including, but not limited to, Code of Federal Regulations Title 29, Chapter 17, and California Code of Regulations, Title 8, Division 1, as the same may be amended from time to time.

“Payment Bond” means the payment bond provided by the Company pursuant to subsection 9.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

“Performance Bond” means the performance bond provided by the Company pursuant to subsection 9.2(A) (Performance and Payment Bonds), in the form set forth in the Transaction Forms.

“Performance Guarantees” means the guarantees of performance made by the Company specifically set forth in Article 4 (Permitting, Design, and Construction) and Appendix 6 (Performance Guarantees).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

1. encumbrances for utility charges, Taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;

2. any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Company to perform the Design-Build Work;

3. any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workers’, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Company and against which the Company has established appropriate reserves in accordance with generally accepted accounting principles;

4. servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges that will not in the aggregate materially and adversely impair the performance of the Design-Build Work by the Company;

5. zoning and building laws, regulations, ordinances, and restrictive covenants, which do not materially interfere with the performance of the Design-Build Work by the Company;

6. encumbrances that are created on or before the Contract Date;

7. encumbrances that are created by a Change in Law on or after the Contract Date; and

8. any encumbrance created by an act or omission by SRWA or with respect to which SRWA has given its consent.

“Person” means an individual, corporation, firm, general partnership, limited partnership, limited liability partnership, limited liability company, company, joint venture, association, trust, Governmental Body, or other legal entity.
“Phase 1 Project” means the Raw Water Pump Station, Phase 1 project referred to in Recital C and as further described in the Agreement for the Construction of SRWA Raw Water Pump Station, Phase 1 dated March 1, 2018 and entered into between SRWA and C. Overaa & Co.

“Plant” or “Water Treatment Plant” means the surface water treatment plant, including all pumping, process, storage and chemical feed facilities to be designed, constructed, and Acceptance Tested by the Company pursuant to the Contract Standards. The Plant includes the Raw Water treatment facilities, chemical facilities, Finished Water storage facilities, electrical, instrumentation and controls, back-up power generating facilities and associated fuel storage facilities, operations building, maintenance building, the yard piping, any related structures and equipment, and all roads, grounds, fences and landscaping appurtenant thereto, as more particularly described in Appendix 5 (Project Technical Requirements).

“Plant Site” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Plant is to be constructed by the Company.

“Producers Price Index” or “PPI” means the final non-seasonally adjusted Producers Price Index for the different commodities set forth in this Contract, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“Project” means the SRWA Regional Surface Water Supply Project.

“Project Equipment and Structures” means that portion of the Regional Water Facilities consisting of the structures, buildings, tanks, basins, piping, electrical instrumentation and controls, remote monitoring and communications, heating, ventilation and air conditioning equipment, chemical and other storage and feed systems, cranes, hoists, and any other equipment or facilities.

“Proposal” means the documents submitted by the Company to SRWA in response to the RFP.

“Raw Water” means water pumped or to be pumped from the Tuolumne River by the Raw Water Pump Station and conveyed to the Plant through the Raw Water Transmission Main.

“Raw Water Pump Station” means the pump station (including pumps, motors, motor control centers, instrumentation and controls, piping, valves, structures, and other equipment) to be installed and constructed at the existing wet well for the diversion and pumping of Raw Water as more particularly described in Appendix 5 (Project Technical Requirements).

“Raw Water Pump Station Site” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Raw Water Pump Station is to be constructed by the Company.

“Raw Water Transmission Main” means the transmission main for the conveyance of Raw Water to the Plant, including all related structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).

“Raw Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Raw Water Transmission Main is to be constructed by the Company.

“Record Adjustment” has the meaning specified in subsection 6.2(D) (Record Adjustments).

“Record Adjustment Date” means one of the dates for making a Record Adjustment set forth in Table 6-2 in item (3) of subsection 6.2(D) (Record Adjustments).
“Record Adjustment Factor” has the meaning specified in subsection 6.2(D) (Record Adjustments).

“Record Drawings” means the record Drawings as described in Appendix 3 (Construction Work Requirements).

“Reference Cost Amounts” has the meaning specified in subsection 6.2(D)(2) (Reference Cost Amounts).

“Regional Water Facilities” means the Raw Water Pump Station, Raw Water Transmission Main, Water Treatment Plant, Finished Water Pumping Station, Ceres Finished Water Transmission Main, and Turlock Finished Water Transmission Main.

“Regulated Site Condition” means (1) surface or subsurface structures, materials or conditions having historical, archaeological, religious or similar significance; (2) the presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law; (3) the presence anywhere in, on or under the Sites on the Contract Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances (in each of items (1), (2) and (3), however, only to the extent not disclosed to the Company in writing as set forth in the RFP or a document attached to or referenced in the RFP); and (4) the presence of Regulated Substances anywhere in, on or under the Sites (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Company. A Regulated Site Condition shall not include any Regulated Substance used, stored or otherwise brought to the Sites by the Company or any Subcontractor as provided in subsection 4.4(C) (Specified Subsurface Conditions and Regulated Site Conditions; Company).

“Regulated Substance” means any (1) oil, petroleum or petroleum product; (2) pollutant, contaminant, Hazardous Material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law; or (3) material that the Company believes may be material that is hazardous waste, as defined California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

“Required Insurance” means the required insurance as set forth in Appendix 11 (Required Insurance).

“Requisition” means a written submission by the Company on the form of requisition as agreed to by the parties, together with accompanying submittals, requesting progress payments or final payment with respect to the Design-Build Price, and which is to be accompanied by such supporting documentation as required by Article 6 (Project Funding and Payment of the Design-Build Price).

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. “Response Actions” include any action which constitutes a “removal”, “response”, or “remedial action” as defined by 42 U.S. Code Section 9601.

“RFP” means SRWA’s Request for Proposals for the Regional Surface Water Supply Project issued on ___, as amended.

“Scheduled Acceptance Date” means _____________, 2022 or such other Scheduled Acceptance Date as may be approved by Change Order.

“Schedule of Values” means the detailed itemized list that establishes the value or cost of each detailed part of the Design-Build Work, and which is used as the basis for preparing progress payments and is in the form required by Appendix 1 (General Design-Build Requirements and Procedures).
“Secondary Technical Criteria” means those portions of the Technical Standards, as further described in Section 4.11 (Secondary Technical Criteria; Variations), and designated as “Secondary Technical Criteria” in Appendices 5 (Project Technical Requirements).

“Security Instruments” means the Guaranty Agreement, the Performance Bond, and the Payment Bond.

“Service Life” means the total period during which an individual item of Project Equipment and Structures is reasonably expected to remain in use, or be available for use, in a productive process, determined in accordance with Good Industry Practice.

“Significant Subcontractor” means any Subcontractor identified as a “Significant Subcontractor” in Appendix 10 (Key Personnel and Approved Subcontractors) which is engaged for any portion of the Design-Build Work representing at least 5% of the Design-Build Price.

“Sites” mean the real property parcels and easements on which the Regional Water Facilities are to be constructed by the Company, including the Raw Water Pump Station Site, Raw Water Transmission Main Right of Way, Plant Site, Ceres Finished Water Transmission Main Right of Way, and Turlock Finished Water Transmission Main Right of Way, as more particularly described and shown in Appendix 8 (Property, Easements, and Landowner Coordination).

“Site Health and Safety Plan” means the Company’s plan for the implementation of a health and safety program that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections, hazard communications and other site-specific safety training during the performance of the Design-Build Work.

“Specified Subsurface Condition” means the presence at the Sites of: (1) any man-made object or structure; or (2) functioning subsurface structures used by Utility providers on or underneath the Sites. However, a Specified Subsurface Condition shall not include any (i) condition that could reasonably have been identified or detected by the Company through its inspections and investigations of the Sites prior to the Contract Date, (ii) underground utilities that are or should have been disclosed to the Company pursuant to the Underground Service Alert system and the Company’s obligations pursuant to Section 4.4(E) (Protection of Underground Utilities), or (iii) condition disclosed to the Company in writing as set forth in an Appendix, the RFP, or a document attached to or referenced in the RFP.

“SRF Program” has the meaning set forth in subsection 6.1(A) (SRF Program Procurement Phase Requirements).

“SRWA” or “Stanislaus Regional Water Authority” means the Stanislaus Regional Water Authority, created by the Cities pursuant to the Joint Powers Agreement.

“SRWA Construction Manager” means a consulting construction manager or construction management firm designated as SRWA Construction Manager by SRWA.

“SRWA Contract Representative” means the SRWA General Manager or such other representative as may be designated in writing as SRWA General Manager by the Board of Directors.

“SRWA Engineer” means an engineer or firm of engineers designated as SRWA Engineer by SRWA.

“SRWA Fault” means any breach (including the untruth or breach of any SRWA representation or warranty herein set forth), failure, non-performance or non-compliance by SRWA with respect to its obligations or responsibilities under this Contract to the extent not attributable to any
Uncontrollable Circumstance or Company Fault, and which materially and adversely affects the Company’s rights, obligations or ability or costs to perform under this Contract.

“SRWA General Manager” means the General Manager of SRWA.

“SRWA Indemnitee” has the meaning specified in Section 8.5 (Indemnification by the Company).

“SRWA Property” means any buildings, structures, improvements, equipment, alarm systems, pipelines, valves, pumping systems, hydrants, sidewalks, curbs, trees, lawns, roadways, utilities or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by SRWA.

“State” means the State of California.

“Subcontract” means an agreement or purchase order by the Company, or a Subcontractor to the Company, as applicable.

“Subcontractor” means every Person (other than employees of the Company) employed or engaged by the Company or any Person directly or indirectly under contract with the Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design-Build Work, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Substantial Completion” has the meaning specified in Section 4.21 (Substantial Completion).

“SWRCB” means the California State Water Resources Control Board, or any predecessor or successor agency.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to the tax.


“Term” has the meaning specified in Section 3.1 (Effective Date and Term).

“Termination Date” means the last day of the Term resulting from either a termination under Article 7 (Breach, Default, Remedies and Termination) or expiration under Article 3 (Term).

“TID” means Turlock Irrigation District, a California special district formed under the Irrigation District Law and located in Stanislaus County.

“TID Utility System Improvements” has the meaning set forth in subsection 4.1(K) (Electrical Power Required for Operations).

“Transaction Form” means any of the forms of Guaranty Agreement, Payment Bond, or Performance Bond appended to this Contract. The final, signed Transaction Forms are part of the Contract.

“Turlock Finished Water Transmission Main” means the transmission mains for the conveyance of Finished Water from the Plant to the Turlock Water Supply System, including all related buildings, structures, pipes, valves and equipment, as more particularly described in Appendix 5 (Project Technical Requirements).
“Turlock Finished Water Transmission Main Right of Way” means that portion of the Sites described in Appendix 8 (Property, Easements, and Landowner Coordination) upon which the Turlock Finished Water Transmission Main is to be constructed by the Company.

“Turlock Water Supply System” means the City of Turlock wells, pump stations, treatment facilities, reservoirs, pipes, mains and all other facilities, equipment and structures used by the City for the production, storage, treatment and conveyance of drinking water in the City of Turlock.

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of such party under this Contract, and (2) materially expands the scope of, materially interferes with, or materially delays or increases the cost of performing the party’s obligations under this Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include the following:

(a) a Change in Law;
(b) any injunction or similar order issued by a Governmental Body, provided that the Company is in compliance with the Contract Standards;
(c) the existence of a Differing Site Condition, a Specified Subsurface Condition, or a Regulated Site Condition to the extent provided in Section 4.4 (Geotechnical and Site Conditions);
(d) naturally occurring events (except weather conditions normal for the Sites) such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
(e) explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
(f) labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors, which affect the performance of the Design-Build Work;
(g) the failure of any Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Company directly, and the Company is not able after exercising all reasonable efforts to timely obtain substitutes;
(h) a delay in completion of the TID Utility System Improvements, as and to the extent provided in subsection 4.1(K) (Electrical Power Required for Operations);
(i) any failure of title to the Sites or any portion of the Sites or any placement or enforcement of any Encumbrance on the Sites or any portion of the Sites not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby, other than Permitted Encumbrances;
(j) variations in the nature, condition or quality of Raw Water as and to the extent provided in Appendix 6 (Performance Guarantees);
(k) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Sites;
(l) a violation of Applicable Law by a Person other than the affected party or its Subcontractors;
(m) with respect to the Company, any SRWA Fault; or
(n) with respect to SRWA, any Company Fault.

(2) Exclusions. None of the following acts, events or circumstances shall constitute an Uncontrollable Circumstance:
(a) any act, event or circumstance that would not have occurred but for the affected party’s failure to comply with its obligations hereunder;
(b) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices (except as provided in subsection 6.2(D) (Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations)), currency values, exchange rates, or other general economic conditions;
(c) with respect to SRWA, any changes in the financial condition of SRWA, and with respect to the Company, any changes in the financial condition of the Company, the Guarantor or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;
(d) the consequences of error, neglect or omission by the Company, the Guarantor, any Subcontractor, any of their Affiliates or any other Person in the performance of the Design-Build Work;
(e) union or labor work rules, requirements or demands that have the effect of increasing the number of employees employed on the Design-Build Work or otherwise increasing the cost to the Company of performing the Design-Build Work;
(f) any impact of prevailing wage or similar laws, customs or practices on the Company’s costs in connection with the performance of the Design-Build Work;
(g) weather conditions normal for the Sites;
(h) any surface, subsurface, or other condition affecting the Sites (including subsurface groundwater levels or other subsurface water conditions, and any soil or water conditions that may affect trench bottom stability), which may increase costs of performing or cause delay in the performance of the Design-Build Work, except those constituting a Differing Site Condition, Specified Subsurface Condition, or Regulated Site Condition, as and to the extent provided in Section 4.4 (Geotechnical and Site Conditions);
(i) any act, event, circumstance or Change in Law occurring outside of the United States, except as provided in subsection (h) of the “Inclusions” section of this definition with respect to the failure of any Subcontractor to furnish equipment which is critical to the Design-Build Work and which is manufactured only at facilities located outside of the United States;
(j) mechanical failure of equipment to the extent not resulting from a condition that is listed in the “Inclusions” section of this definition;
(k) failure of the Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work; or
(l) a Change in Law pertaining to Taxes.

“Unilateral Change Directive” has the meaning set forth in Section 4.12 (Unilateral Change Directives).

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

SECTION 1.2. INTERPRETATION. This Contract shall be interpreted and construed according to the following provisions, except to the extent the context or the express provisions of this Contract otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) References Particular Terms. The words “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Contract. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.
(C) **References to Days and Time of Day.** All references to days are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(D) **References to Statutes.** Each reference to a statute includes any statute that amends, extends, consolidates or replaces the statute or which has been amended, extended, consolidated or replaced by the statute, and includes any orders, regulations, bylaws, or ordinances adopted under the relevant statute.

(E) **References to Governmental Bodies.** Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(F) **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as may be amended, supplemented, substituted, novated or assigned.

(G) **References to All Reasonable Efforts.** The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent Person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that Person’s own benefit.

(H) **Entire Contract.** The parties intend this document to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter of this document. This Contract supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Contract, except those other documents that may be expressly referenced in this Agreement.

(I) **Governing Law.** This Contract shall be governed by and construed in accordance with the applicable laws of the State.

(J) **Severability.** Each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Contract is held to be invalid, unenforceable or illegal to any extent, such provision be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract. If any such provision of this Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Contract as nearly as possible to its original intent and effect.

(K) **Drafting Responsibility.** The parties agree and acknowledge that this Contract has been arrived at through negotiation, and that each party (and its counsel) has had a full and fair
opportunity to revise the terms of this Contract. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Contract.

(L) **Interpolation.** If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(M) **Applicability of Contract Standards.** Where more than one Contract Standard applies to any particular performance obligation of the Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

(N) **Delivery of Documents in Digital Format.** In this Contract, the Company is obligated to deliver the Deliverable Material and other reports, records, designs, plans, Drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to SRWA both in printed form (in the number of copies indicated or reasonably requested by SRWA) and, at SRWA's request, in digital form. Digital copies shall consist of computer readable, usable and editable data submitted in any standard interchange format which SRWA may reasonably request to facilitate the administration and enforcement of this Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the hard copy shall govern.

(O) **Third-Party Rights.** This Contract is exclusively for the benefit of SRWA and the Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party SRWA Indemnitees as provided in Section 8.5 (Indemnification by the Company)) with any remedy, claim, liability, reimbursement, cause of action or other rights. This Contract does not create and shall not be construed to create any third party beneficiaries.

(P) **Discretion.** When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Contract.

(Q) **Liquidated Damages.** This Contract provides for the payment by the Company of liquidated damages in certain circumstances. The parties agree that SRWA’s actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place SRWA in the same economic position as it would have been had the circumstance not occurred. Except where additional remedies are otherwise specifically provided for herein, such liquidated damages shall constitute the only damages payable by the Company to SRWA in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit any of the other remedies for breach specifically provided for in this Contract, including SRWA’s right to terminate this Contract in accordance with Section 7.2 (Events of Default by the Company). The parties acknowledge and agree that the additional remedies specifically provided for in this Contract are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy.

(R) **Standards of Workmanship and Materials.** The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and of good quality. Where this Contract does not specify any explicit quality or standard for construction materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified
elsewhere in the Technical Standards, and the Technical Standards are to be interpreted accordingly.

(S) Appendix Terms and Definitions. Capitalized terms used in any Appendix and not otherwise defined or described in the Appendix will have the meanings set forth in this Contract.
ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. SRWA REPRESENTATIONS. SRWA represents and warrants that:

(A) **Existence and Powers.** SRWA is a joint powers authority of the Cities created pursuant to the Joint Powers Agreement, organized and existing under and by virtue of the Joint Exercise of Powers Act (California Government Code Title 1, Division 7, Chapter 5) and Joint Powers Agreement, with full legal right and authority to enter into and to perform its obligations under this Contract.

(B) **Due Authorization.** This Contract has been duly executed by SRWA General Manager pursuant to authority granted by action of the Board of Directors taken at its meeting on __________, 2019, and constitutes a legal, valid and binding obligation of SRWA, enforceable against SRWA in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect and equitable principles of general application.

(C) **No Conflict.** To the best of its knowledge, neither the execution and delivery by SRWA of this Contract nor the performance by SRWA of its obligations in connection with the transactions contemplated hereby or the fulfillment by SRWA of the terms or conditions hereof conflicts with, violates or results in a breach of (1) any Applicable Law, or (2) any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which SRWA is a party or by which SRWA or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) **No Approvals Required.** No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or voter approval is required for the valid execution, delivery and performance by SRWA of this Contract, except as such have been duly obtained or made.

(E) **No Litigation.** Except as disclosed in writing to the Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against SRWA, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by SRWA or the validity, legality or enforceability of this Contract against SRWA, or on the ability of SRWA to perform its obligations hereunder.

(F) **Claims and Demands.** Except as disclosed in writing to the Company, to the best of its knowledge, there are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against SRWA with respect to providing potable water for public consumption.

(G) **Applicable Law Compliance.** Except as disclosed in writing to the Company, to the best of its knowledge, (1) SRWA is not in material violation of any Applicable Law pertaining to the provision of potable water for public consumption, and (2) SRWA has not received notice of a violation or an alleged violation of any such Applicable Law.

(H) **SRWA Ownership Interest in the Sites.** SRWA owns the Plant Site in fee simple, subject to the easements and other exceptions to title indicated in Appendix 8 (Property, Easements, and Landowner Coordination). SRWA leases the Raw Water Pump Station Site from TID. The Raw Water Transmission Main Right of Way, the Ceres Finished Water Transmission Main Right of Way, and the Turlock Finished Water Transmission Main Right of Way are either easements owned by
SECTION 2.2. COMPANY REPRESENTATIONS. In addition to any other representations and warranties made by the Company in this Contract, the Company represents and warrants that:

(A) **Existence and Powers.** The Company is a duly organized, validly existing and in good standing under the laws of the State of , and has the authority to do business in this State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Contract.

(B) **Due Authorization and Binding Obligation.** This Contract has been duly authorized, executed and delivered by all necessary corporate action of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect and equitable principles of general application.

(C) **No Conflict.** To the best of its knowledge, neither the execution nor delivery by the Company of this Contract nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof conflicts with, violates or results in a breach of (1) any Applicable Law or bylaws or articles of incorporation applicable to the Company, or (2) any order, judgment or decree, or any contract, agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing. The Company has reviewed SRWA Design-Build Conflict of Interest Policy (which was part of the RFP), has completed and submitted SRWA Disclosure of Potential Conflict of Interest Form together with the Proposal, and certifies that the completed form is true and correct.

(D) **No Approvals Required.** No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution, delivery and performance of this Contract by the Company except as such have been duly obtained or made.

(E) **No Litigation.** Except as disclosed in writing to SRWA, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Company’s knowledge, overtly threatened or publicly announced against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution or delivery of this Contract by the Company or the validity, legality or enforceability of this Contract against the Company, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) **Claims and Demands.** Except as disclosed in writing to SRWA, to the best of its knowledge, there are no material and adverse claims and demands based in environmental, contract or tort law pending or threatened against the Company with respect to any water or wastewater treatment plant providing service to the general public designed, constructed, operated, or maintained by the Company.

(G) **Applicable Law Compliance.** Except as disclosed in writing to SRWA, neither the Company, the Guarantor nor any Affiliate has knowledge of any material violation of any Applicable Law pertaining to any water or wastewater treatment plant providing service to the general public.
within the United States, which has been designed, constructed, operated, or maintained by the Company.

(H) Patents and Licenses. The Company owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Design-Build Work without any known material conflict with the rights of others.

(I) Information Supplied by the Company and the Guarantor. The information supplied and representations and warranties made by the Company and the Guarantor in the Proposal and all related submittals and in all post-Proposal submittals with respect to the Company and the Guarantor (and to the Company’s knowledge, all information supplied in such submittals with respect to any Subcontractor) are true, correct and complete in all material respects.
ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM. This Contract shall become effective on the Contract Date and shall continue in effect until the completion of the Design-Build Work or the earlier termination of the Contract in accordance with its terms (the “Term”). At the end of the Term, all other obligations of the parties hereunder shall terminate, except as provided in Sections 3.2 (Survival of Certain Provisions Upon Termination) and 7.7 (Company Obligations at Termination or Expiration).

SECTION 3.2. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. The following provisions shall survive the expiration or earlier termination of this Contract:

(1) Article 2 (Representations and Warranties);

(2) Section 4.18 (Deliverable Material);

(3) Section 4.20 (Guarantees and Warranties);

(4) Section 6.6 (Construction Books and Records; Audit);

(5) Article 7 (Breach, Default, Remedies and Termination), as applicable to the rights and obligations of the parties following the Termination Date;

(6) Section 8.1 (Insurance) and Appendix 11 (Required Insurance), to the extent provided by the applicable insurance policies; and

(7) Section 8.5 (Indemnification by the Company);

(8) Section 10.6 (Property Rights);

(9) Section 10.13 (Fair Employment and Contracting Policy); and

(10) all other provisions of this Contract that so provide shall survive the termination of this Contract;

together with any other provision(s) necessary to give effect to the above provisions. No termination or expiration of this Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties accrued prior to the date of such termination or expiration, (2) the Company’s liability or responsibility imposed by this Contract or Applicable Law with respect to completed Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud, or (3) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.
ARTICLE 4

PERMITTING, DESIGN, AND CONSTRUCTION

SECTION 4.1. DESIGN-BUILD WORK GENERALLY

(A) Commencement of Design-Build Work. On the Contract Date, the Company shall promptly proceed to undertake, perform, and complete the Design-Build Work in accordance with the Contract Standards. The Company shall be paid the Design-Build Price pursuant to Section 6.2 (Design-Build Price) as its entitlement to portions of the Design-Build Price arises in accordance with that Section. The Company shall achieve Acceptance on or before the Scheduled Acceptance Date. The Company’s failure to achieve Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages in accordance with Section 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages). Failure to achieve Acceptance by the by the end of the Extension Period shall constitute a Company Event of Default upon which SRWA may terminate this Contract for cause in accordance with Section 7.2 (Events of Default by the Company).

(B) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Company shall, in accordance with the Contract Standards and without limitation: (1) apply for, obtain and maintain all Governmental Approvals required for the Design-Build Work; (2) comply with all reporting obligations set forth herein; (3) prepare, grade and excavate the Sites; (4) remove from the Sites and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom; (5) design and construct the Regional Water Facilities; (6) conduct initial testing and start-up operations; (7) conduct the Acceptance Tests and achieve Acceptance; and (8) achieve Final Completion; all so that the Regional Water Facilities are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Sites, as indicated in Appendix 1 (General Design-Build Requirements and Procedures), or at other locations approved by SRWA and any other appropriate Governmental Body and arranged and paid for by the Company. In performing the Design-Build Work, the Company shall use care and diligence, and shall take all appropriate precautions to protect the Regional Water Facilities from loss, damage or destruction in accordance with the Contract Standards.

(C) Points of Interconnection. The two points of interconnection between the Regional Water Facilities and the City Water Supply Systems shall be the points at which each Finished Water Transmission Main enters the respective City terminal tank as generally shown in Appendix 3. The Design-Build Work shall include the design and installation of a water meter, on-line analyzer (as described in Appendix 5 (Project Technical Requirements)), and sampling station (to be owned and operated by SRWA) located at each point of interconnection. The points of interconnection and sampling stations shall be the places where the Finished Water quality is sampled and tested for purposes of the Acceptance Test Procedures and Standards. In accordance with Appendix 1 (General Design-Build Requirements and Procedures), the Company shall coordinate with SRWA and Cities regarding any City Water Supply System shutdown required for the interconnection and other interfaces between the Regional Water System and City Water Supply Systems in performing the Design-Build Work. SRWA will facilitate and implement, as applicable, such shutdowns as required in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures).

(D) Sequencing and Staging of Design-Build Work. The Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. SRWA understands and acknowledges that the Company intends to complete the Design-Build Work in stages whereby particular segments of the Design-Build Work may be designed and built prior to the completion of the design of the Regional Water Facilities as a whole. Although this Contract does not require the Company to fully complete the entire design of all
Regional Water Facilities prior to proceeding with particular segments of the physical construction of the Regional Water Facilities, the Company shall comply with all requirements of the Contract Standards and Applicable Law in performing the Design-Build Work and shall comply with the design submittal requirements set forth in subsection 4.9(C) (SRWA Review of Design Documents). The Company shall comply with Good Engineering and Construction Practice in all aspects of the performance of the Design-Build Work. In no event shall the Company proceed with the physical construction of any segment of the Regional Water Facilities prior to the Construction Date established in accordance with Section 4.2 (Construction Date Conditions). If the Company splits the design into different phases of work and prepares the Design Documents in phased packages, the Company shall not proceed with the physical construction of any segment of the Regional Water Facilities addressed in a particular Design Documents package until the Company has fully completed that design package and the Design Documents have been reviewed by SRWA pursuant to Section 4.9 (Company Design - General); provided, however, that, upon request by the Company and at Company’s risk, the SRWA Contract Representative may approve in writing minor exceptions to this limitation. If the Company proceeds with phased Design Documents packages and it chooses to construct some portions of the Regional Water Facilities prior to completing 100% design of the entire Regional Water Facilities, the Company assumes all risks and costs associated with any consequences of its decisions regarding the phasing of design and construction.

(E) Project Schedule and Reports. The Company shall prepare and provide to SRWA a “critical path method” schedule for Design-Build Work relating to Project Equipment and Project Structures in accordance with Appendix 1 (General Design-Build Requirements and Procedures). No later than 60 days following the Contract Date, the Company shall prepare and submit a Project management plan to SRWA, which shall include an organizational structure, list of individual participants representing the Company and SRWA, a schedule of regular progress meetings, topics to be reviewed at such progress meetings, and a communications protocol. The Company shall submit to SRWA, the SRWA Construction Manager and the SRWA Engineer a monthly progress report and schedule in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures). The Company agrees that the Company’s submission of the monthly progress schedule and report (or any revised progress schedule and report) is for SRWA’s, the SRWA Construction Manager’s and the SRWA Engineer’s information only and shall not limit or otherwise affect the Company’s obligations to achieve Acceptance by the Scheduled Acceptance Date. SRWA’s, SRWA Construction Manager’s and the SRWA Engineer’s receipt, review, or comment on a monthly progress schedule and report (or any revised progress schedule and report) shall not bind SRWA in any manner or imply or indicate SRWA approval or consent to any of the matters set forth therein.

(F) Quality Assurance and Quality Control. The Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, which shall be developed by the Company in accordance with Appendix 4 (Design-Build Quality Management).

(G) Subcontracting and Contractor Licensing. The Company and any Subcontractor that performs any construction portion of the Design-Build Work shall (i) possess and maintain a State contractor’s license, classification A (General Engineering Contractor) (except as otherwise may be provided in Appendix 10 (Key Personnel and Approved Subcontractors) for a particular Subcontractor), and (ii) be registered with the State Department of Industrial Relations and qualified to perform public works in the State pursuant to California Labor Code Section 1725.5. This Project is subject to compliance monitoring and enforcement by the State Department of Industrial Relations in accordance with California Labor Code Section 1771.4

(H) Public Works, Labor and Wage Requirements. The Company and its Subcontractors shall comply with all applicable requirements set forth in Appendix 12 (Public Works, Labor and Wage Requirements) with respect to the performance of the Design-Build Work. In particular, the
Company shall comply with the prevailing wage and other public works-related requirements set forth in California Labor Code Division 2, Part 7, Chapter 1 (commencing with Section 1720).

(I) Title, Encumbrances, and Risk of Loss. Title to the structures, buildings, improvements, fixtures, machinery, equipment and materials constituting the Regional Water Facilities shall pass to SRWA upon incorporation in the Project or payment therefor by SRWA, whichever first occurs, free and clear of all Liens and other Encumbrances. The Company shall not directly or indirectly, without SRWA's consent, create or permit to be created or to remain any Encumbrance on or against the Regional Water Facilities, Sites, or Design-Build Work, other than Permitted Encumbrances. The Company shall promptly discharge or post a release bond for any such Encumbrance arising from or out of the Design-Build Work. However, the Company shall bear all risk of loss concerning such structures, buildings, improvements, fixtures, machinery, equipment and materials until the filing of the Notice of Completion, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(J) Electrical Power Required For Construction. The Company acknowledges that as of the Contract Date, there are no TID or other facilities available to supply electrical power for the construction or operation of the Regional Water Facilities; except, however, that there may be temporary TID power for construction at the Raw Water Pump Station Site due to the Phase 1 Project. Accordingly, the Company shall provide or arrange temporary electrical power (e.g., by utilizing on-site power generators, making arrangements with TID for the continuation of any existing temporary power at the Raw Water Pump Station Site, or making other arrangements with TID) as needed for the performance of the Design-Build Work. All costs related to the arranging and supply of temporary electrical power incurred in the performance of the Design-Build Work prior to the Acceptance Date shall be borne by the Company.

(K) Electrical Power Required For Operations. As of the Contract Date, insufficient electricity is available to the Sites to operate the Raw Water Pump Station, Plant, and transmission mains. SRWA shall apply to and make arrangements with TID for TID to extend and install regular electrical service and related improvements to the Raw Water Pump Station Site and Plant Site (the "TID Utility System Improvements") and to provide sufficient electricity for the operation of the Raw Water Pump Station, Plant, and transmission mains. SRWA shall bear all costs associated with work performed by or on behalf of TID for the extension and installation of the TID Utility System Improvements to the extent such costs are not borne by TID, and the Company shall have no responsibility with respect such costs to extend a permanent electricity supply to the Raw Water Pump Station or Plant. However, the Company shall cooperate with and assist TID with its installation of the TID Utility System Improvements, including (i) providing timely (i.e., in sufficient time so as to accommodate TID's planning and construction schedule) and accurate information to TID regarding the electricity capacity needs of the Raw Water Pump Station and Plant, (ii) providing a construction schedule to TID with information about when the Company will need regular TID electrical service to complete the Design-Build Work, and (iii) coordinating with and accommodating the TID construction crew or contractor in performing the TID Utility System Improvements work on the Sites. In the event that the TID Utility System Improvements are not constructed with sufficient capacity to provide electricity to operate the Raw Water Pump Station and Plant by the dates required for the Company to conduct initial testing of the Regional Water Facilities or perform the Acceptance Test, the Company shall be entitled to Uncontrollable Circumstance relief as provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), to the extent such delay materially and adversely affects the Company's ability to perform such Design-Build Work. All costs related to the supply of electrical power to operate the Regional Water Facilities after the Acceptance Date shall be borne by SRWA.

(L) Other Utilities. The Company shall make all arrangements necessary to secure the availability of, and construct all connections for, all Utilities (other than electricity, as and to the
extent provided in subsection (K) of this Section) that are necessary for the performance of the Design-Build Work. In the event SRWA is required to grant Utility easements on the Sites in connection with the Design-Build Work, the Company shall provide complete right-of-way descriptions and Drawings (in recordable form) of all Utility connections and routes on the Sites necessary for such purposes.

(M) **Software Programming.** The Company’s obligation to perform the Design-Build Work includes the obligation to provide all software programming for the monitoring instrumentation, controls, and cybersecurity relating to the Regional Water Facilities, as specifically set forth in Appendices 5 (Project Technical Requirements).

(N) **Payment of Costs.** The Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments and Required Insurance; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar Taxes on building supplies, materials and equipment; general supervision by the Company of all Design-Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Final Completion.

(O) **Notice of Default.** The Company shall provide to SRWA, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval or Subcontract.

(P) **Required Company Engineer Certification.** Any notice, certification, report or application delivered by the Company to SRWA in connection with the Design-Build Work, or payment therefor, under this Article, Article 5 (Testing, Start-up, and Acceptance) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed and sealed certificate of the Company Engineer in compliance with all requirements of Applicable Law for engineer certifications.

(Q) **Statement Required by California Business and Professions Code Section 7030.** Contractors are required by law to be licensed and regulated by the Contractors’ State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, CA 95826.”

SECTION 4.2. CONSTRUCTION DATE CONDITIONS

(A) **Construction Date Conditions Generally.** The Construction Date shall be established pursuant to subsection (C) of this Section upon satisfaction by the Company of its obligations under to subsection (B). The requirements and conditions set forth in subsection (B) shall be the “Construction Date Conditions.”

(B) **Conditions to Commencement of Physical Construction.** In no event shall the Company commence with the physical construction of the Regional Water Facilities prior to the satisfaction of the following Construction Date Conditions:
Article 4 - Permitting, Design, and Construction

(1) The Company shall have provided SRWA with the Performance Bond and Payment Bond and shall certify that the Performance Bond and the Payment Bond are in full force and effect and in compliance with the requirements of Section 9.2 (Bonds).

(2) The Company shall have provided SRWA with certificates for all Required Insurance in accordance with Section 8.1 (Insurance) and Appendix 11 (Required Insurance).

(3) The Company shall have certified that it has completed all pre-construction requirements set forth in Appendices 3 (Construction Work Requirements), 4 (Design-Build Quality Management), 5 (Project Technical Requirements), and SRWA, acting reasonably, shall have received and reviewed for compliance with the Contract: (a) the Company’s communications protocol to facilitate communication between the Company, SRWA and other relevant Project stakeholders prepared in accordance with Appendix 1 (General Design-Build Requirements and Procedures); (b) the Corrosion Control Plan, the Disinfection Plan, and the Instrumentation and Control Plan required to be prepared in accordance with Appendix 5 (Project Technical Requirements); (c) the stormwater pollution prevention plan and any other plans required to be submitted to SRWA in accordance with Appendix ___ (___); (d) the Design-Build Quality Management Plan to be prepared in accordance with Appendix 4 (Design-Build Quality Management); (e) the Site Health and Safety Plan for performance of the Design-Build Work to be prepared in accordance with Appendix 3 (Construction Work Requirements); (f) the Hazardous Materials Management Plan required to be prepared in accordance with Appendix 9 (Governmental Approvals and Utility Coordination); (g) Basis of Design Report to be prepared in accordance with Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures); (h) Schedule of Values and baseline schedule to be prepared in accordance with Section 6.3 (Payment Procedure and Amount) and Appendix ___ (___); and (i) Emergency Response Plan to be prepared in accordance with Appendix 1 (General Design Build Requirements and Procedures).

(4) The Company shall have obtained all Governmental Approvals required for the commencement of the physical construction of the Regional Water Facilities, including a letter from DDW indicating conditional approval of the proposed design of the Regional Water Facilities on the basis of which construction is to be commenced, and all such Governmental Approvals shall be in full force and effect.

(5) SRWA, acting reasonably, shall have approved the Document Submittal Plan required to be submitted to SRWA and prepared in accordance with the requirements of Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures), and the Company shall have complied with the design submittal requirements set forth in subsection 4.9(C) (SRWA Review of Design Documents) to the extent necessary to commence with the physical construction of the Regional Water Facilities.

(C) Establishment of the Construction Date. The Company shall provide 10 days’ written notice to SRWA as to the satisfaction of the Construction Date Conditions and the date it proposes to establish as the Construction Date. The date proposed by the Company shall constitute the Construction Date unless SRWA, by written notice to the Company delivered not later than three days prior to the Construction Date proposed by the Company, determines that the Construction Date Conditions have not been satisfied or that SRWA has determined, acting reasonably, to delay the Construction Date (notwithstanding the satisfaction of the Construction Date Conditions) until SRWA delivers a subsequent written notice to the Company (the “Notice to Proceed”). In the event SRWA determines that the Company has not satisfied the Construction Date Conditions, SRWA shall indicate which conditions the Company has failed to satisfy in its notice to the Company, the Company shall satisfy all such conditions prior to the establishment of the Construction Date, and there shall be no adjustment to the Scheduled Acceptance Date or price relief under this subsection. In the event SRWA determines to delay the Construction Date notwithstanding the satisfaction of
the Construction Date Conditions, (1) the Construction Date shall be the date stipulated as such by SRWA in the Notice to Proceed, (2) the Scheduled Acceptance Date shall be extended by the number of days between the Construction Date proposed by the Company and the actual Construction Date established by SRWA in its Notice to Proceed, and (3) the Company may be entitled to reasonable price relief to the extent provided by Section 8.3 (Uncontrollable Circumstances – Entitlement to Relief).

(D) Effect of the Establishment of the Construction Date. Upon the establishment of the Construction Date, the Company shall have the right to proceed with the physical construction of the Regional Water Facilities and shall have full access to the Sites in accordance with subsection 4.3(C) (Access to the Sites) and Appendix 8 (Property, Easements, and Landowner Coordination).

SECTION 4.3. ACCESS TO AND SUITABILITY OF THE SITES

(A) Familiarity with the Sites. The Company acknowledges that the Company’s agents and representatives have visited, inspected and are familiar with the Sites and surface physical conditions relevant to the obligations of the Company pursuant to this Contract, including normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; that the Company is familiar with all local and other conditions that may be material to the Company’s performance of its obligations under this Contract (including transportation; seasons, climate, and precipitation; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); that the Company has received and reviewed all information regarding the Sites provided to it as part of the Sites-related information or obtained in the course of performing its obligations hereunder and has made any other Sites investigations that it deems appropriate to make a determination as to the suitability of the Sites; and that, based on the foregoing and except as provided in subsection (D), the Sites constitute acceptable and suitable locations for the construction of the Regional Water Facilities in accordance herewith, and the Regional Water Facilities can be constructed on the Sites within the Base Design-Build Price and by the Scheduled Acceptance Date. The Regional Water Facilities shall be located in and on the Sites in a manner that takes into account the easements and other exceptions to title indicated in Appendix 8 (Property, Easements, and Landowner Coordination).

(B) Independent Verification. The Company acknowledges that, except with respect to any Specified Subsurface Conditions set forth in Appendices 5 (Project Technical Requirements) and 8 (Property, Easements, and Landowner Coordination), it is responsible for the independent verification and confirmation of all information supplied to it by or on behalf of SRWA and upon which it elects to rely in connection herewith. No error or omission in any information supplied to the Company by or on behalf of SRWA shall constitute an Uncontrollable Circumstance, or relieve the Company from any of its obligations or entitle the Company to any increase in compensation hereunder, except to the extent provided in Section 4.4 (Geotechnical and Site Conditions).

(C) Access to the Sites. The execution of this Contract shall be deemed to constitute the granting of a license to the Company to access the Sites for the purposes of performing such investigation, engineering and analysis, including such additional subsurface and geotechnical studies or tests as deemed necessary by the Company for the performance of the Design-Build Work prior to the Construction Date. Such pre-Construction Date access shall be subject to SRWA’s prior approval, which shall not be unreasonably withheld, as to time and scope. Following the Construction Date, the Company shall be authorized to access the Sites as may be necessary or appropriate for the performance of the Design-Build Work during the Term and such access rights shall not be subject to prior SRWA approval. The Company shall perform all such activities on the Sites in accordance with and subject to the Contract Standards. Except to the extent provided in Section 4.4 (Geotechnical and Site Conditions), the Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless SRWA Indemnitees in accordance
with and to the extent provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting from access to and work on the Sites.

(D) Raw Water Pump Station Site. As explained in Recital C, the Parties acknowledge that SRWA recently has constructed, or (at the Contract Date) is completing construction of, the Phase 1 Project, including construction of a wet well and related improvements, at the Raw Water Pump Station Site pursuant to a separate construction agreement with C. Overaa & Co. and that some of the Design-Build Work will be constructed and installed on and connected to the completed Phase 1 Project. SRWA assumes responsibility for the satisfactory completion of the Phase 1 Project in accordance with the plans and specifications incorporated in the SRWA/C. Overaa & Co. Agreement for the Construction of SRWA Raw Water Pump Station, Phase 1 dated March 1, 2018. If the Phase 1 Project is not completed in accordance with such plans and specifications and that circumstance materially expands the scope of, materially interferes with, or materially delays the Company’s Design-Build Work at the Raw Water Pump Station Site, then the circumstance will constitute an Uncontrollable Circumstance entitling the Company to relief as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

SECTION 4.4. GEOTECHNICAL AND SITE CONDITIONS

(A) General. Except with respect to Differing Site Conditions, Specified Subsurface Conditions, or Regulated Site Conditions, which constitute Uncontrollable Circumstances entitling the Company to relief as and to the extent provided in this Section and Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), the Company assumes the risk of all surface and subsurface geotechnical conditions at the Sites as they may affect the Company’s performance of the Design-Build Work, including the structural suitability of the Sites or the Company’s excavation, dewatering, or construction costs or schedules, and agrees that any such subsurface geotechnical condition revealed or encountered during the Design-Build Work that has such an affect shall not constitute an Uncontrollable Circumstance. The Parties acknowledge that this Contract is subject to California Public Contract Code section 7104 and that the provisions of this Section 4.4 and related definitions have been prepared so as to implement and comply with the standards and procedures in section 7104.

(B) Differing Site Conditions. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any surface or subsurface geotechnical conditions that would constitute a Differing Site Condition hereunder other than those disclosed by SRWA or discovered by the Company and disclosed to SRWA prior to the Contract Date. In the event that the Company encounters a Differing Site Condition in the performance of the Design-Build Work, the Company shall provide prompt written notice to SRWA of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been disturbed or altered and shall notify SRWA of its intended course of action to address the Differing Site Condition. SRWA then promptly shall investigate or cause to be investigated the alleged Differing Site Condition set out in the Company’s notice. If SRWA finds that the condition claimed by the Company does constitute a Differing Site Condition, then the Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Sections 8.3 and 8.4 (Uncontrollable Circumstances - Entitlement to Relief & Claim Procedures). The Company understands and acknowledges that, prior to submitting its Proposal, it was informed by SRWA that (1) the Company or its Subcontractor may encounter subsurface groundwater levels or other subsurface water conditions at or under the Sites, (2) a 2007 evaluation encountered groundwater at numerous locations along the planned transmission main rights-of-way, (3) the subsurface water conditions are dependent on variable factors (e.g., precipitation, irrigation, well pumping) and may fluctuate at or under the Sites, (4) the subsurface water conditions may adversely affect construction work and the condition and stability of pipeline trench bottoms and other excavated areas, and
(5) the subsurface water conditions may result from or be exacerbated by the Company’s own dewatering activities. Subsurface groundwater levels or other subsurface water conditions at or under the Sites therefore shall not constitute Differing Site Conditions.

(C) Specified Subsurface Conditions and Regulated Site Conditions; Company. The Company represents and warrants that, as of the Contract Date, it has no knowledge of any Specified Subsurface Condition or Regulated Site Condition other than those disclosed by SRWA or discovered by the Company and disclosed to SRWA prior to the Contract Date. In performing the Design-Build Work, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Specified Subsurface Condition or Regulated Site Condition after the location and existence of such condition has been disclosed to the Company or becomes known by the Company through physical observation (including any such observation made during excavations). Upon encountering a Specified Subsurface Condition or Regulated Site Condition, the Company shall provide prompt written notice to SRWA of such condition, which notice shall not be later than five days after such condition is first known to the Company. The Company shall, to the extent reasonably possible, provide such notice before the Specified Subsurface Condition or Regulated Site Condition has been disturbed or altered. The Company shall not be responsible for any Specified Subsurface Condition or Regulated Site Condition and may be entitled to Uncontrollable Circumstance relief as provided in subsection (D). However, if the Company fails to timely provide such notice or exercise due care with respect to such disclosed or known Specified Subsurface Condition or Regulated Site Condition, the scope of the Uncontrollable Circumstances relief may be adjusted as provided by Section 8.3(B) (Mitigation). Regulated Site Conditions shall not include any condition involving Regulated Substances used, stored or otherwise brought to the Sites by the Company or any Subcontractor. The Company shall comply, and shall cause all Subcontractors to comply, with the Contract Standards in using or storing any Regulated Substances on the Sites and shall assume all risks associated with such activities and indemnify, defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting therefrom.

(D) Specified Subsurface Conditions and Regulated Site Conditions; SRWA. If SRWA receives notice from the Company about a Specified Subsurface Condition or Regulated Site Condition or such a condition is determined to exist at one of the Sites that may (1) reasonably require a Response Action or other action in order to comply with Applicable Law, (2) interfere with the performance of the Design-Build Work, or (3) increase the cost to the Company of performing the Design-Build Work, then SRWA promptly shall investigate or cause to be investigated the alleged condition and, if appropriate, commence and diligently prosecute Response Actions or other actions as may be necessary under Good Engineering and Construction Practice to dispose of, remedy or otherwise correct the Specified Subsurface Condition or Regulated Site Condition or otherwise make the Specified Subsurface Condition or Regulated Site Condition comply with Applicable Law. If SRWA finds that a condition claimed by the Company does constitute a Specified Subsurface Condition or Regulated Site Condition, then the Company shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Sections 8.3 and 8.4 (Uncontrollable Circumstances - Entitlement to Relief & Claim Procedures).

(E) Protection of Underground Utilities. Prior to and in connection with conducting any excavation or trenching, the Company shall contact the appropriate Underground Service Alert regional notification center and perform such other actions required by an excavator pursuant to California Government Code Sections 4216 to 4216.24. Because the Company will be performing the final engineering design work for the Regional Water Facilities and SRWA is not preparing and providing detailed plans and specifications to the Company, the parties acknowledge and agree that California Government Code Section 4215 (concerning responsibility for the removal, relocation or protection of existing main or trunkline utility facilities not indicated on the plans and specifications) does not apply to the Design-Build Work or this Contract. Consequently, SRWA shall not have any
responsibility or obligation under section 4215, the Company shall be responsible for the timely identification, removal, relocation, and protection of any existing Utility facilities located on or under the Sites, and the Company shall not have any claim or entitlement to compensation from SRWA pursuant to section 4215.

(F) **Sheeting and Shoring Plan.** In accordance with California Labor Code Section 6705, prior to the excavation of any trench five feet or more in depth, the Company shall submit to SRWA for its acceptance and comment, as appropriate, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches. The plan shall comply with applicable OSHA laws, regulations, construction safety orders, and shoring system standards, or be prepared by a registered civil or structural engineer who certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the applicable construction safety orders and shoring system standards.

**SECTION 4.5. ENVIRONMENTAL REVIEW.** SRWA has prepared and certified a final environmental impact report for the Project under the California Environmental Quality Act. The final EIR requires specific environmental mitigation measures to be performed, implemented or completed in connection with the Design-Build Work. The Environmental Mitigation Measures as set forth in Appendix 9 (Governmental Approvals and Utility Coordination) constitute part of the Design and Construction Requirements, which the Company is obligated to carry out and comply with.

**SECTION 4.6. DESIGN-BUILD WORK PERMITTING RESPONSIBILITIES**

(A) **Governmental Approval Applications.** The Company shall make all filings, applications and reports and take all other action as necessary or appropriate to obtain and maintain, and shall obtain and maintain, all Governmental Approvals (except for those Governmental Approvals that are the responsibility of SRWA, as set forth in Appendix 9 (Governmental Approvals and Utility Coordination)) necessary to commence, continue and complete the Design-Build Work and achieve Acceptance. Where required under Applicable Law or requested by SRWA in its discretion, Governmental Approvals shall be obtained in the name of SRWA, name SRWA as a co-permittee, or recognize SRWA as beneficiary of the Governmental Approval. In connection with applications for Governmental Approvals, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions thereof; (4) attend all required meetings and hearings and, at the request of SRWA, assume the lead role in handling any such meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms thereof. All permit and filing fees and related costs required in order to apply for, obtain, and maintain the Governmental Approvals (other than Governmental Approvals required as a result of an Uncontrollable Circumstance), shall be paid by the Company, regardless of the identity of the applicant or permittee. SRWA shall have the right to attend any meetings or proceedings associated with a Governmental Approval. The final terms and conditions of any Governmental Approval to be obtained and maintained by the Company shall be subject to SRWA’s approval, which approval shall not be unreasonably withheld or delayed.

(B) **Data and Information.** All data, information and action required to be supplied or taken by the Company in connection with the Governmental Approvals shall be supplied and taken on a timely basis considering the requirements of Applicable Law, the responsibilities of SRWA as the legal and beneficial owner of the Project, and the review requirements included in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures). The data and information supplied by the Company to SRWA and all Governmental Bodies in connection therewith shall be
correct and complete in all material respects. The Company shall be responsible for any schedule and cost consequences which may result from the submission of incorrect or incomplete information.

(C) Non-Compliance and Enforcement. The Company shall report to SRWA and, as appropriate, other Governmental Bodies, immediately upon obtaining knowledge of any violation of the terms and conditions of any Governmental Approval, Environmental Mitigation Measures or Applicable Law pertaining to the Project. SRWA shall have the right to independently enforce compliance with this Contract regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body.

(D) Reports to Governmental Bodies. The Company shall prepare all reports, make all information submittals and provide all notices to all Governmental Bodies required under Applicable Law, by all Governmental Approvals, and by Environmental Mitigation Measures required to be performed by the Company, with respect to the Design-Build Work. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for SRWA, if such are acceptable to the Governmental Body. The Company first shall provide SRWA with copies of such regulatory reports for review, comment and signature, as applicable, at least 10 Business Days before their filing with the Governmental Body, and then with the Governmental Body; provided, however, that in the event that Applicable Law requires immediate filing with the Governmental Body, the Company shall provide such copies to SRWA concurrently with the filing with the Governmental Body. The Company is responsible for the accuracy and completeness of all reports, submittals, data and other information proposed for filing.

(E) Potential Regulatory Change. The Company shall keep SRWA regularly advised as to any potential Change in Law affecting the Design-Build Work of which the Company has knowledge, and shall provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on SRWA should a Change in Law actually occur.

(F) Assistance to SRWA. The Company shall reasonably cooperate with and assist SRWA in obtaining and maintaining all Governmental Approvals that are the responsibility of SRWA, as set forth in Appendix 9 (Governmental Approvals and Utility Coordination). Such cooperation and assistance shall include compliance with any specific requirements set forth in Appendix 9 (Governmental Approvals and Utility Coordination) and providing to SRWA and all appropriate Governmental Bodies all data, information, plans and documentation that are within its possession or control (including all information specific to the Design-Build Work that may exist or be required by such Governmental Bodies to be developed by the Company or SRWA), which may be required in order to properly apply for, obtain and maintain such Governmental Approvals. All such data, information, plans and documentation shall be correct and complete in all material respects and, as applicable, shall be developed by the Company in accordance with the Contract Standards.

(G) Limited Permitting Assistance by SRWA. Upon request by the Company, SRWA shall provide reasonable assistance to the Company in connection with the Company’s obligation to obtain and maintain the Governmental Approvals required to be obtained by the Company under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Governmental Approvals, and providing the Company with existing relevant data and documents that are within SRWA’s custody or control or are reasonably obtainable by SRWA and which are reasonably required for such purpose. However, SRWA’s obligation to provide such reasonable assistance shall be limited, in light of the Company’s primary role in the permitting, design and construction of the Regional Water Facilities, to those actions that are legally required to be taken by SRWA as permittee or co-permittee or that involve providing information in the possession of or reasonably obtainable by SRWA.
(H) **Company Assumption of Permitting Risk for Design-Build Work.** The Company assumes the risk of obtaining and maintaining the Governmental Approvals required to be obtained by the Company pursuant to this Section, including the risk of delay, non-issuance, or the imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Change in Law described in items (1) and (2) of the definition thereof and to the extent provided under subsections (I), (J) and (K) of this Section. In assuming this risk, the Company acknowledges in particular that (except as otherwise specifically provided in this Section) the delay or non-issuance of any Governmental Approval required for the commencement of construction will have the effect of compressing the period within which the completion of construction, testing and all other Design-Build Work must be completed hereunder in order to avoid delay liquidated damages pursuant to Section 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages) and termination pursuant to Section 7.2 (Events of Default by the Company). The Company further acknowledges that a Governmental Body, in issuing any Governmental Approval, may impose terms and conditions that require the Company to make changes or additions to the Design-Build Work, which may increase the cost, time or risk to the Company of performing the Design-Build Work. Any such terms and conditions that impose requirements that are different from or that are in addition to those imposed by the Technical Standards shall not constitute a Change in Law, and any changes to the Design-Build Work resulting therefrom shall be subject to review and approval by SRWA, acting reasonably.

(I) **Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations.** If in seeking to obtain a Governmental Approval set forth in subsection (J) of this Section, (1) the Company has complied with the requirements of this Contract, (2) the Company has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval, (3) the Company has in all respects used its best efforts to obtain the Governmental Approval, (4) the Company has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law, and (5) there has been a failure to issue a Governmental Approval by the Assumed Approval Issuance Date set forth in Table 4-6 below, then the Company shall be entitled to an adjustment to the Scheduled Acceptance Date to the extent provided in subsection (J) of this Section.

(J) **Governmental Approval Dates.** The Company shall submit completed applications for each of the Governmental Approvals listed below in Table 4-6 by the applicable “Governmental Approval Application Date,” which is the number of days from the Contract Date as indicated in the table. The Company shall obtain each listed Governmental Approval by the “Assumed Approval Issuance Date” set forth below, which is the date by which the applicable Governmental Approval is expected to be obtained, as measured from the Governmental Approval Application Date and assuming the adopted administrative practice of the applicable issuing Governmental Body and the Governmental Body’s compliance with Applicable Law. The Scheduled Acceptance Date shall be adjusted to account for the number of days of delay by a Governmental Body in issuing any required Governmental Approval listed below in Table 4-6 beyond the Assumed Approval Issuance Date, reduced by (i) the number of days of Company delay in submitting a complete application in accordance with this Section beyond the applicable Governmental Approval Application Date, and (ii) the number of days of any Governmental Body delay in issuing the required Governmental Approval due to the failure of the Company to exercise reasonable diligence in accordance with this Section in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually causes delay in the Company’s critical path completion schedule after the exercise of all reasonable mitigation efforts by the Company. The
Company shall bear the burden of proving any claim of entitlement to an adjustment to the Scheduled Acceptance Date under this Section, and shall promptly and regularly inform SRWA as matters arise which may culminate in any such claim in order to permit timely intervention by SRWA should it so elect. The Company shall not be entitled to an adjustment of the Base Design-Build Price in connection with any delay caused by the applicable Governmental Body in accordance with this subsection.

Table 4-6

<table>
<thead>
<tr>
<th>Governmental Approval</th>
<th>Issuing Governmental Body</th>
<th>Governmental Approval Application Date (Number of days from Contract Date)</th>
<th>Assumed Approval Issuance Date (Number of days from Governmental Approval Application Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Domestic Water Supply Permit</td>
<td>DDW</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Interim Operations Approval</td>
<td>DDW</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Stormwater</td>
<td>Central Valley Regional Water Quality Control Board</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Construction Dewatering Discharge Permit</td>
<td>State Water Resources Control Board / Central Valley Regional Water Quality Control Board</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>NPDES Permit for any Finished or Raw Water Discharge from the Plant</td>
<td>Central Valley Regional Water Quality Control Board</td>
<td>TBD</td>
<td>TBD</td>
</tr>
</tbody>
</table>

As explained in Sec. 5.2, the Company is responsible for applying for the New Domestic Water Supply Permit, obtaining the Interim Operations Approval, and assisting with the New Domestic Water Supply Permit application; however, SRWA is responsible for obtaining the final New Domestic Water Supply Permit if not obtained by Final Completion.
<table>
<thead>
<tr>
<th>Governmental Approval</th>
<th>Issuing Governmental Body</th>
<th>Governmental Approval Application Date (Number of days from Contract Date)</th>
<th>Assumed Approval Issuance Date (Number of days from Governmental Approval Application Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Discharge Permit for any Finished or Raw Water Discharges from the Plant</td>
<td>Central Valley Regional Water Quality Control Board</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Cal OSHA Construction Safety Permits</td>
<td>State Department of Industrial Relations</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Cal OSHA Confined Space Permit</td>
<td>State Department of Industrial Relations</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Cal OSHA Tunneling Permit</td>
<td>State Department of Industrial Relations</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Authority to Construct/Permit to Operate – For Construction Activities</td>
<td>San Joaquin Valley Air Pollution Control District</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Authority to Construct/Permit to Operate – For Operation of Permanent Facilities</td>
<td>San Joaquin Valley Air Pollution Control District</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Road Encroachment Permit</td>
<td>City of Ceres</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Transportation Permit</td>
<td>City of Ceres</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Road Encroachment Permit</td>
<td>City of Turlock</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Transportation Permit</td>
<td>City of Turlock</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Road Encroachment Permit</td>
<td>City of Hughson</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Road Encroachment Permit</td>
<td>County of Stanislaus</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Traffic Control Management Plan</td>
<td>County of Stanislaus</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Transportation Permit</td>
<td>County of Stanislaus</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Truck Oversize/Overweight Permit</td>
<td>State Department of Transportation</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Encroachment Permits</td>
<td>TID</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Monitoring Well/Boring and Well Destruction Permits</td>
<td>County of Stanislaus</td>
<td>TBD</td>
<td>TBD</td>
</tr>
</tbody>
</table>
(K) Failure of a Governmental Body to Comply with Applicable Law. The Company shall be entitled to claim Uncontrollable Circumstance relief in accordance with and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief) in the event that a Governmental Body fails to comply with Applicable Law in connection with a Governmental Approval application or with respect to the imposition of arbitrary and capricious terms and conditions in connection with a Governmental Approval. Any price relief associated with a Governmental Body delay under this subsection shall be limited to the Company’s reasonable daily general conditions costs, subject to Cost Substantiation in accordance with Section 10.8 (Cost Substantiation of Work Already Performed), for the number of days of delay caused by the applicable Governmental Body but only to the extent any such Governmental Body delay actually causes delay in the Company’s critical path completion schedule after the exercise of all reasonable mitigation efforts by the Company.

SECTION 4.7. PILOT TESTING. Notwithstanding any testing that may have been conducted by SRWA or the Company prior to the Contract Date, the Company shall be responsible, at its sole cost and expense, for performing any pilot testing associated with the Water Treatment Plant as may be required by any Governmental Body in connection with any Governmental Approval. The Company specifically bears all risk associated with any requirements imposed by a Governmental Body with respect to such pilot testing except to the extent that such requirements are imposed as a result of any Change in Law described in items (1) and (2) of the definition thereof.

SECTION 4.8. DDW REQUIREMENTS. The parties acknowledge that, although the New Domestic Water Supply Permit is not required under Applicable Law to commence and continue performance of the construction elements of the Design-Build Work, obtaining the Interim Operations Approval is a requirement for introducing Finished Water into the City Water Supply Systems and must be obtained in order to achieve Acceptance. The obligations of the parties with respect to obtaining the Interim Operations Approval and New Domestic Water Supply Permit are set forth in Section 5.2 (Interim Operations Approval and New Domestic Water Supply Permit). The Company acknowledges that DDW intends to provide comments and advice to the Company concerning the Design-Build Work and that such comments and advice are likely to have a bearing on the ability of the parties to obtain the Interim Operations Approval and New Domestic Water Supply Permit. Accordingly, the Company shall cooperate with DDW and shall prepare all submittals relating to the Project and perform all pilot testing required or reasonably requested by DDW in accordance with Sections 4.7 (Pilot Testing) and 5.2 (Interim Operations Approval and New Domestic Water Supply Permit). The Company bears the risk of proceeding in contravention of any comments or advice from DDW, whether such comments or advice rise to the level of Applicable Law or otherwise. The Company shall assume all risks set forth in subsection 5.2(D) (Company Assumption of Risk) with respect to the Interim Operations Approval and DDW approval under Section 4.23(A)(2) (Final Completion).

SECTION 4.9. COMPANY DESIGN – GENERAL

(A) Performance of the Design Work. The Company shall undertake, perform, and complete the designs and plans for the Regional Water Facilities in accordance with the Contract Standards and shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Contract Date, the Company’s design for the Regional Water Facilities is not complete. All Company working and final Design Documents shall comply with the Contract Standards, including applicable requirements and provisions set forth in the Appendices,. The Company shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Design Documents.

(B) Sole Responsibility and Liability. The Technical Standards are intended to include the basic design principles, concepts and requirements for the Design-Build Work, but do not include the
final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the Design-Build Work or for achieving Acceptance. The Company assumes responsibility for the final design and agrees to prepare all necessary and required, complete and detailed designs, plans, Drawings and specifications and to furnish and perform the Design-Build Work in conformity with the Contract Standards and its final designs, plans, Drawings and specifications based thereon. The Company further agrees that it shall not have the right to bring any claim whatsoever against SRWA, the SRWA Engineer, or any of SRWA consultants or subcontractors arising out of any design Drawings, specifications or Technical Standards included in the RFP or made available during the procurement process. Rather, the Company shall have the sole and exclusive responsibility and liability for the design and construction of the Regional Water Facilities and performance of the Design-Build Work. The Company acknowledges that, in the Proposal and negotiation and clarification process leading to the execution of this Contract, the Company had the unrestricted right and opportunity to negotiate changes and clarifications to the Contract, not submit a Proposal, or not approve this Contract if the Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Company’s ability to perform the Design-Build Work in compliance herewith.

(C) SRWA Review of Design Documents. The Company shall provide SRWA with the Document Submittal Plan in accordance with the requirements set forth in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures) and thereafter the Company shall submit Design Documents to SRWA for its review, comment on, and approval in accordance with this subsection, the Document Submittal Plan, and Appendix 2. However, SRWA review and approval will be limited to confirming whether, based on SRWA’s review (which may be incomplete or selective), the Design Documents appear to be in compliance with the Contract, Technical Standards, and applicable Appendices. SRWA review and approval will not extend to construction means, methods, techniques, sequences, or procedures or to safety-related precautions, programs, or requirements. SRWA review and approval of the Design Documents is solely for the benefit of SRWA and the Cities. The Company remains fully responsible for the preparation of the Design Documents in accordance with the Contract Standards and liable for any defects in design, even though SRWA will be reviewing and approving the Design Documents for the limited purpose described above. The Company shall not rely on SRWA approval as validating or confirming its design or the Design Documents. SRWA will complete its review of each submittal in a timely manner in accordance with the procedures and deadlines set forth in Appendix 2 (Design-Build Work Submittal Requirements). In no event shall the Company proceed with the physical construction of any particular segment of the Design-Build Work without first obtaining SRWA approval under this subsection and otherwise complying with the requirements of this subsection, the Document Submittal Plan, and Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures) with respect to that segment of the Design-Build Work (except as otherwise provided by Section 4.1(D) (Sequencing and Staging of Design-Build Work)). The Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures), to any comments provided by SRWA as to the Company’s design submittals. SRWA review, comment on, or approval of the Company’s Design Documents (or SRWA’s failure or delay in commenting on or approving any Design Document) shall not in any way (1) transfer any design-related liability to SRWA, or (2) relieve the Company of full responsibility for the satisfactory preparation of the Design Documents or the design and construction of the Regional Water Facilities and performance of the Design-Build Work in accordance with the Contract Standards.

(D) Documents at the Sites. The Company shall maintain at the Sites all design and construction documents, including a complete set of Record Drawings, specifications, addenda, approved shop drawings, samples, photographs, Change Orders, Contract Administration Memoranda, design change notices, other modifications of SRWA documents, survey data, and Company or construction Subcontractor field orders in accordance with Appendix 3 (Construction
Work Requirements). These documents shall be available to SRWA for reference, copying and use, and a complete set thereof shall be delivered to SRWA upon completion of the Design-Build Work.

SECTION 4.10. DESIGN AND CONSTRUCTION REQUIREMENTS; CHANGES

(A) **Purpose and SRWA Interest.** The Design and Construction Requirements shall form the basis of the minimum Project design and criteria for the Regional Water Facilities and all design work shall be completed in accordance therewith. The Company acknowledges SRWA’s material interest in the Design and Construction Requirements and the Company agrees that no change to the Design and Construction Requirements shall be made except with the written consent of SRWA, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders). In addition for design review concerning compliance with Appendix 5 (Project Technical Requirements) and other Contract Standards, SRWA reserves the right to review and comment upon the final design of the Regional Water Facilities insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Regional Water Facilities are in compliance with Appendices 3 (Construction Work Requirements) and 5 (Project Technical Requirements) with respect to such matters.

(B) **Changes Made at Company Request.** The Company shall give SRWA written notice of, and reasonable opportunity to review and comment upon, any Design and Construction Requirement Change proposed to be made at the Company’s request. The notice shall contain sufficient information for SRWA to determine whether the Design and Construction Requirement Change:

1. does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
2. does not impair the quality, integrity, durability and reliability of the Regional Water Facilities;
3. is reasonably necessary or is advantageous for the Company to fulfill its obligations under this Contract; and
4. is feasible. SRWA shall have the right in its discretion to accept, reject or modify any Design and Construction Requirement Change proposed by the Company. Any such Design and Construction Requirement Change accepted or modified by SRWA, and any related change in the terms and conditions of this Contract, shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

(C) **Changes Made due to Uncontrollable Circumstances.** Upon the occurrence of an Uncontrollable Circumstance prior to the Acceptance Date, SRWA shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief), to make or cause to be made all Design and Construction Requirement Changes reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with SRWA concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and SRWA shall cooperate in order to minimize any delay, lessen any additional cost, and modify the Project so as to permit the Company to continue providing the Design-Build Work in light of such Uncontrollable Circumstance. The design and construction costs resulting from any such Design and Construction Requirement Change shall be borne by SRWA, except to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief). Without limiting the right of SRWA to issue a Unilateral Change Directive under Section 4.12 (Unilateral Change Directives), any Design and Construction Requirement Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of this Contract, shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).
(D) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval that require a Design and Construction Requirement Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, SRWA shall promptly proceed to make or cause to be made all Design and Construction Requirement Changes reasonably necessary or appropriate to comply with such additional terms and conditions. Pursuant to and to the extent provided in Sections 4.6 (Design-Build Work Permitting Responsibilities) and 5.2 (Interim Operations Approval and New Domestic Water Supply Permit), the Company shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Accordingly, the design and construction costs resulting from any Design and Construction Requirement Change required under this Section shall be borne by the Company. Without limiting the right of SRWA to issue a Unilateral Change Directive under Section 4.12 (Unilateral Change Directives), any such Design and Construction Requirement Change and any related change in the terms and conditions of this Contract shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

(E) Changes Made at SRWA Direction. SRWA shall have the right to make Design and Construction Requirement Changes at any time prior to the Acceptance Date at its discretion. Except as provided in subsection (D) of this Section, any increased design and construction costs resulting from any such Design and Construction Requirement Change made at SRWA’s direction shall be borne by SRWA through a Base Design-Build Price Adjustment. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Contract shall be reflected in a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

SECTION 4.11. SECONDARY TECHNICAL CRITERIA; VARIATIONS

(A) Relation to Design and Construction Requirements. The Secondary Technical Criteria contained in Appendix 5 (Project Technical Requirements) are provided in order to establish in further detail (1) the manner in which the design work is reasonably expected to be developed and carried to full completion, and (2) the standards of quality, integrity, durability and reliability to which the Project is to be designed and constructed.

(B) Permissible Variations. The design portion of the Design-Build Work shall be completed in accordance with the Secondary Technical Criteria. In light of the design-build nature of this Contract and the partially completed level of the design work as of the Contract Date, however, reasonable, minor variations from the Secondary Technical Criteria shall be permitted in the final design of the Regional Water Facilities, to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements of the Secondary Technical Criteria from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms and buildings (to the extent overall functionality is not impaired or total square footage materially decreased); routes and depth of pipe work; exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical, power and control cables, switchgear, transformers and control panels. No such variations shall be inconsistent with the Design and Construction Requirements, with the purposes of the Secondary Technical Criteria as set forth in subsection (A) of this Section, or with any limits specifically provided in the Secondary Technical Criteria regarding the range or nature of permissible variations or with any standards or principles regarding permissible deviations set forth therein. Variations in the final design from the Secondary Technical Criteria which conform to the provisions of this Section shall not require affirmative SRWA consent, but shall be identified in the monthly progress schedule and report
provided in accordance with subsection 4.1(E) (Progress Schedule and Reports). However, if SRWA determines, in its discretion, that any such variation does not conform to this Section, then the variation shall require the written consent of SRWA, which shall not be unreasonably withheld or delayed. Any variation requiring the consent of SRWA shall be evidenced by a Contract Administration Memorandum or Change Order, as applicable depending upon the materiality of the change, as provided in Sections 10.3 (Contract Administration) and 10.4 (Change Orders).

SECTION 4.12. UNILATERAL CHANGE DIRECTIVES

(A) Generally. The parties intend to negotiate the terms of any Change Order providing for a Design and Construction Requirement Change pursuant to Section 4.10 (Design and Construction Requirements; Changes) prior to the Company incurring any costs with respect to any such change or adjustment. The Company shall consult with SRWA concerning possible means of addressing any proposed Design and Construction Requirement Change pursuant to Section 4.10 (Design and Construction Requirements; Changes) and the Company and SRWA shall cooperate in order to minimize any delay and lessen any additional cost in light of such proposed Design and Construction Requirement Change. However, notwithstanding the foregoing, SRWA shall have the right to issue a written order prepared and signed by an authorized representative of SRWA and authorized by SRWA, directing a Design and Construction Requirement Change pursuant to this subsection, which order shall specify any appropriate price, performance or schedule relief, if any, associated with the Design and Construction Requirement Change (a “Unilateral Change Directive”). Upon receipt of a Unilateral Change Directive, the Company shall promptly proceed with the performance of any change in the Design-Build Work as instructed by the Unilateral Change Directive and shall promptly advise SRWA in writing of the Company’s agreement or disagreement with any price, performance or schedule relief, if any, as may be proposed by SRWA in the Unilateral Change Directive. If the Company receives a written communication signed by SRWA, which the Company believes is a Unilateral Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work until it receives written confirmation from SRWA that such communication is in fact a Unilateral Change Directive. A Unilateral Change Directive that is signed by the Company and SRWA reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order.

(B) Limitations on SRWA’s Right to Issue Unilateral Change Directives. Except with respect to Design and Construction Requirement Changes requested by the Company, as described in subsection 4.10(A) (Changes Made at Company Request) or required by Governmental Bodies where the Company has assumed the terms and conditions risk associated with the Governmental Approval, as described in subsection 4.10(C) (Changes Required By Governmental Bodies), no Unilateral Change Directive shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, unless SRWA affords the Company appropriate price, schedule, performance or other relief necessary to avoid any such material effect. In addition, no Unilateral Change Directive shall be made that would be contrary to Applicable Law.

(C) Disagreement with Terms of a Unilateral Change Directive. If the Company disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Unilateral Change Directive, the Company shall provide written notice of the disagreement within 15 days after receipt of the Unilateral Change Directive. Upon receipt of a notice of disagreement, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution Procedures) and Appendix 14 (Resolution of Company Claims). In such case, the Company shall proceed with the performance of the Design-Build Work in accordance with the Unilateral Change Directive and shall keep and present, in such form as SRWA may request, an itemized accounting with the appropriate supporting data with respect to the Company’s position.
SECTION 4.13. COMPLIANCE WITH APPLICABLE LAW

(A) Compliance with Applicable Law and Other Standards. In designing, constructing, initially testing, starting up and Acceptance Testing the Regional Water Facilities, the Company shall comply with the Contract Standards. The Company shall ensure that all Persons performing Design-Build Work, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise required by Applicable Law. The Company shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Design-Build Work.

(B) Governmental Approvals Necessary for Continued Construction. The Company shall make all necessary filings, applications and reports as needed to obtain and maintain all Governmental Approvals required under Applicable Law in connection with the continuance of the Design-Build Work once commenced. SRWA, subject to the limitations set forth in subsection 4.6(G) (Limited Permitting Assistance by SRWA), shall cooperate with the Company in connection with the foregoing undertaking.

(C) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law a Governmental Approval with respect to the Design-Build Work, the Company shall: (1) immediately correct such failure and resume compliance with Applicable Law or Governmental Approval; (2) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (3) indemnify, defend and hold harmless SRWA Indemnitees in accordance with Section 8.5 (Indemnification by the Company) from any Loss and Expense resulting therefrom; (4) make all changes in performing the Design-Build Work which are necessary to assure that the failure of compliance with Applicable Law or Governmental Approval will not recur; and (5) comply with any corrective or remediation action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law or Governmental Approval.

(D) Assignment of Anti-Trust Claims. In accordance California Public Contract Code Section 7103.5, in entering into this Contract, the Company offers and agrees to assign to SRWA all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S. Code Section 15) or under the Cartwright Act (California Business and Professions Code Division 7, Part 2, Chapter 2), arising from purchases of goods, services or materials pursuant to this Contract. The assignment shall be made and become effective at the time SRWA tenders final payment to the Company for the Design-Build Work, without further acknowledgement by the parties.

SECTION 4.14. CONSTRUCTION PRACTICE. The Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Sites; construction trade management; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors’ insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Sites; temporary utilities; potable water; sanitary services; Subcontractor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and
construction coordination; and all other plans, equipment, materials, labor, and other work necessary or appropriate to successfully and safely construct the Regional Water Facilities.

SECTION 4.15. SRWA ENGINEER AND CONSTRUCTION MANAGER

(A) Overlap of Responsibilities. The Company acknowledges that SRWA will be advised by both the SRWA Engineer and SRWA Construction Manager in connection with the Company’s performance of the Design-Build Work. The SRWA Construction Manager’s general responsibilities shall be to review and respond to Company requests for information, review submittals, and monitor construction field work and the SRWA Engineer’s general responsibilities shall relate to permitting, preconstruction work, design review, review request for information and submittals during the construction phase, and Acceptance Test monitoring. The Company acknowledges that notwithstanding the general responsibilities of the SRWA Construction Manager and SRWA Engineer, as described in this Section, there may be overlap in the responsibilities of the SRWA Construction Manager and SRWA Engineer, and the Company shall cooperate with both the SRWA Construction Manager and SRWA Engineer as and to the extent required pursuant to this Contract.

(B) Duties of SRWA Construction Manager. The Company shall fully cooperate with the SRWA Construction Manager in connection with the administration of this Contract and the performance of the duties of the SRWA Construction Manager hereunder. In the performance of such services, the Company agrees that the SRWA Construction Manager may, without limiting other possible services to SRWA: review and monitor construction progress, payments and procedures; review baseline schedule; review schedule of values; review monthly progress reports; attend weekly construction meetings; issue construction non-compliance notices and recommend to SRWA that payment be withheld for work that is not completed satisfactorily; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements and proposed variations in the Secondary Technical Criteria; attend monthly Project status meetings; review plans, Drawings and specifications of the Regional Water Facilities for compliance with the Design and Construction Requirements and the Secondary Technical Criteria; attend regular design review meetings; attend monthly Project status meetings; review plans, Drawings and specifications of the Regional Water Facilities for compliance with the Design and Construction Requirements and the Secondary Technical Criteria; monitor the Acceptance Tests undertaken by the Company and review the Company’s certified Acceptance Test report to determine whether the Acceptance Test Procedures and Standards have been satisfied pursuant to Article 5 (Testing, Start-up, and Acceptance) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements); review the validity of the Company’s written notice that an Uncontrollable Circumstance has occurred; observe and monitor the Company’s compliance with the Design-Build Quality Management Plan, Governmental Approvals and related conditions, Environmental Mitigation Measures and the critical path method schedule; review Company submittals and construction-related requests for information; review Record Documents; review before and after construction photographs; and perform such other duties as may be specifically conferred on the SRWA Construction Manager hereunder.

(C) Duties of SRWA Engineer. The Company shall fully cooperate with the SRWA Engineer in connection with the administration of this Contract and the performance of the duties of the SRWA Engineer hereunder. In the performance of such services, the Company agrees that the SRWA Engineer may, without limiting other possible services to SRWA: review construction progress; review payment requests; determine the completion of specified portions of the Design-Build Work; review proposed changes to the Design and Construction Requirements and proposed variations in the Secondary Technical Criteria; attend regular design review meetings; attend monthly Project status meetings; review plans, Drawings and specifications of the Regional Water Facilities for compliance with the Design and Construction Requirements and the Secondary Technical Criteria; monitor the Acceptance Tests undertaken by the Company and review the Company’s certified Acceptance Test report to determine whether the Acceptance Test Procedures and Standards have been satisfied pursuant to Article 5 (Testing, Start-up, and Acceptance) and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements); review the validity of the Company’s written notice that an Uncontrollable Circumstance has occurred; monitor the Company’s compliance with the Design-Build Quality Management Plan, Governmental Approvals and related conditions; review Company submittals and construction-related requests for information; review
record Drawings; review of before and after construction photographs; and perform such other
duties as may be specifically conferred on the SRWA Engineer hereunder. It is understood that the
services intended to be provided by the SRWA Engineer shall be of an observational and review
nature only, and that the SRWA Engineer shall not have SRWA to interfere with, halt, or delay in
any way the construction of the Regional Water Facilities or, except as provided in subsection (D) of
this Section, to require or approve changes to the Design and Construction Requirements and the
Secondary Technical Criteria or the Company’s plans and specifications made in accordance
therewith.

(D) SRWA Engineer Approval of Variations from Secondary Technical Criteria. The parties
acknowledge and agree that the SRWA Engineer shall have authority to approve and sign Contract
Administration Memoranda on behalf of SRWA approving variations in the final design from the
Secondary Technical Criteria requiring the consent of SRWA pursuant to Section 4.11 (Secondary
Technical Criteria; Variations). Except with respect to the foregoing, the Company understands and
agrees that the SRWA Engineer has only limited authority with respect to the implementation of
this Contract, and cannot bind SRWA with respect to any Change Order or to incurring costs in
excess of the amounts appropriated therefor. Only the SDWA Contract Representative shall have the
authority to approve and sign Contract Administration Memoranda or Change Orders relating to
Design and Construction Requirement Changes.

(E) SRWA Extra Work Attributable to Company. The Company shall reimburse to SRWA
any fees and costs (including overtime) of the SRWA Construction Manager, SRWA Engineer, and
other SRWA personnel to the extent any fees and costs and related extra work are attributable to the
failure of the Company to cause Acceptance to occur on or before the Scheduled Acceptance Date, the
repetition of any Acceptance Tests in excess of the Acceptance Tests identified in the SRWA-
approved Acceptance Test Plan, or any other Company-caused rework by SRWA staff that results in
additional cost to the SRWA. However, the Company shall not be required to reimburse such fees
and costs if the additional or repeated Acceptance Tests are required as a result of Uncontrollable
Circumstances.

SECTION 4.16. CONSTRUCTION MONITORING, TESTING, AND UNCOVERING WORK

(A) Observation and Design Review Program. During the progress of the Design-Build Work
through Final Completion, the Company shall at all times afford SRWA, the SRWA Construction
Manager, and the SRWA Engineer every reasonable opportunity for observing all Design-Build
Work, and shall comply with the procedures and requirements set forth in Appendix 2 (Design-Build
Work Submittal Requirements and Review Procedures) and Appendix 4 (Design-Build Quality
Management. The Company shall use its best efforts to provide SRWA personnel with safe access to
the Design-Build Work. During any such observation, all representatives of SRWA, the SRWA
Construction Manager and SRWA Engineer shall comply with the Site Health and Safety Plan for
the Design-Build Work applicable to areas visited, and shall in no material way interfere with the
Company’s performance of any Design-Build Work.

(B) Company Tests and Inspections. The Company shall conduct all tests of the Design-Build
Work (including shop tests) or inspections required by the Contract Standards. The Company shall
give SRWA, the SRWA Construction Manager and the SRWA Engineer reasonable advance notice
(at least 10 Business Days) of tests or inspections prior to the conduct thereof; provided, however,
that in no event shall the inability, failure or refusal to attend or be present of SRWA, the SRWA
Construction Manager or the SRWA Engineer at or during any such test or inspection delay the
conduct of such test or inspection or the performance of the Design-Build Work. The Company shall
engage an engineer or architect licensed in the State at its sole cost and expense to conduct or
witness any such test or inspection. All analyses of test samples shall be conducted by Persons
appearing on lists of laboratories authorized to perform such tests by the State or federal SRWA
having jurisdiction and shall be subject to the approval of SRWA, which approval shall not be unreasonably withheld. In addition to the foregoing, Acceptance Testing of the performance of the completed Regional Water Facilities shall be conducted in accordance with Article 5 (Testing, Startup and Acceptance).

(C) SRWA Tests, Observations and Inspections. SRWA, its personnel, agents, representatives, and contractors, and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests, as SRWA deems necessary or desirable to ascertain whether the Design-Build Work complies with the Contract Standards. Such observations, inspections and tests may be conducted on-site or off-site, may include factory inspections of piping and equipment. The costs of such test, observation or inspection shall be borne by SRWA unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Contract or Applicable Law, in which event the Company shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Company shall secure and deliver to SRWA promptly, at the Company’s sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll, and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Company shall provide to SRWA, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Company under or in connection with any Governmental Approval, Subcontract or Security Instrument.

(E) Notice of Covering Design-Build Work. The Company shall give SRWA notice of its upcoming schedule with respect to the completion and covering of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five Business Days) before such completion and covering. SRWA shall give the Company reasonable notice (a minimum of 72 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford SRWA a reasonable opportunity to conduct a full inspection of such Design-Build Work. At SRWA’s written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that SRWA’s right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by SRWA as to whether the disputed Design-Build Work complies with the requirements of this Contract. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) by the Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which SRWA was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) in all other cases, as follows: by the Company, if such observation or test reveals that the Design-Build Work does not comply with this Contract; or, by SRWA, if such observation or test reveals that the Design-Build Work complies with this Contract.

In the event such Design-Build Work does comply with this Contract, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and
any costs incurred with respect to such observation or test shall be borne by SRWA (through and only through a Base Design-Build Price Adjustment).

SECTION 4.17. CORRECTION OF NON-CONFORMING WORK. The Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work which does not conform with the Contract Standards. SRWA may elect by Change Order, at the Company’s request, to accept non-conforming Design-Build Work and charge the Company (through a Base Design-Build Price Adjustment) for the amount agreed upon by the parties by which the value of the Company’s services or Design-Build Work has been reduced.

SECTION 4.18. DELIVERABLE MATERIAL. As the Design-Build Work progresses (or upon the termination of the Company’s right to perform the Design-Build Work), the Company shall deliver to SRWA all Deliverable Material. The provisions of Section 10.6 (Property Rights) shall apply to any Deliverable Material used by the Company in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. Deliverable Material provided to SRWA shall be the property of SRWA, and SRWA shall have the right to use, reuse, reproduce, publish, display, broadcast and distribute the Deliverable Material and to prepare derivative and additional documents or works based on the Deliverable Material without further compensation to the Company or any other party. SRWA shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by SRWA in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. SRWA’s use of any such Deliverable Material for any purpose other than the Project shall be at its own risk and the Company shall have no liability therefor.

SECTION 4.19. PERSONNEL

(A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company’s and Subcontractors’ employees and personnel. All Persons engaged by the Company for Design-Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. The Company shall replace any Company or Subcontractor employee or worker at the request of SRWA, after notice and a reasonable opportunity for corrective action, in the event SRWA determines, in its discretion, that such employee or worker does not have the requisite skills for the tasks assigned or has engaged in unlawful, unruly or objectionable conduct.

(B) Company Construction Superintendent. The Company shall designate an employee of the Company, an Affiliate, or a Subcontractor (the “Company Construction Superintendent”), who shall be present on the Sites with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design-Build Work. The Company Construction Superintendent shall, among other things: be familiar with the Design-Build Work and all requirements of this Contract; coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision; maintain a daily status log of the Design-Build Work; and attend all weekly and monthly construction progress meetings with SRWA, the SRWA Construction Manager and the SRWA Engineer. The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of subsection (C) of this Section.

(C) SRWA Rights with Respect to Key Design-Build Work Personnel. The Company acknowledges that the identity of the key Design-Build Work management and supervisory personnel proposed by the Company and its Subcontractors in its Proposal submitted in response to the RFP was a material factor in the selection of the Company to perform this Contract. Such personnel and their affiliations are set forth in Appendix 10 (Key Personnel and Approved
Subcontractors). The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown by the Company. “Good cause” includes termination for cause, employee death, disability, retirement or resignation, but shall not include performing services on other projects for the Company or any of its Affiliates. In the event of any such permissible unavailability, the Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to SRWA for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(D) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its Subcontractors, whether pertaining to organization or requirements of the Design-Build Work, employee hiring, or any other matters. SRWA shall have no responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless SRWA Indemnitees in accordance with Section 8.5 (Indemnification by the Company) from any and all Loss and Expense resulting from any such labor dispute.

SECTION 4.20. GUARANTEES AND WARRANTIES

(A) Workmanship Guaranty. The Company warrants to SRWA that the materials, machinery, structures, improvements, and equipment furnished as part of the Design-Build Work will be new, of recent manufacture, and of good quality; that the Design-Build Work will be free from defects; and that the Design-Build Work will conform to the Contract Standards. If, at any time during the period beginning with the Acceptance Date and ending one year thereafter (the “Guaranty Period”), any of the Design-Build Work is found to be malfunctioning, defective, nonconforming, or otherwise not in accordance with the Contract Standards, the Company shall take appropriate action to repair, replace, or otherwise correct it promptly after receipt of written notice from SRWA to do so. SRWA shall give such notice promptly after discovery of the condition. The Company shall respond to critical or emergency service calls from SRWA within 24 hours and non-critical or non-emergency calls within five Business Days. Such response shall require that a competent representative familiar with the specific equipment used in the Design-Build Work inspect the facility and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time. In critical or emergency situations, that time period shall not exceed 48 hours after the on-site inspection. For non-emergencies, such period shall not exceed 10 days. The Guaranty Period for any work repaired, replaced, or corrected under this Section shall be extended for one year from the date of SRWA’s acceptance of the work.

(B) Relief from Guaranty. The Company shall be provided relief from the guaranty under this Section in the event the malfunctioning, defective, or nonconforming work is due to (1) the failure of SRWA to operate and maintain the Project in accordance with Good Industry Practice and generally consistent with the Operation and Maintenance Manual, (2) an error or defect in any software programming provided by SRWA for the monitoring instrumentation and controls, (3) any damage or defect caused by a Project modification not executed by the Company, (4) SRWA’s sole negligence, fraud, or willful misconduct, or (5) normal wear and tear under normal use. However, the Company shall not be relieved pursuant to clause (1) of this subsection to the extent that any such SRWA failure to operate or maintain the Project is attributable to any error or defect in the Operation and Maintenance Manual prepared by the Company.

(C) Guaranty Not Exclusive. The guaranty in this Section is in addition to, and not in limitation of, any other rights or remedies available under this Contract or Applicable Law. Nothing in this Section will be construed to limit the Company’s liability or responsibility imposed by this
Contract or Applicable Law with respect to the Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud. The Guaranty Period applies only to the specific Company guaranty obligations under this Section and it does not establish a limitations period with respect to any other obligation. The guarantees under this Section do not excuse the Company from any claim based on breach of Contract arising from defective or nonconforming work that is discovered more than one year after the Acceptance Date.

(D) Guaranty Work. Any guaranty work under this Section shall be performed in accordance with the Contract Standards and in a manner that minimizes interference with SRWA’s ongoing Project operations. Any guaranty work shall be performed at the sole cost and expense of the Company. The Company acknowledges that it incorporated the costs and risks associated with these guarantees into the Base Design-Build Price. The Performance Bond, which continues in effect for one year after the recording of the Notice of Completion, applies to and secures the guaranty under this Section.

(E) Assignment of Manufacturer Warranties. The Company shall obtain from all Subcontractors, vendors, suppliers and other Persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Regional Water Facilities such warranties and guarantees as are normally provided with respect thereto and as are specifically required in Appendix 5 (Project Technical Requirements) and the Contract Standards, each of which shall be given and assigned to SRWA to the full extent of the terms thereof. No such warranty shall relieve the Company of any obligation hereunder, and no failure of any warranted or guaranteed structure, improvement, fixture, machinery, equipment or material shall be the cause for any increase in the Design-Build Price or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to an Uncontrollable Circumstance.

SECTION 4.21. SUBSTANTIAL COMPLETION

(A) Conditions to Substantial Completion. “Substantial Completion” shall occur only when all of the following conditions have been satisfied, unless waived in writing by SRWA:

1. the Company has submitted and SRWA has approved in writing, such approval not to be unreasonably withheld, a certification by the Company that construction of the Regional Water Facilities is physically complete and all other Design-Build Work, except the Acceptance Tests and the items on the Final Punch List, is complete and in all respects is in compliance with this Contract;

2. a preliminary or temporary certificate of occupancy has been issued for the Regional Water Facilities, if required by Applicable Law;

3. the Company has delivered to SRWA a red-lined set of construction Record Drawings as required by Appendix 3 (Construction Work Requirements);

4. all Utilities specified or required under this Contract to be arranged for by the Company are connected and functioning properly;

5. the Company and SRWA have agreed in writing upon the Final Punch List in accordance with Section 4.22 (Final Punch List) (or, if they are unable to agree, SRWA shall have prepared and issued the Final Punch List to the Company within 15 Business Days of the Company having submitted its proposed Final Punch List to SRWA);

6. the Company has delivered to SRWA written certification from the equipment manufacturers (including manufacturers of information technology systems and
instrumentation and controls) that all major items of machinery and equipment included in the Regional Water Facilities have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements;

(7) the Company has delivered to SRWA a statement setting forth in detail all claims, if any, of every kind whatsoever against or involving the Company or any Subcontractor and connected with, or arising out of, the Design-Build Work (and current up to the date when the Company gives such statement to SRWA);

(8) the Company is authorized by all appropriate Governmental Bodies to perform the procedures necessary to achieve Acceptance and to conduct the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended;

(9) the Company has submitted to SRWA and SRWA has reviewed and approved the plan for Acceptance Testing as required by Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements);

(10) the Company has delivered to SRWA a draft, complete Operation and Maintenance Manual prepared by the Company in accordance with Appendix 5 (Project Technical Requirements);

(11) the Company has completed all necessary operations and maintenance training as required by Section 5.9 (Operations Training by Company) and Appendix 7; and

(12) the Company has submitted written certification that all of the foregoing conditions have been satisfied and SRWA has approved the Company’s certification, which approval shall be effective as of the date of the Company’s certification.

(B) Notice of Substantial Completion. The Company shall give the SRWA Contract Representative at least 30 days’ prior written notice of the expected date of Substantial Completion.

SECTION 4.22. FINAL PUNCH LIST. As required by Section 4.21 (Substantial Completion), the Company shall submit a proposed Final Punch List to SRWA and the SRWA Construction Manager when the Company believes that the Design-Build Work has been substantially completed in compliance with this Contract. The “Final Punch List” shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Company’s opinion:

(1) the Company can complete before the Final Completion deadline provided in Section 4.23 (Final Completion), and with minimal interference to the occupancy, use and lawful operation of the Regional Water Facilities; and

(2) would represent, to perform or complete, a total cost of not more than one percent of the portion of the Base Design-Build Price applicable to the construction of the Regional Water Facilities.

In no event shall the Final Punch List contain any incomplete items necessary for full, automated operation of the Regional Water Facilities. The Final Punch List shall be approved by SRWA, and completion of the Final Punch List work shall be verified by a final walk-through of the Regional Water Facilities conducted by SRWA and the SRWA Construction Manager with the Company and the Company Construction Superintendent.
SECTION 4.23. FINAL COMPLETION

(A) Final Completion Requirements. “Final Completion” shall occur when all of the following conditions have been satisfied:

1. **Acceptance Achieved.** The Company has achieved Acceptance of the Regional Water Facilities in accordance with Article 5 (Testing, Start-up, and Acceptance);

2. **DDW Approval.** DDW has issued the New Domestic Water Supply Permit or DDW has provided other written information, satisfactory to SRWA, indicating that the Regional Water Facilities have been completed in accordance with DDW requirements;

3. **Design-Build Work Completed.** All Design-Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Contract;

4. **Certificate of Occupancy Issued.** A final certificate of occupancy has been issued for the Regional Water Facilities or any component thereof, if required by Applicable Law;

5. **Final Operation and Maintenance Manual.** The Company has delivered to SRWA the final Operation and Maintenance Manual prepared by the Company in accordance with Appendix 5 (Project Technical Requirements);

6. **Deliverable Material.** The Company shall have delivered to SRWA all Deliverable Material required by Section 4.18 (Deliverable Material);

7. **Final Record Documents.** The Company shall have delivered to SRWA the final and complete set of construction Record Drawings as required by Appendix 3 (Construction Work Requirements);

8. **Equipment Warranties and Manuals.** The Company shall have delivered to SRWA copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Regional Water Facilities required to be obtained under Section 4.20 (Guarantees and Warranties), together with copies of all related operating manuals supplied by any equipment supplier;

9. **Spare Parts In Storage.** All spare parts required by the applicable Design and Construction Requirements and Secondary Technical Criteria have been delivered and are in storage at the Regional Water Facilities;

10. **Payment of Claims.** The Company shall have certified to SRWA that all of its claims against SRWA have been paid as provided in Section 6.5 (Final Requisition and Payment); and

11. **Indemnity for Subcontractor Claims.** The Company has provided evidence to SRWA that no Encumbrances (other than Permitted Encumbrances) exist with respect to the Regional Water Facilities and has provided a written representation that there exist no outstanding claims from Subcontractors or, if there are outstanding claims from Subcontractors, the Company shall state the nature and amount of the claims, identify the claimant, and indemnify defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in subsection 8.5 (Indemnification by the Company) from and against all Loss and Expense resulting therefrom.
(B) **Deadline to Achieve Final Completion.** The Company shall achieve Final Completion within 90 days after the Acceptance Date. If the Company fails to achieve any of the items set forth in subsection (A) of this Section by the last day of the applicable period specified in the subsection (B), an Event of Default by the Company will be deemed to have occurred under Section 7.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder. Upon such a default, SRWA may terminate this Contract upon written notice to the Company. Upon any such termination, SRWA shall have all of the rights provided in Article 7 (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

**SECTION 4.24. BOARD APPROVAL AND NOTICE OF COMPLETION.** Promptly following Final Completion, the Board of Directors shall accept the Design-Build Work as complete and authorize the filing of the Notice of Completion in accordance with Section 6.5 (Final Requisition and Payment). Upon the recording of the Notice of Completion, the parties' obligations under this Contract shall terminate (except as provided in Sections 3.2 (Survival of Certain Provisions Upon Termination) and 7.7 (Company Obligations at Termination or Expiration)), the Company shall have no further obligation to furnish and maintain the Required Insurance, and, the Company shall be entitled to payment of the undisputed balance of the Base Design-Build Price, including retention amounts, subject to and in accordance with Section 6.5 (Final Requisition and Payment).
ARTICLE 5
TESTING, START-UP, AND ACCEPTANCE

SECTION 5.1. INITIAL TESTING

(A) General. The Company shall perform initial testing (including all required commissioning) of and start-up the Project and completed Regional Water Facilities, test equipment and subsystems, and conduct post-start-up operations prior to pre-acceptance testing in accordance with the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). The cost of all such initial testing activities, regardless of their extent or duration, has been priced into the Base Design-Build Price.

(B) Water Deliveries and Disposal During Initial Testing. Any water, whether or not Finished Water, produced by the Regional Water Facilities during initial testing or prior to Acceptance Testing shall be recycled within the Project, delivered to the Cities for beneficial use, or disposed of in accordance with Applicable Law. The Company may deliver Finished Water to the City Water Supply Systems during initial testing and prior to Acceptance Testing provided that it has obtained an Interim Operations Approval (as discussed below in Section 5.2) specifically authorizing such delivery during initial testing, and has provided SRWA with reasonable notice of its intention to deliver Finished Water to the City Water Supply Systems. Any such Finished Water delivered to the City Water Supply Systems shall meet all requirements of Applicable Law. SRWA shall have no obligation to pay the Company for Finished Water delivered to the City Water Supply Systems pursuant to this Article 5.

SECTION 5.2. INTERIM OPERATIONS APPROVAL AND NEW DOMESTIC WATER SUPPLY PERMIT

(A) Authorization of Operation and Water Introduction. The Company acknowledges that the operation of the Project and the introduction of Finished Water into the City Water Supply Systems are prohibited by Applicable Law until an Interim Operations Approval, as defined in this subsection, or the New Domestic Water Supply Permit is issued by DDW. DDW may issue a letter, permit with provisions, or other instrument (an “Interim Operations Approval”) authorizing temporary operation of the Project and introduction of Finished Water into the City Water Supply Systems until such time as the conditions of such Interim Operations Approval have been satisfied and the New Domestic Water Supply Permit is issued. The Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of DDW.

(B) SRWA’s Responsibilities with Respect to the New Domestic Water Supply Permit. It is expected the DDW will require submittals with respect to the Regional Water Facilities in connection with its review and consideration of the New Domestic Water Supply Permit application and the issuance of the New Domestic Water Supply Permit for the Project. In the event DDW requires submittals that do not pertain to the Project, SRWA shall have sole responsibility, on a timely basis, to prepare all information and take all actions that may be necessary in order to submit the requested materials with respect to the aspects not pertaining to the Project.

(C) Company Obligations Generally. The Company shall cooperate with DDW and, except as provided in subsection (B) of this Section, shall make all applications and take all other action necessary, including performing all required pilot testing under Section 4.7 (Pilot Testing), to obtain the Interim Operations Approval and process the New Domestic Water Supply Permit application, and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of SRWA, subject to SRWA’s rights hereunder. The Company shall manage the process of obtaining the Interim Operations Approval
and New Domestic Water Supply Permit in a manner that affords SRWA a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Design-Build Work Submittal Requirements and Review Procedures). The Company shall not knowingly take any action in any application, material submittal, or other communication with any Governmental Body regarding the Interim Operations Approval or New Domestic Water Supply Permit or the terms and conditions thereof that would impose any unreasonable cost or burden on SRWA or that would contravene any SRWA policies with respect to the matters contained therein. SRWA reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company that would have the effect described in the preceding sentence.

(D) Company Assumption of Risk. The Company assumes the risk of obtaining the Interim Operations Approval and the DDW approval described at Section 4.23(A)(2) (Final Completion), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Company shall be afforded relief from the assumption of such risk: (1) in the event of the occurrence of any Change in Law described in items (1) and (2) of the definition thereof; and (2) to the extent provided in subsections 4.6(I) (Uncontrollable Circumstance Relief Associated with Certain Permitting Obligations), 4.6(J) (Governmental Approval Dates), and 4.6(K) (Failure of a Governmental Body to Comply with Applicable Law). In assuming this risk, the Company acknowledges in particular that (1) the delay or non-issuance of the Interim Operations Approval or DDW approval under Section 4.23(A)(2) may delay or prevent the delivery of Finished Water to the City Water Supply Systems, the commencement of the Acceptance Tests, or the occurrence of Acceptance, and thereby give SRWA the right to impose delay liquidated damages or terminate this Contract as provided in Sections 4.23(B) (Deadline to Achieve Final Completion), 5.6 (Scheduled Acceptance Date and Delay Liquidated Damages), 5.8 (Failure to Achieve Acceptance), and 7.2 (Events of Default by the Company), and (2) DDW may impose or enforce terms and conditions that require the Company to make changes or additions to the Project that may increase the cost or risk to the Company of performing the Design-Build Work. The exercise by DDW of any of its rights with respect to the Interim Operations Approval or New Domestic Water Supply Permit shall not constitute a Change in Law. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Company assumes the risk.

(E) Final New Domestic Water Supply Permit. If, by the time of Final Completion, DDW has not issued the final New Domestic Water Supply Permit and the Company has satisfied all of the other conditions of Final Completion, then the Parties shall proceed to Final Completion and SRWA shall assume the obligation and responsibility to obtain the final New Domestic Water Supply Permit. In this event, following Final Completion (and extending beyond final payment if needed), the Company shall provide ongoing technical support to and reasonably cooperate with and assist SRWA and DDW and their staffs and consultants as appropriate to pursue and obtain the final permit, including making all reasonable efforts to provide such information and documents as may be reasonably requested by SRWA or DDW.

SECTION 5.3. ACCEPTANCE TESTING

(A) Submittal of Acceptance Test Plan. At least 270 days before the earlier of the Scheduled Acceptance Date or the date upon which the Company plans to begin Acceptance Testing, the Company shall prepare and submit to SRWA for its approval a detailed Acceptance Test Plan, which shall conform to the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) in all respects. If the Company and SRWA are unable to agree upon an acceptable
Acceptance Test Plan within 90 days of such submittal, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution Procedures).

(B) Notice of Commencement of the Acceptance Tests. The Company shall provide SRWA with at least 30 days’ prior written notice of the expected initiation of the Acceptance Tests in accordance with the requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). At least 10 days prior to the actual commencement of Acceptance Testing, the Company shall certify in writing that it is ready to begin Acceptance Testing in accordance with the Acceptance Test Plan and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

(C) Conditions to Commencement of the Acceptance Tests. The Company shall not commence the Acceptance Tests until the following events have occurred:

1. The requirements of subsections (A) and (B) of this Section have been met and SRWA has approved the Acceptance Test Plan;

2. If required by Applicable Law, DDW has approved the Acceptance Test Plan proposed by the Company and approved by SRWA;

3. Substantial Completion has occurred;

4. The New Domestic Water Supply Permit or an Interim Operations Approval has been issued by DDW, and contains sufficient authorization to permit the Acceptance Tests and post-Acceptance Test operations (including the delivery of Finished Water to the City Water Supply Systems) to be conducted in accordance herewith; and

5. The Company has certified that it has complied with the pre-Acceptance Testing requirements of Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

(D) Conduct of the Acceptance Tests. The Company shall conduct the Acceptance Tests in accordance with Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements) and the Acceptance Test Plan, and shall notify SRWA when the test shall occur. The Company shall permit the SRWA Engineer and the other designated representatives of SRWA to inspect the preparations for the Acceptance Tests and to be present for the conduct of the Acceptance Tests for purposes of ensuring compliance with Appendix 7 and the Acceptance Test Plan and the integrity of the Acceptance Tests results.

(E) Test Report. Within 30 days following the last day of any Acceptance Test, the Company shall furnish SRWA and the SRWA Engineer with 10 copies of a written Acceptance Test report consistent with the requirements specified in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), certified as true, complete and correct by the Company Engineer.

SECTION 5.4. WATER DELIVERIES DURING ACCEPTANCE TEST AND PRIOR TO ACCEPTANCE

(A) Acceptance Tests. During any Acceptance Test, the Company shall deliver Finished Water to the City Water Supply Systems in volumes and on the schedule established by the approved Acceptance Test Plan. The cost of all Acceptance Test activities, including any repetition of the Acceptance Tests, has been priced in the Base Design-Build Price.

(B) Prior to the Acceptance Date. Following the Acceptance Tests and prior to Acceptance, the Company shall deliver Finished Water to the City Water Supply Systems at Flow Rates as determined by SRWA in consultation with the Company and Cities. SRWA shall employ or retain water treatment plant operators who are properly licensed by DDW to operate the Plant. During the
time from and after delivering Finished Water to the City Water Supply Systems and until the Acceptance Date, Company shall operate the Regional Water Facilities in coordination with SRWA water treatment plant operators. Finished Water deliveries pursuant to this subsection shall continue until (1) the Acceptance Date, (2) this Contract is terminated by SRWA for the Company’s failure to achieve Acceptance by the end of the Extension Period, or (3) any authority to operate the Project contained in an Interim Operations Approval, if applicable, expires or terminates.

SECTION 5.5. ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the “Acceptance Date Conditions,” each of which must be satisfied in all material respects by the Company in order for the Company to achieve Acceptance, and each of which must be and remain satisfied as of the Acceptance Date:

1. Achievement of Acceptance Test Procedures and Standards. The Company shall have completed the Acceptance Tests and such tests shall have demonstrated that the Project and completed Regional Water Facilities have met the Acceptance Test Procedures and Standards, as certified by the Company pursuant to Section 5.3 (Acceptance Testing) and agreed to by SRWA pursuant to Section 5.7 (Concurrence or Disagreement with Test Results);

2. Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Interim Operations Approval, that are necessary for the operation of the Project shall have been duly obtained by the Company and shall be in full force and effect. Certified copies of all such Governmental Approvals, to the extent not in SRWA’s possession, shall have been delivered to SRWA; and

3. No Default. SRWA has not asserted and Event of Default by the Company existing under this Contract or by the Guarantor under the Guaranty Agreement, and the Company has certified that there is no Event of Default by the Company existing under this Contract or by the Guarantor under the Guaranty Agreement or an event that, with the giving of notice or the passage of time, would constitute an Event of Default by the Company or Guarantor.

SECTION 5.6. SCHEDULED ACCEPTANCE DATE AND DELAY LIQUIDATED DAMAGES. The Company shall achieve Acceptance by the Scheduled Acceptance Date. In the event that Acceptance occurs after the Scheduled Acceptance Date, the Company shall pay to SRWA daily delay liquidated damages in accordance with this subsection for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Contract for an Event of Default. The amount of such daily delay liquidated damages payable shall be $______ per day. Such damages shall be payable on the first day of each month and, upon any termination for failure to achieve Acceptance, upon the date of termination.

SECTION 5.7. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS

(A) Acceptance Date Concurrence. If the Company verifies in the written report delivered pursuant to subsection 5.3(E) (Test Report) that the Acceptance Date Conditions have been satisfied, SRWA shall determine, within 60 days of its receipt of such report, whether it concurs with such certification. If SRWA states in writing that it concurs with the Company’s certification, the Company shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on a permanent basis from the date of SRWA’s written concurrence.

(B) Acceptance Date Disagreement. If SRWA determines at any time during such 60-day review period that it does not concur with the Company’s certification delivered pursuant to subsection 5.3(E) (Test Report), SRWA shall promptly send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by SRWA, either party may elect to initiate dispute resolution procedures in accordance with Section 7.10 (Dispute Resolution
Procedures). Acceptance shall not be deemed to have been achieved unless the Acceptance Tests, conducted as provided in the Acceptance Test Plan and Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements), demonstrate that all of the Acceptance Test Procedures and Standards have been met. In the event the Company, in conducting the Acceptance Tests, does not successfully meet the Acceptance Test Procedures and Standards, the Company shall re-test the Regional Water Facilities in accordance with Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements). Nothing in this Section shall prevent the Company from repeating any Acceptance Test in order to establish the achievement of Acceptance. The Company shall provide SRWA with at least three days’ written notice of any re-test of the Acceptance Tests.

SECTION 5.8. FAILURE TO ACHIEVE ACCEPTANCE. If the Company has not achieved Acceptance by the last day of the Extension Period, then an Event of Default by the Company will be deemed to have occurred under Section 7.2 (Events of Default by the Company) notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and SRWA shall thereupon have the right to terminate this Contract upon written notice to the Company. Upon any such termination, SRWA shall have all of the rights provided in Article 7 (Breach, Default, Remedies and Termination) upon a termination of the Company for cause.

SECTION 5.9. OPERATIONS TRAINING BY COMPANY. During the start-up and Acceptance period and continuing for 30 days after the Acceptance Date, the Company shall provide training to SRWA and its operations staff concerning the operation, maintenance, and management of the Regional Water Facilities and related equipment. The scope and type of the training is described in Appendix 7 (Pre-Acceptance Testing and Acceptance Test Requirements).

SECTION 5.10. COMMENCE SRWA PROJECT OPERATIONS. Commencing on the Acceptance Date, SRWA and its operations staff shall begin the use, operation and management of the Regional Water Facilities and other Project facilities. Accepting and assuming Project operations shall not affect any of SRWA’s rights and remedies under this Contract, the Performance Bond, or Applicable Law.
ARTICLE 6

PROJECT FUNDING AND PAYMENT OF THE DESIGN-BUILD PRICE

SECTION 6.1. STATE REVOLVING FUND FINANCING

(A) SRF Program Procurement Phase Requirements. The parties acknowledge that SRWA plans to finance the Design-Build Price (in whole or in part) with loan funds through the California Safe Drinking Water State Revolving Fund (SRF), which is administered by the SWRCB. In the alternative or additionally, SRWA may pursue a loan from another government low interest loan program such as the Water Infrastructure Finance and Innovation Act (WIFIA) program or a grant from a government grant program. (The SRF, WIFIA, or other government loan or grant program is referred to collectively as the “SRF Program”). In SRF Program funded projects, the lender or grantor will require that the project construction contract and prime contractor implement and comply with special terms and conditions. These expected terms and conditions are set forth in Appendix 13 (State Revolving Fund Requirements). Appendix 13 includes a part labelled the SRF Program Procurement Phase Requirements. Commencing on the Contract Date, the Company shall implement and comply with the “SRF Program Procurement Phase Requirements” set forth in Appendix 13. The cost of compliance with the SRF Program Procurement Phase Requirements has been priced in the Base Design-Build Price (Section 6.2(B)).

(B) Implementation of Additional SRF Program Requirements. If the SWRCB awards SRF Program funds to the Project, then SRWA shall provide written notice to the Company advising it about the applicability of the SRF Program requirements. Upon receipt of such a notice from SRWA, the Company shall implement and comply with all other requirements (i.e., the other requirements set forth in Appendix 13 (State Revolving Fund Requirements) that are in addition to the “SRF Program Procurement Phase Requirements”).

(C) Adjustment to the Base Design-Build Price for State Revolving Fund Financing. If SRWA issues a notice to the Company under subsection (B) implementing SRF Program requirements pursuant to this Section, then the Base Design-Build Price shall be increased by the sum set forth at Section 6.2(C)(4) (Base Design-Build Price Adjustments). The addition to the Base Design-Build Price shall fully compensate the Company for all costs (other than the SRF Program Procurement Phase Requirements under Subsection (A)) associated with implementing and complying with the requirements set forth in Appendix 13 (State Revolving Fund Requirements), including the following: meetings, phones calls and correspondence with SWRCB; preparation and review of deliverables and other documents for SWRCB filing and approval; additional recordkeeping; Davis-Bacon Act compliance; Project signage requirements; documentation for invoicing, reporting, and payroll management in accordance with SRF Program requirements; disadvantaged business enterprise, minority business enterprise, women’s business enterprise and fair share objectives/goals procurement requirements; compliance with American iron and steel procurement requirements; and, responding to and participating in audit requests as needed. The addition to the Base Design-Build Price pursuant to this Section does not include compensation for any Company costs relating to Federal Acquisition Regulations (FAR) Part 31 procurement adherence and compliance requirements, which, if such requirements become applicable, would be treated as an Uncontrollable Circumstance entitling the Company to relief as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

SECTION 6.2. DESIGN-BUILD PRICE

(A) Design-Build Price Generally. SRWA shall pay the Company the Design-Build Price for the Design-Build Work. The “Design-Build Price” shall be the sum of the Base Design-Build Price and any Base Design-Build Price Adjustments. The Company acknowledges that the construction materials and supplies to be acquired by the Company or any Subcontractor in connection with the
Design-Build Work are subject to State sales and use tax and that these taxes have been priced into the Base Design-Build Price. Company therefore shall pay all such taxes without reimbursement from SRWA. The Company agrees that the Design-Build Price shall be the Company’s entire compensation and reimbursement for the performance of the Design-Build Work and for all costs and expenses incurred by the Company in performing the Design-Build Work through to Final Completion.

(B) Base Design-Build Price. The “Base Design-Build Price” is $_________. Except as provided subsection (C) of this Section, the Base Design-Build Price shall not be subject to adjustment. The Base Design-Build Price includes all costs for design, construction through Final Completion, permitting, initial testing, start-up, Acceptance Testing, and interim operations prior to the Acceptance Date, including costs for labor, materials, chemicals and Utilities.

(C) Base Design-Build Price Adjustments. The adjustments to the Base Design-Build Price provided for in this subsection shall be deemed the “Base Design-Build Price Adjustments” and any such adjustments must be approved through a Change Order. The Base Design-Build Price shall be subject to adjustment only for the following:

1. **Adjustment for Change Orders.** The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from any Change Orders or Unilateral Change Directives issued by SRWA with respect to Design and Construction Requirement Changes pursuant to and to the extent provided in Sections 4.11 (Changes to the Design and Construction Requirements) and 4.12 (Unilateral Change Directives).

2. **Adjustment for Uncontrollable Circumstances.** The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from Uncontrollable Circumstances not reflected in item (1) above, as and to the extent provided in Section 8.3 (Uncontrollable Circumstances - Entitlement to Relief).

3. **Adjustment for Certain Raw Materials Cost Fluctuations.** The Base Design-Build Price shall be adjusted to account for the cost or cost savings resulting from fluctuations in certain raw materials costs, as and to the extent provided in subsections (D) and (E) of this Section.

4. **Adjustment for State Revolving Fund Financing.** If SRWA furnishes the Company with written notice implementing SRF Program requirements pursuant to Section 6.1(B) (State Revolving Fund Financing), then the Base Design-Build Price shall be increased by $_________.

(D) Base Design-Build Price Adjustment for Certain Raw Materials Cost Fluctuations. The Base Design-Build Price shall be subject to an adjustment (increase or decrease) pursuant to this subsection to account for fluctuations in the costs of the materials indicated in Table 6-2, below. Such adjustment to the Base Design-Build Price shall occur on the date which is six months following the final Record Adjustment Date set forth in Table 6-2 (the “Materials Price Adjustment Date”), and shall be calculated by adding or subtracting the Materials Price Adjustment to the Base Design-Build Price in the manner set forth in this subsection. The Company shall submit the Materials Price Adjustment in the Requisition in the month following the Materials Price Adjustment Date. Any adjustment to the Base Design-Build Price based on the Materials Price Adjustment under this subsection shall be subject to the limitation set forth in subsection (E) of this Section.

1. **Materials Price Adjustment.** The “Materials Price Adjustment” shall equal the sum of the Record Adjustments, which shall be calculated in accordance with item (3), below. Record Adjustments reflecting a decrease in the applicable Producers Price Index shall offset Record Adjustments reflecting an increase in the applicable PPI. The Materials Price Adjustment shall
serve to increase the Base Design-Build Price in the event that the sum of the Record Adjustments equals a positive number and shall serve to reduce the Base Design-Build Price in the event that the sum of the Record Adjustments equals a negative number.

(2) **Reference Cost Amounts.** The “Reference Cost Amounts” for each material shall be as set forth in Table 6-2, below. The Company represents that the Reference Cost Amounts consist only of the cost of the material (as included in the Company’s material take-offs upon which the Company based its Proposal) and excludes all associated procurement costs, labor costs, and tax and freight charges. These Reference Cost Amounts shall be used to calculate the Record Adjustments in accordance with item (3), below.

(3) **Record Adjustments.** The parties shall calculate a “Record Adjustment” for each material indicated in Table 6-2, below, within 30 days after the applicable Record Adjustment Date in accordance with this subsection. Record Adjustments shall be based on the PPI indicated in Table 6-2. Record Adjustments shall be calculated by multiplying the applicable Baseline Cost Amount associated with the particular material by the Record Adjustment Factor. The “Record Adjustment Factor” shall be based on the change in the applicable PPI from the Contract Date (“IC”), to the applicable PPI on the Record Adjustment Date (“IE”), and shall be calculated in accordance with the following formula:

\[
\text{Record Adjustment Factor} = \frac{IE}{IC} - 1.00
\]

The parties agree that the PPI for any month reflects prices as of the 13th day of the month. The parties shall use linear interpolation to determine the PPI for any particular date and shall approve and sign a Contract Administration Memorandum setting forth each Record Adjustment within 45 days after the applicable Record Adjustment Date. The parties acknowledge that each PPI is subject to a one-time revision four months after original publication. Accordingly, the parties will review each PPI four months after the applicable Record Adjustment Date to determine if the index value for the applicable Record Adjustment Date has been revised. In the event of any such revision, the applicable Record Adjustment shall be revised through the execution of a subsequent Contract Administration Memorandum to reflect the revised PPI for the applicable Record Adjustment Date. Except as provided in item (1), above, with respect to the calculation of the Materials Price Adjustment, Record Adjustments shall not serve to increase or decrease the Base Design-Build Price.

<table>
<thead>
<tr>
<th>Dept of Labor PPI Series ID</th>
<th>Material</th>
<th>Reference Cost Amounts(1)</th>
<th>Material Quantity(2)</th>
<th>Record Adjustment Date(3)</th>
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<tr>
<td>WPU05810112</td>
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<td>TBD</td>
<td>TBD</td>
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<tr>
<td>WPU1017</td>
<td>Steel Mill Products</td>
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</tr>
</tbody>
</table>
### Dept of Labor PPI Series ID | Material | Reference Cost Amounts\(^{(1)}\) | Material Quantity\(^{(2)}\) | Record Adjustment Date\(^{(3)}\)
---|---|---|---|---
WPU1331 | Masonry Block and Brick | TBD | TBD | TBD
WPU101708 | Cold Finished Bars | TBD | TBD | TBD
WPU072106 | Plastic Construction Products | TBD | TBD | TBD
WPU101706 | Steel Pipe and Tubing | TBD | TBD | TBD
WPU101502 | Pressure and Soil Pipe and Fittings, Cast Iron | TBD | TBD | TBD
WPU1174 | Transformers and Other Power Regulators | TBD | TBD | TBD
WPU114902 | Metal Valves | TBD | TBD | TBD
WPU1334 | Pre-cast Concrete | TBD | TBD | TBD
WPU133201 | Concrete Pipe | TBD | TBD | TBD
WPU132101 | Construction sand, gravel and stone | TBD | TBD | TBD
WPU1175 | Switchgear, switchboard equipment | TBD | TBD | TBD
WPU1149 | Misc. general purpose equipment | TBD | TBD | TBD
WPU1173 | Motors and Generators | TBD | TBD | TBD
WPU114102 | Industrial Pumps | TBD | TBD | TBD

\(^{(1)}\) Reference Cost Amounts are amounts proposed by the Company as of the Contract Date and shall consist only of the cost of the material, excluding all associated procurement costs, labor costs and tax and freight charges.

\(^{(2)}\) Material quantity shall be consistent with the Reference Cost Amount.

\(^{(3)}\) Each Record Adjustment Date shall be the number of days indicated from the Contract Date. No Record Adjustment Date may be more than 365 days from the Contract Date.

(E) Cap on Adjustment to the Base Design-Build Price for Certain Raw Materials Cost Fluctuations. The aggregate amount of any increase in the Base Design-Build Price for fluctuations in certain Raw Material Costs provided for in subsection (D) of this Section shall not exceed $500,000 and the aggregate amount of any decrease in the Base Design-Build Price for fluctuations in certain Raw Material Costs provided for in subsection (D) of this Section shall not exceed $1,000,000.
SECTION 6.3. PAYMENT PROCEDURES AND AMOUNTS

(A) Schedule of Values. The Company shall prepare and submit to SRWA for its approval preliminary and final drafts of the Schedule of Values in accordance with the requirements of Appendix 1 (General Design-Build Requirements and Procedures). After the final Schedule of Values is accepted by SRWA, it shall be used to assist in the estimating of the value of the Design-Build Work performed for progress payment purposes. The Company shall not submit requests for progress payments until a final Schedule of Values has been approved.

(B) Design-Build Work Requisitions. Following the approval of the final Schedule of Values under subsection (A) and the establishment of the Construction Date in accordance with Section 4.2 (Construction Date Conditions), the Company shall be entitled to submit monthly Requisitions and receive from SRWA the payments, which (1) shall be made on a percent complete basis in accordance with the completed work and Schedule of Values, and (2) shall be subject to the conditions to payment set forth in this Section. Each Requisition must be accompanied by a monthly requisition report, which shall include:

1. a reasonably detailed description of all Design-Build Work actually completed to date;
2. revisions to the progress schedule (or a revised progress schedule) which shall reflect changes in the Company’s construction schedule since the date of the last Requisition;
3. revisions to the cost-loaded critical path schedule, which shall reflect changes in the critical path schedule since the date of the last Requisition;
4. construction progress photographs;
5. a certificate of the Company Construction Superintendent and the Company Engineer certifying (a) the portion of the Base Design-Build Price that is payable to the Company, (b) that the Company is neither in default under this Contract nor in breach of any material provision of this Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, and (c) that all items applicable to the Design-Build Work entitling the Company to the requested payment under the Schedule of Values have been completed in accordance with the Contract Standards;
6. a certified copy of each weekly payroll record containing a statement of compliance verifying compliance with applicable prevailing wage and related laws and regulations and signed under penalty of perjury pursuant to California Labor Code Sections 1771.5 and 1776.
7. notice of any Encumbrances that have been filed together with evidence that the Company has discharged or bonded against any such Encumbrances or made timely notification to the Payment Bond or Performance Bond surety regarding such Encumbrances; and
8. any other documents or information relating to the Design-Build Work or this Contract reasonably requested by SRWA, the SRWA Construction Manager, or the SRWA Engineer or as may be required by Applicable Law or this Contract.

(C) TID-Related Cost Breakout. The parties acknowledge that the Amended Water Sales Agreement between SRWA and TID dated __________, 2018 requires TID to fund 20% of the capital costs to design and construct the Raw Water Pump Station and Raw Water Transmission Main components of the Regional Water Facilities and that SRWA plans to bill TID for its 20% share of that portion of the Design-Build Price. In order to facilitate and aid SRWA with this cost allocation
and billing to TID, the Company shall fairly and reasonably allocate and apportion its Design-Build Work costs between (1) the Raw Water Pump Station and Raw Water Transmission Main (up to and including the delivery meter at the Plant), and (2) other components of the Regional Water Facilities. The Schedule of Values and Requisitions shall reflect and incorporate this allocation.

(D) SRWA Review of Requisitions. The SRWA Construction Manager and SRWA Engineer shall share responsibility for the review and processing of Requisitions. The SRWA Engineer will be primarily responsible for Requisitions relating to design work, permitting, acceptance testing, and other non-construction work and the SRWA Construction Manager will be primarily responsible for Requisitions relating to construction work. The SRWA Construction Manager or the SRWA Engineer shall review the Company’s certified Requisitions to SRWA for each Design-Build Price payment and within seven days after receipt of the Company’s written report delivered pursuant to this Section, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Company’s certification that the Company has achieved the level of progress indicated and is entitled to payment. If the SRWA Construction Manager or SRWA Engineer determine that the Design-Build Work has progressed to the level indicated in the Company’s certified Requisition and the SRWA Construction Manager or the SRWA Engineer provide written notice thereof to the Company and SRWA, then SRWA shall pay the Company within 30 days after SRWA’s receipt of the complete, certified and properly submitted Requisition. Disputes regarding payments of the Base Design-Build Price shall be resolved in accordance with subsection (E). Any undisputed portion of a complete, certified and properly submitted Requisition shall be paid within 30 days after receipt of the Requisition. If SRWA does not pay a properly submitted and undisputed payment request within this 30-day period, then SRWA shall pay interest on the overdue amount to the Company at the rate set forth at California Code of Civil Procedure section 685.010. The parties acknowledge that progress payments shall be reviewed and paid in accordance with California Public Contract Code section 20104.50 and that the procedures in this Section incorporate the requirements of that code section. The parties further acknowledge that payment may be delayed if SRWA funds are not available for payment or if payment is delayed due to an audit inquiry by the financial officer of SRWA.

(E) Disbursement Dispute Procedures. If the SRWA Construction Manager or SRWA Engineer determine, pursuant to subsection (D), that the Design-Build Work required for any payment has not progressed as indicated by the Company, or otherwise disputes any Requisition, the SRWA Construction Manager or SRWA Engineer shall provide prompt written notice to the Company as to the SRWA Construction Manager’s or SRWA Engineer’s reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such notice, the Company may make the necessary corrections or changes and resubmit a certified Requisition to the SRWA Construction Manager or SRWA Engineer, as applicable, or SRWA and Company otherwise may agree on a revised Requisition amount to be paid. If the Company is unable to reach agreement with the SRWA Construction Manager or SRWA Engineer, as applicable, as to the progress of the Design-Build Work, the Company may exercise its right to contest the SRWA Construction Manager’s or SRWA Engineer’s, as applicable, determination in accordance with Section 7.10 (Dispute Resolution Procedures) and Appendix 14 (Resolution of Company Claims). In the event that upon resolution of any such dispute, it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount for the period of dispute calculated at the rate set forth in California Code of Civil Procedure Section 685.010.

(F) Payment of the Design-Build Price. For any payments to the Company under this Section, SRWA shall (1) pay an amount equal to 95% of the Design-Build Price to the Company on a progress payment basis, as provided in subsection (G), and (2) pay an amount equal to 5% of the
Design-Build Price to the Company as a lump sum following Final Completion, as provided in subsection (H).

(G) 95% Progress Payments of the Design-Build Price. Once each Requisition for a progress payment based on the Schedule of Values has been received, reviewed and approved by SRWA in accordance with subsection (D) or (E), SRWA shall pay the Company an amount equal to 95% of the approved Requisition amount. In lieu of withholding 5% from the progress payments, the Company may substitute securities or request payment of retentions to an escrow agent in accordance with the provisions of California Public Contract Code section 22300. For any items of work contained on the Final Punch List, SRWA may reasonably estimate the cost to make each correction or to complete each such item and SRWA may withhold from payment of the final progress payment or payments an amount equal to 150% of the aggregate value of such items.

(H) 5% Lump Sum Final Payment of the Design-Build Price. SRWA shall pay the Company the 5% amount retained from the Design-Build Price within 30 days following Final Completion as determined by the Board of Directors under Sections 4.24 (Board Approval and Notice of Completion) and 6.5 (Final Requisition and Payment), less any sums withheld by SRWA pursuant to Section 6.4 (Permissible Withholdings).

(I) Certification of Amounts Due. Whenever requested by SRWA, the Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Company for the Design-Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

(J) No Waiver or Release. No progress payments made by SRWA to the Company pursuant to this Section shall constitute an acceptance of the Design-Build Work, or any portion thereof, or a waiver or release by SRWA of any rights relating to the Company’s obligations under this Contract.

SECTION 6.4. PERMISSIBLE WITHHOLDINGS. In addition to the amounts to be retained pursuant to subsection 6.3 (Payment Procedures and Amounts), SRWA may disapprove, withhold and retain all or any portion of any payment requested in any Requisition (including the final Requisition) in an amount sufficient to pay the expenses SRWA reasonably expects to incur in correcting any deficiency set forth in the SRWA Construction Manager’s or SRWA Engineer’s written finding pursuant to subsection 6.3(E) (Disbursement Dispute Procedure). Without limiting the foregoing, the Company agrees that SRWA may disapprove, withhold and retain, as applicable and to the extent permitted by the Contract or Applicable Law, amounts associated with the following:

1. any liquidated damages that are due and owing to SRWA hereunder;
2. any indemnification amounts that are due and owing to SRWA hereunder and with respect to which a claim has been filed against SRWA by a third party in accordance with Applicable Law;
3. any deductions or withholdings that are required by Applicable Law;
4. any payments with respect to which documents to be delivered in connection therewith are not correct or complete;
5. any payments with respect to which the Design-Build Work covered by such Requisition (or any previous Requisition) does not comply with this Contract;
(6) any payments with respect to which any Person has asserted a Lien or stop notice resulting from the acts or omissions of the Company in performing the Design-Build Work and such stop notice or Lien remains unreleased or un-bonded;

(7) in the event of any payment dispute between SRWA and Company, SRWA may withhold from the final payment an amount not to exceed 150% of the disputed amount, in accordance with California Public Contract Code Section 7107(c); and

(8) in the event the Company fails to pay any Taxes, penalties or fees imposed by any Governmental Body and that are the obligation of the Company under this Contract, then the Company authorizes SRWA to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

SECTION 6.5. FINAL REQUISITION AND PAYMENT

(A) Final Requisition. Upon achieving Final Completion in accordance with Section 4.23 (Final Completion), the Company shall prepare and submit to SRWA a final Requisition. The final Requisition shall include:

(1) AIA Document G707 (Consent of Surety Company to Final Payment) or equivalent certifying that the surety agrees that final payment of the Design-Build Price shall not relieve the surety of any of its obligations under the Performance Bond or the Payment Bond;

(2) AIA Document G706 (Contractor’s Affidavit of Payment of Debts and Claims) or equivalent certifying that the Company has been paid the Design-Build Price in full, except for any listed exceptions;

(3) a conditional waiver and release on final payment or unconditional waiver and release on final payment submitted by the Company in the form provided by California Civil Code Section 8136 or 8138 and acceptable to SRWA;

(4) an unconditional waiver and release on final payment submitted by each Material Subcontractor in the form provided by California Civil Code Section 8138 and acceptable to SRWA (if any Material Subcontractor refuses or fails to furnish such release or waiver, the Company shall provide to SRWA a bond or other security acceptable to SRWA to indemnify SRWA Indemnitees against any payment claim by the Material Subcontractor); and

(5) a list of all pending property damage, personal injury, or death insurance claims arising out of or resulting from the Design-Build Work, identifying the claimant and the nature of the claim.

(B) Final Payment. If based on the SRWA Construction Manager’s or SRWA Engineer’s (1) observation of the Design-Build Work, (2) final inspection, and (3) review of the final Requisition and other documents required by subsection (A) of this Section and Section 4.23 (Final Completion), the SRWA Engineer is satisfied that conditions for Final Completion have been satisfied or waived in writing by the parties, then the SRWA Engineer shall within 30 days after receipt of the final Requisition, furnish to SRWA and the Company recommendation to approve final payment and Final Completion. If the SRWA Engineer within seven days shall return the final Requisition to the Company, indicating in writing the reasons for not recommending final payment, then the Company shall either (1) make the necessary corrections or changes and resubmit the final Requisition, or (2) contest the SRWA Engineer’s determination in accordance with subsection 6.3(E) (Disbursement Dispute Procedures).
(1) **SRWA Board Concurrence.** If SRWA Board of Directors concurs with the SRWA Engineer’s recommendation of final payment and Final Completion, then the Board of Directors shall accept the Design-Build Work as complete, confirm Final Completion, and authorize the filing of the Notice of Completion. SRWA then shall record the Notice of Completion within 30 days following the Board approval and make final payment to the Company, including payment pursuant to Section 6.3(H) (5% Lump Sum Final Payment of the Design-Build Price).

(2) **SRWA Non-Concurrence.** If SRWA Board of Directors does not concur with the SRWA Engineer’s determination, SRWA shall return the Requisition to the Company indicating in writing its reasons for refusing final payment and Final Completion. The Company then shall either (1) make the necessary corrections or changes and resubmit the final Requisition, or (2) contest the SRWA Engineer’s determination in accordance with subsection 6.3(E) (Disbursement Dispute Procedures).

Final payment does not constitute a waiver by SRWA of any rights relating to the Company’s obligations under this Contract or Applicable Law. Final payment constitutes a waiver of all claims by the Company against SRWA relating to the Design-Build Work and the payment of the Design-Build Price, except for any unresolved claims or disputes listed by the Company or a Material Subcontractor in the documents submitted to SRWA under subsection (A) of this Section and still unsettled.

**SECTION 6.6. CONSTRUCTION BOOKS AND RECORDS; AUDIT**

(A) **Construction Books and Records.** The Company shall prepare and maintain proper, accurate and complete books and records regarding the Design-Build Work and all other transactions related to the design, permitting, construction, and testing of the Design-Build Work, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design-Build Work, this Contract, any Subcontract or any operations or transactions in which SRWA has or may have a financial or other material interest hereunder. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards for governmental institutions. In the event the Company fails to prepare or maintain any books, records or accounts as required under this subsection, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required under this Contract to the extent such failure prevented Cost Substantiation. To the extent any such information is delivered or made available to SRWA, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The Company shall keep and maintain all such construction books and records for the Design-Build Work separate and distinct from other records and accounts, and shall keep and maintain all such books and records for at least five years after the date of the filing of the Notice of Completion, or such longer period during which any Legal Proceeding with respect to the Design-Build Work commenced within five years after the filing of the Notice of Completion may be pending.

(B) **Audit Rights and Requirements.** To the extent provided in this Section, all payments whatsoever by SRWA to the Company and all Design-Build Work of the Company shall be subject to audit at any time by the State Auditor, SRWA and the Cities. The Company and its Subcontractors shall comply with State audit requirements and, to the extent that SRWA receives federal funding or uses tax-exempt financing for the Project, federal audit requirements. The Company shall produce the construction books and records required to be kept and maintained by the Company pursuant to subsection (A) for examination and copying by the State Auditor, SRWA or the Cities in connection with the costs of Change Orders, Unilateral Change Directives, Uncontrollable Circumstance costs,
or other costs in addition to the Base Design-Build Price under circumstances in which such costs are the responsibility of SRWA hereunder and are required to be Cost Substantiated pursuant to this Contract. Except as otherwise required by Applicable Law, the Company shall not be required to produce such construction books and records with respect to costs incurred in connection with work performed on a fixed price, negotiated basis. Notwithstanding any of the foregoing, the Company shall produce all books and records required to be maintained pursuant to subsection (A) of this Section to the extent that such books and records pertain directly to Contract performance if there is reasonable indication of fraud or corrupt practices. The provisions of this Section shall survive the termination of this Contract. This Contract and all payments made hereunder shall be subject to audit in accordance with this Section for up to three years after final payment is made under this Contract.
ARTICLE 7
BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 7.1. REMEDIES FOR BREACH. Except as otherwise provided in this Contract with respect to termination rights, in the event that either party breaches this Contract, the other party may exercise any legal rights it may have under this Contract, the Security Instruments, or Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Contract for cause except upon the occurrence of an Event of Default.

SECTION 7.2. EVENTS OF DEFAULT BY COMPANY

(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity. Each of the following shall constitute an Event of Default by the Company upon which SRWA, by notice to the Company, may terminate this Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Company to obtain or maintain any Security Instrument required by Article 9 (Security for Performance) as security for the performance of this Contract (unless SRWA has released the Company from its obligation to provide a Security Instrument pursuant to Section 9.3 (Cost of Security Instruments));

(2) Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Company to achieve Acceptance prior to the end of the Extension Period as provided in Section 5.8 (Failure to Achieve Acceptance);

(3) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(4) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company or the Guarantor to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

(5) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company’s or the Guarantor’s property, respectively, or the filing against the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively; or

(6) Default of Guarantor. The failure of the Guarantor to make any payment or perform any other obligation under the Guaranty Agreement in a timely manner.

(B) Events of Default Requiring Previous Notice and Cure Opportunity. It shall be an Event of Default by the Company upon which SRWA may terminate this Contract, by notice to the Company, if:

(1) Representations and Warranties. Any representation or warranty of the Company hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Contract or the Guaranty Agreement or the
ability of the Company to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations hereunder is thereby materially and adversely affected;

(2) Payment or Performance. The Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to SRWA under this Contract within 60 days following the due date for such payment, or (b) to perform any material obligation under this Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein);

No such default under this subsection (B) shall constitute an Event of Default giving SRWA the right to terminate this Contract for cause under this subsection unless (a) SRWA has given prior written notice to the Company and the surety providing the Performance Bond by stating that a specified default has occurred which gives SRWA a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail, and (b) the Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

(C) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Contract is terminated by SRWA for an Event of Default by the Company, SRWA shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Contract, the Security Instruments, or Applicable Law.

(D) Relationship to Liquidated Damages. Any liquidated damages payable by the Company under this Contract shall cease to accrue on the Termination Date. The Company shall be liable for all liquidated damages that have accrued up to the Termination Date. The parties acknowledge and agree that such liquidated damages are intended solely to compensate SRWA for costs and expenses associated with the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that SRWA is likely to suffer in the event of a Company Event of Default under this Article. Accordingly, except as specifically provided in Section 7.3 (Limitation on Company Liability) and except with respect to damages relating solely to the specific circumstances for which liquidated damages are provided under this Contract, the payment of any such liquidated damages by the Company shall not serve to limit or otherwise affect SRWA’s right to pursue and recover damages under this Section.

SECTION 7.3. LIMITATION ON COMPANY LIABILITY. The Company’s aggregate liability under this Contract and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages to SRWA arising out of the performance or unexcused nonperformance of the Design-Build Work as a consequence of a claim or lawsuit initiated by SRWA shall not exceed an amount equal to 50% of the Base Design-Build Price. This limitation on liability does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Company or the Guarantor in connection with this Contract, including without limitation (a) any loss, cost or expense sustained by the Company in the performance of the Design-Build Work, or in seeking to cure or prevent any breach of this Contract; (b) any fine, penalty, fee, charge, or Tax levied or imposed by any Governmental Body; (c) any claims, losses or penalties incurred by the Company or the Guarantor in connection with this Contract; (d) any Loss and Expense or other indemnity payment (resulting from third party claims) paid or incurred by the Company or the Guarantor; and (e) payment of any defense costs, including attorneys’ fees, to, for, or on behalf of the City with respect to any third party claim. Nothing in this Section shall limit the scope of SRWA’s right to pursue any remedy under the Payment Bond or Performance Bond.
SECTION 7.4. EVENTS OF DEFAULT BY SRWA

(A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by SRWA upon which the Company, by notice to SRWA, may terminate this Contract:

1. Representations and Warranties. Any representation or warranty of SRWA hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of SRWA to carry out its obligations hereunder is thereby materially and adversely affected;

2. Failure to Pay or Perform. The failure, refusal or other default by SRWA in its duty: (1) to pay the amount required to be paid to the Company under this Contract within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein); or

3. Bankruptcy. The authorized filing by SRWA of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Company the right to terminate this Contract for cause under this subsection unless (1) the Company has given prior written notice to SRWA stating that a specified default has occurred which gives the Company a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail, and (2) SRWA has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

(C) Limitation of Liability Upon SRWA Event of Default. If this Contract is terminated by the Company for cause as a result of an Event of Default by SRWA during the Term, the damages payable by SRWA upon any such termination shall not exceed the amounts specified in subsections 7.5(B) (SRWA Convenience Termination Right Option Prior to the Construction Date) or 7.5(C) (SRWA Convenience Termination Right Option After the Construction Date), as applicable and calculated as provided therein, which would be payable as if this Contract were terminated for convenience by SRWA.

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price under Article 6 (Project Funding and Payment of the Design-Build Price), but not yet paid as of the Termination Date.

SECTION 7.5. SRWA TERMINATION OPTIONS

(A) SRWA Termination for Cause. SRWA shall have the right to terminate this Contract for cause and to pursue all remedies available pursuant to this Article, without cost or liability to SRWA, based upon the occurrence of any Event of Default by the Company under Section 7.2 (Events of Default by the Company).

(B) SRWA Convenience Termination Right Option Prior to the Construction Date. SRWA shall have the right at any time prior to the Construction Date, exercisable in its discretion, for its
convenience and without cause, to terminate this Contract upon 30 days’ written notice to the Company. Upon any such termination, SRWA shall pay the Company an amount equal to $500,000 plus payment of any sum owing the Company as of the Termination Date under subsection (D).

(C) **SRWA Convenience Termination Right Option After the Construction Date.** SRWA shall have the right at any time after the Construction Date and prior to the Acceptance Date, exercisable in its discretion, for its convenience and without cause, to terminate this Contract upon 30 days’ written notice to the Company. Upon any such termination, SRWA shall pay the Company an amount equal to the $1,000,000 plus payment of any sum owing the Company as of the Termination Date under subsection (D).

(D) **Payment of Amounts Owing Through the Termination Date.** Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price under Article 6 (Project Funding and Payment of the Design-Build Price), but not yet paid as of the Termination Date.

(E) **Delivery of Work Product to SRWA.** Concurrently with payment by SRWA to the Company of the amount due upon any termination of this Contract under this Section, the Company shall deliver to SRWA all of its work product (including all Deliverable Material) produced during the period commencing on the Contract Date to the Termination Date, which work product immediately shall become the property of SRWA. SRWA’s use of any such work product for any purpose other than the Project shall be at its own risk and the Company shall have no liability therefor.

SECTION 7.6. PROVISIONS REGARDING CONVENIENCE TERMINATION

(A) **Termination Fee Payment Contingent Upon Surrender of Possession.** SRWA shall have no obligation to pay the applicable termination fee provided for in Section 7.5 (SRWA Termination Options), except concurrently with the surrender of possession and control by the Company of the Regional Water Facilities and Sites to SRWA.

(B) **Adequacy of Termination Payment.** The Company agrees that the applicable termination fee provided in Section 7.5 (SRWA Termination Options) shall fully and adequately compensate the Company and all Subcontractors for all costs of undertaking their obligations under subsection 7.7(A) (Company Obligations), foregone potential profits, and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition, and other similar wind-down costs attributable to the termination of the Company’s right to perform this Contract.

(C) **Consideration for Convenience Termination Payment.** The right of SRWA to terminate this Contract for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Contract, and the Company hereby waives any right it may have under Applicable Law to assert that SRWA owes the Company a duty of good faith and fair dealing in the exercise of such right.

(D) **Completion or Continuance by SRWA.** After the date of any termination under this Article, SRWA may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Design-Build Work so terminated, including entering into contracts with other contractors.
SECTION 7.7. COMPANY OBLIGATIONS AT TERMINATION OR EXPIRATION

(A) Company Obligations. Upon a termination of the Company's right to perform this Contract under Section 7.5 (SRWA Termination Options), or upon the expiration of this Contract under Section 3.1 (Effective Date and Term), the Company shall, as applicable:

(1) stop the Design-Build Work on the date and to the extent specified by SRWA;

(2) promptly deliver to SRWA all Design Documents and construction record Drawings prepared by the Company in carrying out the Design-Build Work which have not previously been delivered to SRWA, and all supporting design notebooks, calculations, record files, design meeting memoranda, and construction meeting memoranda;

(3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(4) promptly remove from the Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal;

(5) clean the Sites, and leave them in a neat and orderly condition;

(6) subject to subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the Sites;

(7) promptly deliver to SRWA a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Regional Water Facilities;

(8) provide SRWA with a list of all computer and other files relevant to the Design-Build Work and access, user names, passwords and security codes with instructions and demonstrations that show how to open and change such codes;

(9) deliver to SRWA a copy of all books and records in its possession relating to the performance of the Design-Build Work, and including all books, records, documents and computer data relating to the operation, maintenance, activities and administration of the Project and its various components and facilities;

(10) promptly deliver to SRWA copies of all Subcontracts, together with a statement of the items ordered and not yet delivered pursuant to each Subcontract; the expected delivery date of all such items; the total cost of each Subcontract and the terms of payment; the estimated cost of canceling each Subcontract; and, any special circumstances that might limit or prohibit cancellation of any Subcontract;

(11) assign to SRWA any Subcontract that SRWA elects in writing, at its sole election and without obligation, to have assigned to it (SRWA shall assume, and the Company shall be relieved of, the obligations under any Subcontract so assigned);

(12) unless SRWA directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;
(13) provide SRWA with a list of all Project Equipment and Structures subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which SRWA will be responsible for paying on or after the Termination Date;

(14) promptly transfer to SRWA all warranties given by any manufacturer or Subcontractor with respect to particular components of the Design-Build Work;

(15) notify SRWA promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the Design-Build Work (or any Subcontracts);

(16) retain on the Sites, computer systems to be delivered to SRWA including all Project-related files, data, information and software and to not delete any such files, data, information or software; and

(17) take such other actions, and sign such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize SRWA’s costs, and take no action which shall increase any amount payable by SRWA under this Contract.

(B) Hiring of Company Personnel. Upon the termination or expiration of this Contract under any provision hereof, SRWA shall have the right to offer employment on any terms it may choose to any Company employee employed on the Design-Build Work. No Company employment agreement, personnel rules, job offer, letter or similar document shall contravene this right. The Company shall assist and cooperate with any such employee transition in the manner reasonably requested by SRWA.

SECTION 7.8. NO WAIVERS. No action of SRWA or Company pursuant to this Contract (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party’s compliance with any term or provision of this Contract. No course of dealing or delay by SRWA or Company in exercising any right, power or remedy under this Contract shall operate as a waiver thereof or otherwise prejudice such party’s rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of SRWA or the Company under this Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 7.9. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Contract, or the material inaccuracy of any representation made in this Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between SRWA and the Company, and specifically is not intended to limit the scope of the indemnity provisions in Section 8.5 (Indemnification by the Company), which indemnity includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 7.10. DISPUTE RESOLUTION PROCEDURES

(A) Generally. Each party shall follow the dispute resolution procedures set forth in this Section and, if applicable, Appendix 14 (Resolution of Company Claims) to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated
resolution of disputes in a prompt and efficient manner without resort to arbitration or litigation, which should be a last resort.

(B) **Informal Negotiations.** Representatives of SRWA and the Company with day-to-day involvement in the administration of this Contract and the performance of the Design-Build Work shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Contract. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Contract. Any dispute resolved informally shall be documented by the SRWA Engineer and, if the dispute resolution involves a change in the Design-Build Work, increase or decrease in the Design-Build Price due the Company, or adjustment in the time to complete the work, then the informal dispute resolution shall be confirmed by a Change Order.

(C) **Rights to Request and Decline Non-Binding Mediation.** Either party may request non-binding mediation of any dispute arising under this Contract. The non-requesting party may decline the request in its discretion. If the parties agree to mediation, the costs of such non-binding mediation shall be divided equally between SRWA and the Company. The mediator shall be a professional engineer, attorney, or other professional mutually acceptable to the parties who has no current or on-going relationship with either party. Each party shall participate in good faith in the mediator’s program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation. The parties may pursue their remedies under subsections D and E without having first attempted mediation under this subsection.

(D) **Company Claim.** Any Company claim against SRWA for additional money or a time extension (a “claim” as further defined in Appendix 14) that is not resolved under this Section shall be resolved in accordance with Appendix 14 (Resolution of Company Claims).

(E) **SRWA Claim.** For any SRWA claim against the Company that is not resolved under this Section, SRWA may pursue any remedy authorized by Applicable Law.

(F) **Court Venue.** All Legal Proceedings related to this Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in the County of Stanislaus, California or in federal courts located in the Eastern District of California. The Company and SRWA each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have regarding the jurisdiction or venue of any such Legal Proceeding.

(G) **Survival.** The provisions of this Section shall survive the termination of this Contract.
ARTICLE 8
INSURANCE, DAMAGE, UNCONTROLLABLE CIRCUMSTANCES,
AND INDEMNIFICATION

SECTION 8.1. INSURANCE

(A) Company Insurance. At all times during the Term, the Company shall obtain and
maintain the Required Insurance in accordance with Appendix 11 (Required Insurance), and shall
pay all premiums with respect thereto as the same become due and payable. The Required
Insurance, excluding the builder’s risk insurance, shall be provided concurrently with the execution
and delivery of this Contract. The builder’s risk insurance shall be provided as a condition precedent
to the Construction Date in accordance with Section 4.2 (Construction Date Conditions). All
Required Insurance shall remain in effect for the periods specified in Appendix 11 (Required
Insurance). The Company shall comply with all applicable Insurance Requirements pertaining to the
Regional Water Facilities and Sites under any policy of Required Insurance and take all steps
necessary to assure that the Design-Build Work remains continuously insured in accordance with
the requirements of this Contract during the Term.

(B) Certificates, Policies and Notice. The Required Insurance, including any renewals
thereof, shall be evidenced by certificates of insurance as provided herein and in Appendix 11
(Required Insurance). The delivery by the Company to SRWA of certificates of insurance is required
by this Contract as a condition precedent to the execution of this Contract for all Required
Insurance, excluding builder’s risk, which shall be delivered as a condition precedent to the
occurrence of the Construction Date pursuant to Section 4.2 (Construction Date Conditions). On an
annual basis during the Term, the Company shall furnish updated certificates of insurance to SRWA
to confirm the continued effectiveness of the Required Insurance. In addition, the Company shall
supply SRWA, upon request, with certified copies of all Project-specific policies of Required
Insurance. All Required Insurance furnished through the Company’s corporate insurance policies
shall be made available for review by SRWA or its designated representatives at a location
acceptable to SRWA upon the reasonable request of SRWA; provided, however, that, in order to help
protect the confidentiality of such corporate insurance policies, the Company shall not be required to
provide SRWA with copies of such policies (other than as mandated by Applicable Law) and may
redact pricing information and provisions unrelated to the Project from such policies prior to review.
Notwithstanding the foregoing, SRWA accepts no responsibility for the confidentiality of the
Company’s corporate insurance policies and shall not be liable in any manner for any inadvertent
disclosure of such policies to any third party.

(C) Subcontractors. Whenever a Subcontractor is utilized, the Company shall either obtain
and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the
applicable requirements of Appendix 11 (Required Insurance) and shall provide SRWA with
certificates evidencing such insurance. Notwithstanding the insurance coverages and limits specified
in Appendix 11, the Company may, with the approval of SRWA acting reasonably, require
Subcontractors to obtain and maintain lower levels of insurance coverage that are commensurate to
the Subcontractor’s scope of work and risk.

(D) Maintenance of Insurance Coverage. If the Company fails to pay any premium for
Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails
to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis,
SRWA may, but is not obligated to, pay such premium or procure similar insurance coverage from
another insurer and upon such payment by SRWA the amount thereof shall be immediately
reimbursable to SRWA by the Company. The Company shall not perform Design-Build Work during
any period when any policy of Required Insurance is not in effect. The failure of the Company to
obtain and maintain, or cause to be obtained and maintained, any Required Insurance shall not
relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify, defend and hold harmless SRWA Indemnitees in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company), from and against any and all Loss and Expense arising out of such failure.

SECTION 8.2. LOSS, DAMAGE OR DESTRUCTION TO THE PROJECT

(A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Regional Water Facilities from loss, damage or destruction in accordance with Good Engineering and Construction Practice, Good Industry Practice, Applicable Law and the Insurance Requirements. The Company shall report to SRWA and any other appropriate Governmental Body and insurer under any applicable Required Insurance, promptly upon obtaining knowledge thereof, any loss, injury, death, damage, or destruction in connection with the Design-Build Work or any OSHA recordable injury accident on the Sites related to the Design-Build Work, and as soon as practicable thereafter (but in no event later than 72 hours) shall submit a full written report to SRWA. The Company shall also submit to SRWA within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Regional Water Facilities to at least the character or condition thereof existing immediately prior to the loss, damage or destruction.

(B) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third-party, each party shall assist the other in exercising such rights as it may have to effect such recovery. All available insurance or other third-party payment proceeds shall be applied for such repair, replacement and restoration purposes in accordance with subsection (C) of this Section. Each party shall provide the other with copies of all relevant documentation at no cost to the other party, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection to provide the other party with documents subject to the attorney-client privilege under State law.

(C) Payment for Restoration Work and Insurable Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Regional Water Facilities shall be for the account of SRWA. SRWA shall pay for restoration work required pursuant to this Section with such proceeds and recoveries and, as necessary, such other funds obtained by SRWA in the event insurance proceeds or other third-party payments are not sufficient to pay for restoration work pursuant to this Section. Notwithstanding the foregoing, the following costs of repairing, replacing and restoring the Regional Water Facilities following any event or occurrence of loss, damage or destruction shall be borne by the Company: cost of all applicable Required Insurance deductibles; costs for which insurance proceeds are not available due to the failure of the Company to obtain or maintain any applicable policy of Required Insurance; and; costs caused by Company Fault and with respect to which no insurance proceeds are available.

(D) Exceptions. Repair, replacement and restoration costs resulting from the following perils shall be borne by SRWA: (1) terrorism; (2) war, civil war, or armed conflict; (3) nuclear explosion or nuclear, radioactive, chemical or biological contamination; (4) epidemics, pandemics or quarantine, or related health alerts issued by a Governmental Body; and (5) tidal waves.

(E) Repair of SRWA, City and Private Property. The Company shall promptly repair or replace any Regional Water Facilities, City Property, or private property damaged by the Company
or a Subcontractor or any of their officers, directors, employees, representatives or agents in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

SECTION 8.3. UNCONTROLLABLE CIRCUMSTANCES – ENTITLEMENT TO RELIEF

(A) Relief Available to the Company. If and to the extent that an Uncontrollable Circumstance interferes with, delays, or increases the cost to the Company to performing the Design-Build Work, the Company shall be entitled to either relief from its performance obligations or an increase in the Design-Build Price (except as and to the extent provided in this Section, Section 8.4 (Uncontrollable Circumstances - Claim Procedures) and Section 8.5 (Indemnification by the Company)). The Company shall perform all other Design-Build Work not affected by the Uncontrollable Circumstance. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Company pursuant to subsection (B) upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Design-Build Price would have otherwise been increased or shall serve to reduce the Design-Build Price to reflect such mitigation measures, as applicable. The Company shall not be entitled to any price relief through an adjustment to the Design-Build Price on account of any costs incurred as the result of an act, event, or circumstance that the Company or the Guarantor is obligated to insure against under Section 8.1 (Insurance) and Appendix 11 (Required Insurance), irrespective of any limits of coverage or any deductible applicable under any policy of insurance.

(B) Mitigation. Whenever an Uncontrollable Circumstance occurs, the Company shall, as promptly as practicable, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to the parties, and resume or continue full performance under this Contract. Any relief to which the Company is entitled under this Section on account of an Uncontrollable Circumstance shall be adjusted to account for the effect of such measures and any other mitigation measures that were or should have been taken by the Company in compliance with its duty to mitigate.

(C) SRWA Ownership of Construction Schedule Float. The parties acknowledge that the Project completion schedule anticipates early and late finish dates for each major element of the Design-Build Work and for completion of the Design-Build Work prior to the Scheduled Acceptance Date. This “float” in schedule shall be “owned” by SRWA for any purpose relating to the determination of whether an Uncontrollable Circumstance has occurred or the relief to which the Company is entitled on account thereof. In particular, if the Acceptance Date occurs on or before the Scheduled Acceptance Date, no act, event or circumstance occurring prior to the Scheduled Acceptance Date that affects the Company’s schedule shall be deemed to constitute an Uncontrollable Circumstance entitling the Company to additional compensation for delay, notwithstanding the impact of any such act, event or circumstance on the Company’s planned schedule for completion of the Design-Build Work.

SECTION 8.4. UNCONTROLLABLE CIRCUMSTANCES – CLAIM PROCEDURES

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Company shall give written notice of the occurrence of the Uncontrollable Circumstance to SRWA as soon as practicable, and in any event within 10 days of the date the Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement to relief under this Contract. The Company’s notice shall include a written report: (a) describing the Uncontrollable Circumstance and the cause thereof, to the extent known; (b) stating the date on which the Uncontrollable Circumstance began and its estimated duration; (c) summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the
performance of the Company's obligations under this Contract; and (d) indicating the nature and scope of the Company's potential entitlement to relief. The Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(B) Updates. The Company shall provide SRWA with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in subsection (A). In particular, the Company shall notify SRWA as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Specific Relief Request. The Company shall submit to SRWA a further notice making its request for specific relief, the basis therefor, and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A). If the specific relief cannot reasonably be ascertained within such 30-day period, the Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Company to SRWA after the dates required under this Section, then any Company entitlement to relief shall be offset to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Burden of Proof and Mitigation. The Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Company complied with its mitigation obligations under subsection 8.3(B) (Mitigation).

(F) SRWA Response; Agreement or Dispute. Within 30 days after receipt of a relief request by the Company pursuant to subsection (C) of this Section, SRWA shall issue a written determination as to the extent, if any, to which it concurs with the Company's request and the reasons therefor. If the parties agree as to the specific relief to be given the Company on account of an Uncontrollable Circumstance, the agreement shall be evidenced by a Contract Administration Memorandum or a Change Order, as applicable. If the parties do not agree as to the specific relief to be given the Company on account of an Uncontrollable Circumstance, SRWA may issue a Unilateral Change Directive pursuant to Section 4.12 (Unilateral Change Directives). Any issue in dispute relating to the assertion of the occurrence of an Uncontrollable Circumstance may be referred to the dispute resolution procedures set forth in Section 7.10 (Dispute Resolution Procedures).

SECTION 8.5. INDEMNIFICATION BY THE COMPANY

(A) Indemnity; General. The Company shall indemnify, defend, protect, and hold harmless SRWA, the Cities, and their respective elected officials, appointed officers, employees, representatives, agents and contractors (each, an “SRWA Indemnitee”), from and against (and pay the full amount of) any and all Loss and Expense incurred by an SRWA Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with):

(1) any failure of the Company to perform its obligations under this Contract;

(2) any negligent act, error or omission, willful misconduct, or failure to comply with Applicable Law of or by the Company or a Subcontractor or any of their officers, directors, employees, representatives, agents in connection with this Contract;
disputes among unions or trade organizations representing employees of the Company or a Subcontractor in connection with the performance of the Design-Build Work, as provided in subsections 4.19(D) (Labor Disputes) and 10.12(B) Labor Disputes, respectively;

(4) any Subcontractor claims, as provided in subsections 4.23(A)(10) (Indemnity for Subcontractor Claims) and 10.10(B) (Indemnity for Claims); or

(5) the infringement or unauthorized use of any patent, trademark, copyright or trade secret, as and to the extent provided in subsection 10.6(A) (Protection from Infringement).

The Company acknowledges and agrees that its indemnification obligations under item (1) of this Section shall apply with respect to any failure by the Company to perform under this Contract, notwithstanding that indemnification is specifically mentioned with respect to certain obligations in this Contract but not other obligations.

(B) Indemnity; Design Professional. This subsection (B) applies if the claim or Legal Proceeding arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of a State-registered professional engineer or other “design professional” (as that term is defined at California Civil Code Section 2782.8) performing any of the Design-Build Work. Company shall indemnify, defend, protect, and hold harmless SRWA Indemnitees (as defined in Subsection (A)) from and against any Loss and Expense that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of a design professional. This subsection shall be applied and construed in accordance with California Civil Code Section 2782.8; however, the parties acknowledge and agree that any design professional working under this Contract “is a party to a written design-build joint venture agreement” within the meaning of Section 2782.8, subsection (e)(2).

(C) Limitations. The Company’s indemnity obligations under subsections (A) and (B) shall not be limited by any insurance the Company does or does not maintain or by any matter relating to insurance. The Company shall not, however, be required to reimburse or indemnify any SRWA Indemnitee for any Loss and Expense to the extent caused by the negligence or willful misconduct of any SRWA Indemnitee, to the extent attributable to any Uncontrollable Circumstance, or as may be limited by Applicable Law. These indemnification provisions are for the protection of SRWA Indemnites only and shall not be deemed to create any right in favor of any third parties. The Company’s obligations under this indemnification provision shall survive the termination of, or completion of work under, this Contract.
ARTICLE 9
SECURITY FOR PERFORMANCE

SECTION 9.1. GUARANTOR

(A) Guaranty Agreement. Prior to or concurrent with the execution of this Contract, the Company shall cause to be executed and provided the Guaranty Agreement in the form attached hereto as a Transaction Form.

(B) Guarantor Reports. Within 180 days after the end of each fiscal year of the Guarantor, the Company shall furnish SRWA with a copy of the Guarantor's audited year-end financial statements for that fiscal year. If the Company files an annual Form 10-K report with the Securities and Exchange Commission, then, in lieu of providing the audited financial statements, the Company may provide Guarantor's Form 10-K report or provide SRWA with a link to access such information posted on a public website.

(C) Notice of Material Event; Credit Enhancement. For purposes of this Section, a “Material Event” shall be deemed to have occurred if (1) in the event that the Guarantor has long-term senior debt outstanding with a credit rating by either Moody's Investors Service or Standard & Poor's Rating Services (each a “Rating Service”) and such rating by either Rating Service is established at or is reduced below investment grade level, or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, the credit standing of the Guarantor declines to a level that is insufficient to support an investment grade credit rating by either Rating Service on long-term senior debt of the Guarantor, whether or not any such debt is outstanding. The Company immediately shall notify SRWA of any Material Event. If Guarantor is a publicly traded company, the notification shall be made simultaneously with public disclosure in accordance with Applicable Law. If a Material Event occurs, the Company shall cause to be provided credit enhancement of the Guaranty Agreement obligation within 30 days after such occurrence. Such credit enhancement shall be in the form either of (1) an unconditional guarantee of all of the Company's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is or would be rated investment grade by either Rating Service, or (2) a letter of credit securing the Company's obligations hereunder in the face amount of $10,000,000 provided by a bank or financial institution whose long-term senior debt is or would be rated investment grade by either Rating Service.

SECTION 9.2. BONDS

(A) Performance and Payment Bonds. The Company shall provide SRWA with the Performance Bond and the Payment Bond as a Construction Date Condition pursuant to Section 4.2 (Construction Date Conditions). The Payment Bond shall be in the form attached in Transaction Form B and the Performance Bond shall be in the form attached as Transaction Form C. Each of the Payment Bond and the Performance Bond shall be in an amount equal to 100% of the Base Design-Build Price. The Performance Bond and the Payment Bond shall be issued by a California admitted surety company (1) approved by SRWA and having a rating of “A” in the latest revision of the A.M. Best Company’s Insurance Report; (2) listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of SRWA as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”; and (3) holding a valid certificate as an admitted surety authorized to transact surety business in the State. The Performance Bond and the Payment Bond shall comply with and shall be subject to the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.). The Performance Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Base Design-Build Price Adjustments, until one year after the filing of the Notice of Completion. The Payment Bond shall remain open in an amount equal to 100% of the Design-Build Price, including any Base Design-Build Price
Adjustments, for the statutory period following the filing of the Notice of Completion, as required by Applicable Law.

(B) Monitoring of Sureties. The Company shall be responsible throughout the Term for monitoring the financial condition of any surety company issuing bonds under this Contract and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the Company promptly shall notify SRWA of such event and take steps to ensure continued compliance with this Section, by either furnishing or arranging for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless SRWA agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Company of such an event, SRWA shall not unreasonably withhold its approval of such assurance.

SECTION 9.3. COSTS OF SECURITY INSTRUMENTS. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company’s obligations hereunder is included in the Base Design-Build Price and shall be borne by the Company without further reimbursement or payment from SRWA.
ARTICLE 10

GENERAL PROVISIONS

SECTION 10.1. OWNERSHIP AND USE OF SITES. The Regional Water Facilities and Sites shall be owned by SRWA at all times (except for the Raw Water Pump Station Site that is leased by SRWA). The Company shall not have any legal, equitable, or other ownership or leasehold interest in any of the Sites, except for the license conveyed by Section 4.3(C) (Access to the Sites).

SECTION 10.2. RELATIONSHIP OF PARTIES. The Company’s relationship to SRWA is that of an independent contractor. All persons hired by the Company or any Subcontractor and performing the Design-Build Work shall be the Company’s or Subcontractor’s employees or agents. The Company shall pay, and SRWA shall not be responsible for, the salary, wages, workers’ compensation, unemployment insurance, disability insurance, tax withholding, and benefits to and on behalf of the Company’s and Subcontractor’s employees. Company shall, to the fullest extent permitted by law, indemnify SRWA, and its directors, officers, employees, and agents from and against any and all liability, penalties, expenses and costs resulting from any adverse determination by the federal Internal Revenue Service, California Franchise Tax Board, other federal or state agency, or court concerning the Company's independent contractor status or employment-related liability.

SECTION 10.3. CONTRACT ADMINISTRATION

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters routinely will arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Contract.

(B) Contract Administration Memoranda. The principal tool for the administration and memorialization of routine matters arising under this Contract that do not require a Change Order shall be a “Contract Administration Memorandum.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by SRWA and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Contract in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other matters relating to Contract administration or performance. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Contract.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of SRWA reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Company Contract Representative or designee and signed by the SRWA Contract Representative or designee. SRWA and Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Change Orders and all other documents relating to the administration and performance of this Contract.
SECTION 10.4. CHANGE ORDERS

(A) Generally. No material change, alteration, revision, or modification of the terms and conditions of this Contract shall be made except through a written Change Order or other written amendment to this Contract, duly authorized and signed by SRWA (as and to the extent authorized by the Board of Directors) and duly authorized and signed by the Company.

(B) Procedure. Change Orders shall be serially numbered, dated and signed by the Company Contract Representative or designee or designee and by the SRWA Contract Representative or designee. SRWA and the Company each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Contract.

SECTION 10.5. CONTRACT REPRESENTATIVES

(A) Company Representatives. The Company shall appoint and inform SRWA from time to time of the identity of (1) the Company Engineer, (2) the Company Construction Superintendent, (3) the Company Contract Representative, and (4) one or more corporate officials of the Company and the Guarantor with senior supervisory responsibility for the Project and the performance of this Contract (the “Company Senior Supervisors”). The Company shall promptly notify in writing to SRWA of any changes to these representatives. The Company Senior Supervisors shall cooperate with SRWA in any reviews of the performance of the Company Contract Representative, Company Engineer, or Company Construction Superintendent, which SRWA may undertake from time to time, and shall give full consideration to any issues or concerns raised by SRWA in conducting such performance reviews.

(B) SRWA Representatives. SRWA shall appoint and inform the Company from time to time of the identity of the (1) SRWA Engineer, (2) SRWA Construction Manager, and (3) SRWA Contract Representative. SRWA shall promptly notify the Company in writing about any changes to these representatives. When this Contract requires any approval or consent by SRWA to a Company submission, request or report, the approval or consent shall be given by the SRWA Contract Representative (unless otherwise provided by this Contract) in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by SRWA with the Applicable Law that governs its affairs.

SECTION 10.6. PROPERTY RIGHTS

(A) Protection from Infringement. The Company shall indemnify, defend and hold harmless SRWA Indemnitees in the manner provided in Section 8.5 (Indemnification by the Company) from and against any and all Loss and Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Design-Build Work. At its option, the Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, Service Life and technical characteristics and development so that such equipment does not so infringe.

(B) Intellectual Property Developed by the Company. All intellectual property developed by the Company in connection with the Design-Build Work shall be owned by the Company subject to the terms and conditions of this Section and Section 4.18 (Deliverable Materials), and is hereby licensed to SRWA on a non-exclusive, cost free, perpetual basis for use by SRWA. Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. SRWA shall have an irrevocable, perpetual, royalty-free and unrestricted right to use, reuse, reproduce, publish, display, broadcast and distribute such intellectual property, and to prepare derivative and additional documents based on such intellectual property, for any SRWA purpose, whether before or following the Termination Date. Neither SRWA nor the Company shall license, transfer or otherwise make
available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration; provided, however, that SRWA may transfer and make available to the Cities all such intellectual property for their respective use to the same extent and subject to the same restrictions as govern use by SRWA under this Section. The use by SRWA or either City of any such intellectual property for purposes other than in connection with the Project shall be at their own risk and the Company shall have no liability therefor.

SECTION 10.7. NEGOTIATED FIXED PRICE WORK

(A) Base Design-Build Price. The Base Design-Build Price has been fixed and agreed to by the parties based on the Company’s Proposal and is not subject to Cost Substantiation.

(B) Negotiated Lump Sum Pricing for Other Work. This Contract obligates SRWA to pay for certain costs resulting from Uncontrollable Circumstances, SRWA Fault, and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that SRWA will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance of the Company’s performance of the work and reflected in an approved Change Order. To facilitate such negotiations, the Company shall furnish SRWA with all information reasonably requested by SRWA regarding the Company’s expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Company’s actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Company’s actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 10.8. COST SUBSTANTIATION OF WORK ALREADY PERFORMED

(A) Cost Substantiation Generally. The Company shall provide Cost Substantiation for the costs for which SRWA is financially responsible hereunder, other than the Base Design-Build Price and the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 10.7 (Negotiated Fixed Price Work). In incurring costs that are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of $50,000), and shall enter into subcontracts on reasonable terms and prices in light of the work to be performed and SRWA’s potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Company. Examples of costs which require substantiation include (1) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and (2) situations where the parties agree that the Company shall perform work on a cost-plus basis. All Design-Build Work costs which are subject to Cost Substantiation shall be further subject to the terms, conditions and limitations set forth in Article 6 (Project Funding and Payment of the Design-Build Price).

(C) Cost Substantiation Certificate. The Company shall prepare and provide to SRWA a Cost Substantiation certificate to substantiate and document the cost. The certificate must state and describe the amount of the cost, the provision(s) of this Contract under which the cost is chargeable to SRWA, the competitive or other process utilized by the Company to obtain the reasonable price, and how such work, services, or materials are reasonably required to perform the Design-Build Work. The Cost Substantiation certificate shall be accompanied by copies of such documentation (e.g., timesheets, invoices, canceled checks, expense reports, receipts) as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to SRWA and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed
work, (1) the amount and character of materials, equipment and services furnished or utilized, the vendors or other Persons from whom purchased, and the amounts payable therefor; (2) a statement of any equipment used and any rental payable therefor; (3) employee hours, duties, wages, salaries, benefits and assessments; and (4) profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Design-Build Work to governmental entities. The Company shall use reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

(D) **Mark-Up.** On all costs incurred by the Company for work performed directly by the Company or any of its Affiliates that are subject to Cost Substantiation, the Company shall be entitled to a mark-up of 10% for risk, profit, administration, and all other overhead and shall not be entitled to any other additional compensation. On all costs incurred by the Company for work performed by a Subcontractor, the Company shall be entitled to a mark-up of 5% for risk, profit, administration, and all other overhead and shall not be entitled to any other additional compensation. The price payable to any Subcontractors, including Subcontractor overhead and mark-ups for risk and profit, must be reasonable. No mark-up will be added to the Company’s or a Subcontractor’s costs for lodging, meals or travel.

SECTION 10.9. **USE OF SUBCONTRACTORS AND KEY PERSONNEL**

(A) **Use of Subcontractors and Key Personnel.** SRWA acknowledges that the Company will carry out portions of the Design-Build Work by contracting such obligations to one or more Subcontractors. The Company shall use the Subcontractors and Key Personnel listed in Appendix 10 (Key Personnel and Approved Subcontractors) or such others as SRWA may approve, acting reasonably and without unreasonable delay, for the performance of the Design-Build Work. The addition of any such SRWA-approved Subcontractors and Key Personnel in Appendix 10 shall be reflected in a Contract Administration Memorandum.

(B) **Restricted Persons.** In providing the Design-Build Work, the Company shall not employ or contract with, or allow any of the Subcontractors to employ or contract with, any Person who, in the reasonable opinion of SRWA, is any of the following:

1. Is debarred, suspended, or otherwise disqualified from federal, State, SRWA, or City contracting for any services similar in nature to the Design-Build Work (including those debarred by the California Division of Labor Standards Enforcement; see www.dir.ca.gov/dlse/debar.html);

2. Was or is subject to any material claim of the United States, State, SRWA, or City in any proceedings (including regulatory proceedings) that have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in SRWA’s view, in either case, be reasonably likely to materially affect the ability of the Company to perform its obligations under this Contract;

3. In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal felony less than five years prior to the date at which the determination of whether the Person falls within this definition is being made;

4. Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or
Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

SECTION 10.10. SUBCONTRACTS

(A) Terms and Actions. The Company shall retain full responsibility to SRWA under this Contract for all matters related to the Design-Build Work. No failure of any Subcontractor used by the Company in connection with the provision of the Design-Build Work shall relieve the Company from its obligations to perform the Design-Build Work. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising from the actions or inactions of the Company or a Subcontractor.

(B) Indemnity for Claims. The Company shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against SRWA for labor, services, materials or equipment furnished for the Design-Build Work, except as provided by Payment Bond and stop notice remedies. The Company acknowledges that its indemnity obligations under Section 8.5 (Indemnification by the Company) shall include all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work to the extent that those claims fall within the scope of the indemnity in Section 8.5 (Indemnification by the Company).

(C) Assignability. All Subcontracts entered into by the Company with respect to the Design-Build Work shall be assignable to SRWA, solely at SRWA’s election and without cost or penalty, upon the expiration or termination of this Contract.

SECTION 10.11. MATERIAL SUBCONTRACTS

(A) SRWA Consents. The Company shall not take any of the following actions, unless SRWA has consented to such action in writing, such consent not to be unreasonably withheld or delayed: (1) terminate, or agree to or permit the termination of, all or any material part of any Material Subcontract; (2) make, or agree to or permit the making of, any material amendment of any Material Subcontract or any departure by any party from any material provision of any Material Subcontract; (3) permit any Significant Subcontractor to assign or transfer to any Person all or substantially all of the obligations under the Material Subcontract; or (4) enter into, or permit the entering into of, any Material Subcontract other than those entered on or before the Contract Date.

(B) Process and Timeframe for Consent. SRWA shall give or deny such consent within (1) 10 Business Days of receipt of such notice and all relevant documentation, if the Company is seeking to terminate a Material Subcontract immediately, or (2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases. If SRWA fails to give or deny its consent within such time periods it shall be deemed to have given its consent.

(C) Costs of Request for Consent. The Company shall pay SRWA’s reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with reviewing and processing any request for consent by the Company pursuant to this Section. At the time of the request the Company shall make a payment to SRWA against its obligation under this Section of $15,000. After SRWA’s decision is rendered, SRWA will either refund any overpayment or invoice the Company for any additional amounts due under this Section.

SECTION 10.12. LABOR RELATIONS DISPUTES

(A) Labor Relations. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company and Subcontractors. SRWA shall have no
responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless SRWA Indemnites in accordance with Section 8.5 (Indemnification by the Company) from any and all Loss and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Company has knowledge of an actual or potential labor dispute that may affect any of the Design-Build Work, the Company shall promptly (1) give notice about the dispute to SRWA, including all relevant information related to the dispute of which the Company has knowledge, and (2) take all reasonable and appropriate steps to ensure that such labor dispute does not affect the performance of any of the Design-Build Work, including by applying for relief to appropriate courts or Governmental Bodies.

SECTION 10.13. FAIR EMPLOYMENT AND CONTRACTING POLICY

(A) Compliance with SRWA Non-Discrimination Policy. During the Term, the Company will not discriminate against any employee, applicant for employment, Subcontractor, guest, visitor or invitee, because of race, religion, creed, color, sex, age (over 40), marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless allowed by Applicable Law (e.g., as a bona fide occupational qualification). The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The terms used in this Section shall have the same meaning as defined in State statutes and regulations governing the same subject matter.

(B) Compliance with Statutes. The Company shall comply with Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and the Americans with Disabilities Act of 1990, and any other Applicable Law pertaining to nondiscrimination, anti-harassment, disability rights, and fair employment practices.

(C) Indemnification. The Company shall indemnify, defend and hold harmless SRWA Indemnites in the manner provided in Section 8.5 (Indemnification by the Company) from and against all Loss and Expense which any of them may incur arising from any claim of wrongful employment practices (e.g., discrimination or harassment) arising from the conduct of the Company, a Subcontractor, or any of their officers, employees, or agents.

SECTION 10.14. ASSIGNMENT

(A) By the Company. The Company shall not assign, transfer, convey, lease, encumber, or otherwise dispose of this Contract, its right to execute the same, or its right, title or interest in all or any part of this Contract or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of SRWA. Any such consent given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of SRWA to any further assignment. Any such assignment of this Contract that is approved by SRWA shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Contract, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this Contract unless such approval specifically provides otherwise.

(B) By SRWA. SRWA shall not assign its rights or obligations under this Contract without the prior written consent of the Company. SRWA may, however, assign its rights and obligations under this Contract, without the consent of the Company, to another Governmental Body if such assignee assumes, and is legally capable of discharging, the duties and obligations of SRWA hereunder.
SECTION 10.15. BINDING EFFECT. This Contract shall bind and inure to the benefit of SRWA and the Company and any assignee acquiring an interest hereunder consistent with Section 10.14 (Assignment).

SECTION 10.16. PARTY BEARING COST OF PERFORMANCE. All obligations, tasks and responsibilities to be undertaken by a party under this Contract will be performed at the sole cost and expense of the party required to perform or undertake the obligation, task or responsibility, unless otherwise expressly provided by this Contract or otherwise explicitly agreed to in writing by the parties.

SECTION 10.17. NOTICES

(A) Procedure. Any notice, consent, approval, or other communication (collectively “Notice”) required or permitted to be given under this Contract shall be in writing and delivered or sent either (1) in person, (2) by prepaid, first class U.S. mail, (3) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (4) by email with a confirmed receipt. Any such Notice must be addressed as provided in subsection (B). Any Notice so delivered or sent will be deemed given (1) when delivered in person, (2) three days after deposited in prepaid, first class U.S. mail, (3) on the date of delivery as shown on the overnight courier service receipt, or (4) upon the sender’s receipt of an email from the other party confirming the receipt of the emailed Notice.

(B) Notice Addresses. Notices required or permitted to be given under this Contract shall be addressed as follows:

To SRWA:

Stanislaus Regional Water Authority
156 S. Broadway, Suite 270
Turlock, CA 95380
Attn: Robert Granberg, P.E., General Manager
Email: granbergassociates@gmail.com

with a copy to:

Lindsay Smith, P.E.
West Yost Associates
2020 Research Park Drive, Suite 100
Davis, CA 95618
Email: lsmith@westyost.com

and

Richard P. Shanahan
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816
Email: rps@bkslawfirm.com

To the Company:

XXX
Any party may change its contact information by notifying the other party of the change in the manner provided above.

SECTION 10.18. NOTICE OF CLAIMS AND LITIGATION. In the event the Company or SRWA receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims (including any third-party claim subject to California Public Contract Code Section 9201(b)), or investigations in connection with the Design-Build Work, the party receiving such notice or undertaking such defense or prosecution promptly shall give the other party notice of such proceedings.

SECTION 10.19. FURTHER ASSURANCES. In order to carry out and give full effect to this Contract, each party will use all reasonable efforts to provide such information, sign and deliver such further instruments and documents, and take such actions as may be reasonably requested by the other party, so long as not inconsistent with the provisions of this Contract and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Contract. The parties will reasonably cooperate with each other to carry out the purpose and intent of this Contract, including providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Contract.

[SIGNATURE PAGE FOLLOWS]
The parties have caused this Contract to be approved and executed by their duly authorized representatives as of the day and year first above written.

STANISLAUS REGIONAL WATER AUTHORITY

By: ___________________________________________

Robert Granberg, General Manager

Attest:

______________________________

Allison Martin, Secretary

Approved as to form:

______________________________

Richard P. Shanahan, General Counsel

By

______________________________ [name]

______________________________ [title]

By

______________________________ [name]

______________________________ [title]
TRANSACTION FORMS

TO THE
DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

Form A  Guaranty Agreement Form
Form B  Payment Bond Form
Form C  Performance Bond Form
TRANSACTION FORM A

GUARANTY AGREEMENT FORM
THIS GUARANTY AGREEMENT is made and entered into as of ________, 2019, between the Stanislaus Regional Water Authority, a joint powers authority organized and existing under the California Joint Exercise of Powers Act (“SRWA”), and __________, a corporation organized and existing under the laws of the State of __________ and authorized to do business in the State of California (“Guarantor”), who agree as follows:

RECITALS. This Contract is made with reference to the following background recitals:

A. SRWA and __________, a __________ organized and existing under the laws of the State of __________ (the “Company”), have entered into the Design-Build Contract for the Regional Surface Water Supply Project dated ____________, 2019, as may be amended from time to time (the “Contract”). The Company has agreed under the Contract to obtain governmental approvals for, design, construct, start up, commission, and acceptance test a raw water pump station, raw water transmission main, water treatment plant, finished water pumping station, finished water transmission mains, and other facilities and improvements, all as more particularly set forth in the Contract.

B. The Company is a ____________ of the Guarantor.

C. Performance by SRWA and the Company of their obligations under the Contract will result in a direct and substantial benefit to the Guarantor.

D. SRWA will enter into the Contract only if, concurrently with the Company’s approval and execution of the Contract, the Guarantor guarantees the performance by the Company of all of the Company’s Obligations under the Contract as set forth in this Guaranty Agreement.

E. The Guarantor approves this Guaranty Agreement in order to induce the execution and delivery of the Contract by SRWA and in consideration thereof.

1. Definitions and Interpretation

1.1. As used in this Guaranty Agreement, the following words and terms shall have the meanings set forth below. Any other capitalized word or term used but not defined herein is used as defined in the Contract.

A. “Guaranty Agreement” means this Regional Surface Water Supply Project Guaranty Agreement, as the same may be amended by the parties from time to time.

B. “Obligations” means the covenants and agreements of, and the amounts payable by, the Company pursuant to the terms of the Contract.

C. “Transaction Agreement” means the Contract, any Material Subcontract, the Performance Bond, and the Payment Bond, and including any amendment or supplement to any of these documents.

1.2. In this Guaranty Agreement, unless the context otherwise requires:

A. References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty Agreement.
B. Plurality. Words importing the singular number mean and include the plural number and vice versa.

C. Entire Agreement. The parties intend this document to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the subject matter of this document. This Guaranty Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the subject matter of this Guaranty Agreement, except those other documents that may be expressly referenced in this Guaranty Agreement.

D. Applicable Law. This Guaranty Agreement shall be governed by and construed in accordance with the applicable laws of the State of California.

E. Severability. If any clause, provision, section, or subsection shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, section, or subsection shall not affect any of the remaining provisions hereof, and this Guaranty Agreement shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor’s liability beyond that expressly set forth herein.

F. Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

G. Payments. All payments required to be made by the Guarantor under this Guaranty Agreement shall be made in lawful money of the United States of America.

2. Representations and Warranties. The Guarantor represents and warrants that:

2.1. Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of __________, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty Agreement.

2.2. Due Authorization and Binding Obligation. This Guaranty Agreement has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

2.3. No Conflict. To the best of its knowledge, neither the execution and delivery by the Guarantor of this Guaranty Agreement nor the performance by the Guarantor of its obligations under the Guaranty Agreement: (a) conflicts with, violates or results in a breach of any Applicable Law; or (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor’s articles of incorporation, bylaws, or other corporate charter, or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

2.4. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty Agreement by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

2.5. No Litigation. Except as disclosed in writing to SRWA, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor’s knowledge, overtly threatened or publicly announced against the Guarantor, in which an
unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty Agreement against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

2.6. Consent to Design-Build Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Contract.

3. Guaranty Covenants

3.1. Guaranty to SRWA. The Guarantor absolutely, presently, irrevocably and unconditionally guarantees to SRWA for the benefit of SRWA and the Cities (a) the full and timely performance and observance of each and all of the Obligations, and (b) the full payment when due of each and all of the payments required to be credited or made by the Company under the Contract to, or for the account of, SRWA, when the same shall become due and payable pursuant to this Guaranty Agreement. However, the Guarantor shall have the right to assert the defenses provided in Section 3.4 against claims made under this Guaranty Agreement and the combined liability of the Guarantor under this Guaranty Agreement and the Company under the Contract shall be subject to the applicable limitations of liability set forth in Section 7.3 (Limitation on Company Liability) of the Contract.

3.2. SRWA Right to Proceed against Guarantor. This Guaranty Agreement constitutes a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, SRWA shall have the right to proceed first and directly against the Guarantor under this Guaranty Agreement and without proceeding against the Company or exhausting any other remedies against the Company which SRWA may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that SRWA: (a) file a lawsuit or proceed to obtain a judgment against the Company or any other Person that may be liable for the Obligations or any part of the Obligations; (b) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Contract or required to be given to the Company under Applicable Law; (c) foreclose against or seek to realize upon any security for the Obligations; or (d) exercise any other right or remedy to which SRWA is or may be entitled in connection with the Obligations or any security therefor or any other guaranty thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Contract. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and the Guarantor as may be required in connection with such Obligation and this Guaranty Agreement, the liability of the Guarantor shall be effective and shall immediately be performed or paid.

3.3. Guaranty Absolute and Unconditional. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms and conditions of the Contract, and, except as provided in Section 3.4, shall not be subject to any counterclaim, setoff, deduction, or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, SRWA, or any other Person. Without limiting the foregoing, the obligations of the Guarantor shall not be released, discharged, or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

A. the extension or renewal of this Guaranty Agreement or the Contract up to the specified Terms of each agreement;
B. any failure, omission or delay by SRWA in the exercise of any right, power or remedy conferred on SRWA with respect to this Guaranty Agreement or the Contract, except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

C. any permitted transfer or assignment of rights or obligations under the Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance, or other transfer of any of their respective interests in the Project or in, to, or under any of the Transaction Agreements;

D. any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of SRWA or any other Person in any Transaction Agreement or in the Project;

E. any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

F. any failure of title with respect to all or any part of the respective interests of any Person in the Sites or the Project;

G. the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceeding against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty Agreement or any Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty Agreement shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty Agreement that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

H. except as permitted by Section 5.1 below, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

I. any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

J. the failure on the part of SRWA to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty Agreement and to the Company as a condition to the enforcement of Obligations pursuant to the Contract;

K. any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

L. the merger or consolidation of any party to the Transaction Agreements into or with any other Person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any Person;

M. any legal disability or incapacity of any party to the Transaction Agreements; or
N. the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty Agreement not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (A) through (N) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty Agreement.

3.4. Defenses, Setoffs, and Counterclaims. The Guarantor may exercise or assert any and all legal or equitable rights or defenses that the Company may have under the Contract or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Contract or the Guarantor has expressly waived in Section 3.5 or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, setoffs, or deductions that the Company is permitted to assert pursuant to the Contract, if any. To the extent that any of the matters specified in Section 3.3, subparagraphs (A) through (F) and (H) through (N) would provide a defense to, release, discharge or otherwise affect an Obligation of the Company, the Guarantor’s obligations under this Guaranty Agreement shall be treated the same.

3.5. Waivers by Guarantor. The Guarantor unconditionally and irrevocably waives:

A. notice from SRWA of its acceptance of this Guaranty Agreement;

B. notice of any of the events referred to in Section 3.3, except to the extent that notice is required to be given under the Contract as a condition to the enforcement of an Obligation;

C. to the fullest extent lawfully possible, all notices to the Guarantor that may be required by statute or regulation to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Contract or Applicable Law as a condition to the performance of any Obligation;

D. to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period that may be applicable to guarantors (or parties in similar relationships) that is shorter than the applicable statute of limitations period for the underlying claim;

E. any right to require a lawsuit or other proceeding first against the Company;

F. any right to require a lawsuit or other proceeding first against any Person or the security provided by or under any Transaction Agreement, except to the extent such Transaction Agreement specifically requires a proceeding first against any Person (except the Company) or security;

G. any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

H. the requirement of, or the notice of, the filing of a claim by SRWA in the event of the receivership or bankruptcy of the Company; and

I. all demands upon the Company or any other Person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.
3.6. Payment of Costs and Expenses. The Guarantor agrees to pay SRWA on demand all Fees and Costs incurred by or on behalf of SRWA in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty Agreement against the Guarantor, other than the Fees and Costs that SRWA incurs in performing any of its obligations under a Transaction Agreement when required as a condition to performance by the Company of its Obligations.

3.7. Subordination of Rights. The Guarantor agrees that any right of subrogation or contribution that it may have against the Company as a result of any payment or performance hereunder is fully subordinated to the rights of SRWA hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company or the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty Agreement.

3.8. Separate Obligations. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations under this Guaranty Agreement shall: (a) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty Agreement; (b) give rise to separate and independent causes of action against the Guarantor; and (c) apply irrespective of any waiver or indulgence granted from time to time by SRWA. The Guarantor agrees that this Guaranty Agreement shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by SRWA, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Contract, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

4. Term. This Guaranty Agreement shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully performed and paid.

5. General Covenants

5.1. Consolidation, Merger, Sale or Transfer

A. The Guarantor covenants that during the term of this Guaranty Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (3) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another Person, or permit one or more other Persons to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor Person (if other than the Guarantor) assumes in writing all the obligations of the Guarantor hereunder and, if required by Applicable Law, is duly qualified to do business in the State of California; (2) the successor Person (if other than the Guarantor) delivers to SRWA an opinion of counsel to the effect that its obligations under this Guaranty Agreement are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (3) any such transaction does not result in a change in the Guarantor’s financial condition that would adversely affect the ability of the Guarantor to perform its obligations under this Guaranty Agreement.

B. Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the
effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty Agreement as provided in this Section.

5.2. Assignment. Except as provided in Section 5.1, this Guaranty Agreement may not be assigned by the Guarantor without the prior written consent of SRWA.

5.3. Qualification in California. The Guarantor agrees that, so long as this Guaranty Agreement is in effect, if required by Applicable Law, the Guarantor will be duly qualified to do business in the State of California.

5.4. Consent to Jurisdiction. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty Agreement or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in Stanislaus County, California or in federal courts located in the Eastern District of California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection that it may have to the laying of the jurisdiction or venue of any such Legal Proceeding in any such court.

5.5. Binding Effect. This Guaranty Agreement shall bind and inure to the benefit of SRWA and Guarantor and, subject to Sections 5.1 and 5.2, their successors and assigns.

5.6. Amendments. This Guaranty Agreement may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of SRWA and the Guarantor. Any amendment by SRWA requires action by its Board of Directors.

5.7. Liability Limited to Guarantor. This Guaranty Agreement does not create any obligation of, or right to pursue a remedy against, any director, officer, employee or stockholder of the Guarantor or any Affiliate of the Guarantor for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty Agreement shall be taken against any such director, officer, employee, stockholder, or Affiliate.

5.8. Notices

A. Procedure. Any notice, consent, approval, or other communication (collectively “Notice”) required or permitted to be given under this Contract shall be in writing and delivered either (1) in person, (2) by prepaid, first class U.S. mail, (3) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (4) by email with a confirmed receipt. Any such Notice must be addressed as provided in subsection (B). Any Notice so delivered will be deemed given (1) when delivered in person, (2) three days after deposited in prepaid, first class U.S. mail, (3) on the date of delivery as shown on the overnight courier service receipt, or (4) upon the sender’s receipt of an email from the other party confirming the receipt of the emailed Notice.

B. Notice Addresses. Notices required or permitted to be given under this Contract shall be addressed as follows:

To SRWA:

Stanislaus Regional Water Authority
156 S. Broadway, Suite 270
Turlock, CA 95380
Attn: Robert Granberg, P.E., General Manager
Email: granbergassociates@gmail.com

with a copy to:
Richard P. Shanahan  
Bartkiewicz, Kronick & Shanahan  
1011 22nd Street  
Sacramento, CA 95816  
Email: rps@bkslawfirm.com

To the Company:

XXX

with a copy to:

XXX

Any party may change its contact information by notifying the other party of the change in the manner provided above.

The Guarantor has caused this Guaranty Agreement to be approved and executed by its duly authorized officers as of the day and year first above written.

XXX

By  

________________________________________

________________________________________ [name]

________________________________________ [title]

By  

________________________________________

________________________________________ [name]

________________________________________ [title]

The Guaranty Agreement is accepted and agreed to by the Stanislaus Regional Water Authority:

By:  

Robert Granberg, General Manager

Attest:

________________________________________

Allison Martin, Secretary

Approved as to form:

{00077272.2}
Richard P. Shanahan, General Counsel
TRANSACTION FORM B
PAYMENT BOND FORM
PAYMENT BOND

Bond No.: ____________

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, the Stanislaus Regional Water Authority (“SRWA”) has awarded to _____ (“Company”) the Design-Build Contract for the Regional Surface Water Supply Project (the “Contract”) for the work generally described as follows:

the design and construction of the Regional Surface Water Supply Project facilities and related work

as set forth in the Contract;

WHEREAS, the Company is required by the Contract and by the provisions of California Civil Code division 4, part 6 to furnish a payment bond in connection with the Contract, as hereinafter set forth; and,

WHEREAS, the Contract by this reference is made a part hereof;

NOW, THEREFORE, we, the undersigned Company, as Principal, and ______________, as Surety, a corporation organized and existing under the laws of the State of ______________, duly authorized and in good standing to transact business under the laws of the State of California, as an admitted surety, are held and firmly bound unto SRWA in the sum of $ ______________, the sum being not less than 100% of the total Contract amount payable by SRWA, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Company, its heirs, executors, administrators, successors, assigns or subcontractor shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any of the persons named in California Civil Code section 9100, or shall fail to pay for amounts due under the California Unemployment Insurance Code with respect to such work or labor as required by the provisions of California Civil Code division 4, part 6, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the California Employment Development Department from the wages of employees of the Company and subcontractors pursuant to California Unemployment Insurance Code section 13020 with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that Code, the Surety or Sureties hereon will pay for the same in amount not exceeding the sum specified in the Contract, otherwise the above obligation shall be void.

This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under California Civil Code section 9100, so as to give a right of action to them or to their assigns in any suit brought upon this bond. The Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

The surety waives the provisions of California Civil Code sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties), and 2849 (regarding a surety’s rights as to other security held by the creditor).
In the event suit is brought upon this bond and judgment is recovered, the non-prevailing party shall pay all costs incurred by the prevailing party in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys' fees to be fixed by the court.

IN WITNESS WHEREOF, we have signed this bond this _____ day of ________________.

For Company as Principal:

________________________________________

Name:____________________________________

Title:_____________________________________

For Surety:

________________________________________

Name:____________________________________

Title:_____________________________________

Address to serve Principal and Surety with notices, papers and other documents:

________________________________________

________________________________________

________________________________________

(Seal)

(NOTE: The date of this bond must not be prior to the date of the Contract. Notary acknowledgement for surety and surety's power of attorney must be attached.)
CERTIFICATE OF ACKNOWLEDGMENT BY NOTARY PUBLIC
[California Civil Code § 1189]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California    )
County of _____       )

On _________________ before me, ____________________________, a notary public, personally appeared ____________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature __________________________ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]
TRANSACTION FORM C

PERFORMANCE BOND FORM
PERFORMANCE BOND

Bond No.: __________

KNOW ALL MEN BY THESE PRESENTS,

THAT, WHEREAS, the Stanislaus Regional Water Authority ("SRWA") has awarded to _____ ("Company") the Design-Build Contract for the Regional Surface Water Supply Project (the "Contract") for the work generally described as follows:
the design and construction of the Regional Surface Water Supply Project facilities and related work as set forth in the Contract;

WHEREAS, the Company is required under terms of the Contract to furnish a bond for the faithful performance of the Contract; and,

WHEREAS, the Contract is by reference made a part hereof;

NOW, THEREFORE, we, the undersigned Company, as Principal, and _______________, a corporation organized and existing under the laws of the State of _____, and duly authorized and in good standing to transact business under the laws of the State of California, as an admitted Surety, are held and firmly bound unto SRWA in the penal sum of $___________, the sum being not less than 100% of the total Contract amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

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

As a condition precedent to the satisfactory completion of the said Contract, the above obligation in above-stated amount shall hold good for a period of one year after the recording of the notice of completion, during which time if the Company, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect SRWA from loss or damage made evident during the period of one year from the date of recording of the notice of completion, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the above-stated amount shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Company remains.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.
The surety waives the provisions of California Civil Code sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties), and 2849 (regarding a surety’s rights as to other security held by the creditor).

In the event suit is brought upon this bond and judgment is recovered, the non-prevailing party shall pay all costs incurred by the prevailing party in such suit, including, but not limited to, administrative and consultant costs, and reasonable attorneys’ fees to be fixed by the court.

IN WITNESS WHEREOF, we have signed this bond this _____ day of ______________.

For Company as Principal:

________________________________________
Name: ___________________________________
Title: ___________________________________

For Surety:

________________________________________
Name: ___________________________________
Title: ___________________________________

Address to serve Principal and Surety with notices, papers and other documents:

________________________________________
________________________________________
________________________________________

(Seal)

(NOTE: The date of this bond must not be prior to the date of the Contract. Notary acknowledgement for surety and surety’s power of attorney must be attached.)
CERTIFICATE OF ACKNOWLEDGMENT BY NOTARY PUBLIC  
[California Civil Code § 1189]  

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.  

State of California    )
County of ______    )

On _________________ before me, ____________________________________, a notary public, personally appeared _________________________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _______________________________  (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]
APPENDICES
TO THE
DESIGN-BUILD CONTRACT
FOR THE
REGIONAL SURFACE WATER SUPPLY PROJECT

1. General Design-Build Requirements and Procedures
2. Design-Build Work Submittal Requirements and Review Procedures
3. Construction Work Requirements
4. Design-Build Quality Management
5. Project Technical Requirements
6. Performance Guarantees
7. Pre-Acceptance Testing and Acceptance Test Requirements
8. Property, Easements, and Landowner Coordination
9. Governmental Approvals and Utility Coordination
10. Key Personnel and Approved Subcontractors
11. Required Insurance
12. Public Works, Labor and Wage Requirements
13. State Revolving Fund Requirements
14. Resolution of Company Claims
SOQ Submittal Form C-1 – Transmittal Form and Certification

(To be typed on Respondent Letterhead)

Lindsay Smith, PE
Project Engineer
SRWA Regional Surface Water Supply Project
2020 Research Park Drive, Suite 100
Davis, CA 95618
530-756-5905
lsmithSRWA@westyost.com

Dear Ms. Smith:

__________________________ (the “Respondent”) hereby submits its Statement of Qualifications (SOQ) in response to the Request for Qualifications (RFQ) issued by the Stanislaus Regional Water Authority (SRWA) on ____________, 2018.

As a duly authorized representative of the Respondent, I hereby certify, represent and warrant as follows in connection with the SOQ:

1. The Respondent acknowledges receipt of the RFQ and the following addenda:

<table>
<thead>
<tr>
<th>Addenda No.</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. The submittal from the Respondent has been duly authorized by, and in all respects is binding upon, the Respondent. A Certification of Authorization that evidences my authority to submit the SOQ and bind the Respondent is attached hereto.

3. The insurance coverage required by the RFQ will be provided or brokered by __________, as evidenced by such firm’s letter of intent submitted herewith.

4. All firms that will be significant participants in providing services under the Design-Build Contract (the “Participating Firms” and key management personnel “Key Project Team Members”) are identified in the SOQ.

5. The Respondent and each major Participating Firm have submitted all information that is required by the RFQ. To the best knowledge of the Respondent, all such information is correct and complete.
6. All information and statements contained in the SOQ are current, correct and complete, and are made with full knowledge that the SRWA will rely on such information and statements in evaluating Respondents.

7. The SOQ has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFQ.

8. Neither the Respondent nor any Participating Firm is currently suspended or debarred from doing business with any governmental entity.

9. Neither the Respondent nor any Participating Firm is currently a debtor in any bankruptcy proceeding.

10. The Respondent and all Participating Firms have paid all taxes and fees due by the United States Government, the State of California (if applicable), Stanislaus County (if applicable) and are in good standing with these parties.

11. The Respondent has reviewed all of the engagements and pending engagements of the Respondent, and no potential exists for any conflict of interest or unfair advantage.

12. Neither the Respondent nor any Participating Firm has been convicted of any criminal conduct or been found to be in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wage.

13. The Respondent has carefully examined all documents constituting the RFQ and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFQ and such addenda, 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 RFQ and SOQ.

14. The Respondent has reviewed and understands the requirements of the RFQ and all addenda thereto and, if selected as a Proposer, agrees to all substantive terms and conditions of the RFQ, except as otherwise noted by the Respondent in its SOQ.

15. The Respondent has reviewed, understood and complied with Federal, State and Local equal opportunity requirements and SRWA contract compliance requirements for this RFQ process and will do so in subsequent stages of this selection process.

16. The Respondent, if selected as a Proposer, intends to submit a proposal in response to the Request for proposals to be issued by the SRWA for the Project.

17. The Contact Person who will serve as the primary interface between the SRWA and the Respondent is:

   NAME: ________________________________

   TITLE: ________________________________

   ADDRESS: ________________________________
PHONE: ________________________________
CELL: ________________________________
FAX: ________________________________
EMAIL: ________________________________

We declare under penalty of perjury under the laws of the State of California that the information provided in Respondent’s Statement of Qualifications and related submittal forms and attachments is true and correct.

Name of Respondent: ________________________________

Date: ________________________________

By: ________________________________

_________________________ [name]
_________________________ [title]

By: ________________________________

_________________________ [name]
_________________________ [title]

[If the Respondent is a corporation, the certification must be signed by two authorized corporate officers; if a general partnership, by two or more general partners; if a limited partnership, by one general partner and one general or limited partner; if a limited liability company, joint venture, or other entity, by two authorized members, managers or officers.]
SOQ Submittal Form C-2 – Design, Construction, Acceptance Testing and Startup Experience

1) Design, Construction Acceptance Testing and Startup Experience: provide information requested in Section 4.3.5 in the format shown below. Individual sections of the form may be resized to accommodate project information. Supplemental sheets may also be attached to this form with the project name identified on each sheet.

<table>
<thead>
<tr>
<th>Project Name &amp; Location:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Project:</td>
</tr>
<tr>
<td>□ Design</td>
</tr>
<tr>
<td>□ Construction</td>
</tr>
<tr>
<td>□ Design/Build</td>
</tr>
<tr>
<td>□ Design/Build/Operate</td>
</tr>
<tr>
<td>□ Other __________________</td>
</tr>
<tr>
<td>Respondent Role on Project:</td>
</tr>
<tr>
<td>□ Design</td>
</tr>
<tr>
<td>□ Construction</td>
</tr>
<tr>
<td>□ Design/Build</td>
</tr>
<tr>
<td>□ Design/Build/Operate</td>
</tr>
<tr>
<td>□ Other __________________</td>
</tr>
<tr>
<td>Description of Respondent Role:</td>
</tr>
</tbody>
</table>

A. Applicability and relevance of referenced project to the Project:

B. SOQ submittal team participants (firms):

C. Other key participants (firms):

D. Team structure, management description (describe responsible parties and their roles):

E. Customer and owner (include name, title, organization, address, telephone, email):
<table>
<thead>
<tr>
<th>F. Current status of project (design, construction, or operations phase) and number of years of operation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>G. Description of systems and processes, including size and capacity:</td>
</tr>
<tr>
<td>H. Original construction contract amount:</td>
</tr>
<tr>
<td>I. Percent change orders through construction and cause:</td>
</tr>
</tbody>
</table>
| J. Was the project completed within the original project schedule?  
Please explain if the answer is “no”. |
| K. Procedure for gaining governmental approvals on project and a description of responsible parties: |
| L. Description of any ingenuity and innovation employed on project: |
| M. Respondent’s key personnel: |
| N. Key project contact of Respondent, if different than contact information included in “E” above (name, title, organization, address, telephone, email): |
SOQ Submittal Form C-3 – Key Project Staff

Key Project Staff: provide the information requested on this form for key project staff members as defined in Section 4.3.4. Attach additional pages if necessary.

<table>
<thead>
<tr>
<th>General Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Firm:</td>
</tr>
<tr>
<td>Title:</td>
</tr>
<tr>
<td>Years employed by firm:</td>
</tr>
<tr>
<td>Total Professional Experience:</td>
</tr>
<tr>
<td>Professional Registration and Licenses (type/state/year):</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SRWA Regional Surface Water Supply Project – Specific Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title/Assignment:</td>
</tr>
<tr>
<td>Description of Role/Responsibilities:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commitment(1):</th>
<th>Permitting:</th>
<th>%</th>
<th>Design:</th>
<th>%</th>
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<tbody>
<tr>
<td>Construction:</td>
<td>%</td>
<td>Startup and Testing:</td>
<td>%</td>
<td></td>
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<tr>
<td>Other:</td>
<td>%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Relevant Project Experience(2):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project:</td>
</tr>
<tr>
<td>Location:</td>
</tr>
<tr>
<td>Current Status:</td>
</tr>
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<td>----------------</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Involvement:</th>
<th>from</th>
<th>through</th>
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<table>
<thead>
<tr>
<th>Description of Specific Roles and Responsibilities:</th>
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Notes relative to SOQ submittal Form C-3:

1. Commitment indicates the amount of time (in percent) that the staff person would be available to work on the Project during the permitting, design, construction, and startup 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.

2. Provide this information for as many projects as are applicable. Replicate this form as necessary.
SOQ Submittal Form C-4 – Financial Resources Data Form

Respondent Team Member: ________________________________

Section I Financial Data Summary⁽¹⁾

<table>
<thead>
<tr>
<th>Category</th>
<th>FY -4</th>
<th>FY -3</th>
<th>FY -2</th>
<th>FY -1</th>
<th>FYTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income Statement</strong></td>
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</tr>
<tr>
<td>Operating Revenues</td>
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</tr>
<tr>
<td>Operating Expenses</td>
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<tr>
<td>Depreciation / Amortization</td>
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<tr>
<td>EBIT / Operating Profit</td>
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<tr>
<td>Interest Income</td>
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<tr>
<td>Other Non-Operating Income</td>
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<tr>
<td>(Expense)</td>
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<tr>
<td>EBIT</td>
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### Credit and Other Ratings

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Bond Ratings (please list all bond issues within the last five years with issue date and rating):

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

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1. In the event that no credit rating is available for the DB Contractor from a nationally recognized rating agency, then the DB Contractor, 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 Financial Resources Data Form; and
   (b) a narrative discussion of the long-term credit strength of the DB Contractor.

   DB Contractors shall also provide an explanation or state the reasons that no such credit rating from a nationally recognized credit rating Authority is available.
Section III Other Financial Information

As required by Section 4.3.6.1 of the RFQ, provide the DB Contractor’s audited financial statements for the past 5 fiscal years, including auditor’s opinion, footnotes and other required supplementary information as well as the DB Contractor’s most recently available quarterly statements.

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

______________________________
Name of DB Contractor

______________________________
Name of Designated/Authorized Signatory

______________________________
Signature

______________________________
Title
SOQ Submittal Form C-5 – Safety Record

Per Public Contract Code 22164, a Respondent’s safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

Experience Modification Rate for the most recent three-year period:

Average Total Recordable Injury or Illness Rate for the most recent three-year period:

Average Lost Work Rate for the most recent three-year period:

Is the DB Contractor a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code? Yes ☐ No ☐
ATTACHMENT D

SRWA Procurement Process Conflict of Interest Policy
STANISLAUS REGIONAL WATER AUTHORITY
DESIGN-BUILD CONFLICT OF INTEREST POLICY

1. Purpose and Authority. The purpose of this policy is to adopt and implement a standard organizational conflict of interest policy to govern the Authority design-build solicitation and contract award process. This policy affects the ability of a design-build entity and its team to be considered for the design-build contract. This policy is adopted pursuant to Public Contract Code section 22162 and other applicable law.

2. Definitions. The following definitions apply to this policy:

   a. “Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, or senior management employee of the Person. For purposes of this definition, “control” means the (i) power to directly or indirectly control or direct the management or policies of the specified Person, whether through the ownership of voting rights, partnership or limited liability company interests, contract, or otherwise, or (ii) direct or indirect ownership of 50% or more of the voting securities or interests of that Person.

   b. “Authority” means the Stanislaus Regional Water Authority.

   c. “City” means the City of Ceres or City of Turlock.

   d. “Contract” means the design-build contract for the design and construction of the Project that the Authority intends to enter into with the successful Proposer.

   e. “Person” means an individual, corporation, firm, general partnership, limited partnership, limited liability partnership, limited liability company, company, joint venture, association, trust, federal, state or local government agency, or other legal entity.

   f. “Project” means the Authority Regional Surface Water Supply Project.

   g. “Proposer” means a design-build entity seeking to enter into the Contract and the design-build entity’s material subcontractors, engineers, subconsultants, and vendors who would perform Contract work.

3. General

   a. Organizational conflicts of interest can occur when, because of business relationships with other Persons or other factors or activities (i) the Proposer is unable or potentially unable to render impartial assistance to or advise Authority, (ii) the Proposer's objectivity in performing the Contract work is or might be impaired, or (iii) the Proposer has an unfair competitive advantage.

   b. The Authority recognizes that a Proposer must maintain business relationships with other public and private sector entities in order to continue as a viable business. The Authority will take this reality into account as it evaluates any potential organizational conflict of interest and the appropriateness of proposed measures to mitigate or avoid
potential conflicts. The Authority does not intend to disqualify a Proposer based merely on the existence of a business relationship with another entity. Rather, the Authority would disqualify a Proposer only when the relationship causes a conflict that potentially impairs the Proposer’s ability to provide objective advice and service to the Authority and the potential conflict cannot be avoided or adequately mitigated.

c. In addition to this policy, the design-build procurement also shall be subject to applicable California conflict of interest statutes and regulations.

d. While participating in the design-build procurement and, for the successful Proposer, during the term of the Contract, the Proposer and its Affiliates are prohibited from entering into or seeking an agreement with the Authority to provide construction management, inspection, or other services on the Project.

4. Conflicts. An organizational conflict of interest may exist in the following instances:

a. The Proposer or an Affiliate is under contract to the Authority or a City.

b. The Proposer or an Affiliate has performed engineering or other services for (i) the Authority, or (ii) a City in connection with the Project.

c. The Proposer or an Affiliate has obtained any confidential advice or information from the Authority or a City relating to the Project or the design-build procurement.

d. The Proposer or an Affiliate owns real property in a location where there may be a positive or adverse impact on the value of such property based on the design-build work to be performed under the Contract.

e. The Proposer or an Affiliate is providing services to another Person and the Proposer knows or has reason to believe that the other Person’s interest are, or may be, adverse to the Authority’s or a City’s interest with respect to the Project.

f. The Proposer or an Affiliate has a business, consulting, or contracting arrangement with a Person who is employed or retained by the Authority.

g. The Proposer or an Affiliate has a business, consulting, or contracting arrangement with a member of the Authority Technical Advisory Committee.

h. Any circumstance or situation that could violate Government Code sections 1090 to 1099 concerning financial conflicts of interest in connection with the making of local government agency contracts.

5. Procedure

a. A Disclosure of Potential Conflict of Interest Form (see Attachment A) will be provided to and is to be used by each Proposer to assist in screening for potential organizational conflicts of interest. Each Proposer must review this Design Build Conflict of Interest Policy, review and evaluate its potential organizational conflicts of interest under the policy, and complete the Disclosure of Potential Conflict of Interest Form and submit it together with both the design-build procurement statement of qualifications and (if invited
to submit a proposal) the proposal. If the Proposer determines a potential conflict of interest exists, it also must (i) disclose and explain the potential conflict of interest to the Authority, and (ii) propose remedial, mitigation, or other measures to avoid or adequately mitigate the potential conflict. Disclosure of a potential conflict will not necessarily disqualify a Proposer from becoming shortlisted or awarded the Contract.

b. If the Proposer becomes aware of any changes concerning its disclosure form after the submission of the form and before Contract award, the Proposer shall prepare and submit to the Authority an updated disclosure form.

c. The Authority will review the disclosure forms, any disclosed conflicts, and the appropriateness of any proposed remedial, mitigation, or other measures. The Authority also may request additional information from the Proposer. If a Proposer discloses a potential conflict, the Authority will review and consider the information provided by the Proposer and other available information and determine whether the Proposer has an organizational conflict of interest that (i) makes the Proposer unable or potentially unable to render impartial service to the Authority, (ii) impairs or may impair the Proposer's objectivity in performing the Contract work, or (iii) gives the Proposer an unfair competitive advantage in the procurement. If the Authority determines that the Proposer does have an organizational conflict of interest, then the Authority will consider whether the conflict may be avoided or adequately mitigated by the proposed remedial, mitigation, or other measures. If the Authority determines that the Proposer has an organizational conflict of interest and that it cannot be avoided or adequately mitigated, then the Authority will disqualify the Proposer from further participation in the design-build procurement. The determination of a disqualifying conflict of interest shall be at the sole discretion of the Authority.
Attachment A

STANISLAUS REGIONAL WATER AUTHORITY
DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST FORM

The below-named Proposer declares that it has reviewed the Stanislaus Regional Water Authority Design-Build Conflict of Interest Policy and has determined, to the best of its knowledge and belief, that (check one):

_____ A potential organizational conflict of interest exists as follows:

Describe nature of the potential conflict(s) (attach additional sheets as necessary):

Describe measures proposed to mitigate or avoid the potential conflict(s) (attach additional sheets as necessary):

_____ A potential organizational conflict of interest does not exist.

Proposer: ________________________________

Signature: ________________________________

Title: ________________________________

Date: ________________________________

If a potential conflict has been identified, please provide the name, phone number, and email address for a contact person authorized to discuss this disclosure form with the Authority.

Name: ________________________________

Phone: ________________________________

Email: ________________________________
ATTACHMENT E
Certificate Committing to Use a Skilled and Trained Workforce
Certificate Committing to Use a Skilled and Trained Workforce

I certify and commit on behalf of the Respondent as follows:

[Check one provision as applicable]

_____ If awarded the Design-Build Contract for the Project, Respondent and all of its subcontractors at every tier shall implement and comply with the requirements of Public Contract Code sections 22164(c) and 2601-2602 regarding the use of a skilled and trained workforce (as defined at Public Contract Code section 2601) to perform all the work on the Project. Respondent also acknowledges and agrees that contract terms concerning the skilled and trained workforce requirement, including a provision requiring the contractor to prepare and submit monthly reports demonstrating compliance, will be incorporated into the Design-Build Contract.

_____ Respondent is a party to an applicable project labor agreement (as defined at Public Contract Code section 2500) that binds Respondent and all of its subcontractors at every tier to use a skilled and trained workforce. A copy of the agreement is attached to this certificate.

_________________________________________   Dated: ____________

Signature of Authorized Representative

_________________________________________

Name

_____________________________________

Title
## Reference Documents List

### Disclaimer

The following is a list of Reference Documents for the Project, which is available to Proposers. These documents are provided to Proposers solely for their informational purposes, and this list shall not be considered an appropriate or exhaustive list of information necessary for interested bidders to meet its obligations under the Service Contract. These documents do not represent the optimal and specific Project features that are defined by the RFP and the Service Contract. The recommendations, conclusions, findings, analyses, results or views expressed in the Reference Documents have not been approved or endorsed by the SRWA, and accordingly should not be construed as representing SRWA policy.

The SRWA neither makes any representation nor warranty with respect to, nor assumes any responsibility for the appropriateness, completeness or the accuracy of the Reference Documents. Proposers are solely responsible for conducting their own independent research and due diligence for the preparation of their Proposals and the subsequent delivery of services under the Service Contract. No information derived from any part of the Reference Documents, the RFP or from the SRWA or any of its agents, employees, contractors, advisors or consultants, shall relieve the Proposer from any risk or from fulfilling all terms of the Service Contract.

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