



**ENGINEERING & OPERATIONS
BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
December 15, 2014
9:00 AM
Approximate Meeting Time: 3 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE NOVEMBER 17, 2014 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

3. PUBLIC COMMENTS

Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.

Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.

DISCUSSION ITEMS

4. Rebate Application for Turf Removal and Synthetic Turf
5. MNWD & ETWD Inter-tie Construction Contract Award
6. La Siena Mainline Construction Contract Award
7. Valve Replacements Construction Contract Award
8. Tree Maintenance Multi-Year Service Agreement
9. Amendment No. 1 to On-Call Asphalt and Concrete Repair Services Fiscal Year 2014-15 and Change of Contractor

INFORMATION ITEMS

10. Operations Facilities Update

11. Late Items (Appropriate Findings to be Made)

- a. Need to take immediate action; and
- b. Need for action came to District's attention after Agenda Posting. [Requires 2/3 vote (5 members) or unanimous vote if less than 2/3 are present]

CLOSED SESSION

12. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8a Closed Session will be conducted regarding the following:

Property: 4 Liberty, Aliso Viejo, 92656

Under Negotiation: Price and terms of payment

Real Property Negotiators: Joone Lopez, Matt Collings, Kevin Turner, Mike Hartel

ADJOURNMENT

The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 831-2500 at least forty-eight (48) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least forty-eight (48) hours prior to the scheduled meeting.

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than seventy-two (72) hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed except that, if such writings are distributed immediately prior to, or during the meeting, they will be available in the Board meeting room and on the District website at www.mnwd.com.



**DRAFT
MINUTES OF THE SPECIAL MEETING OF THE
ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT**

November 17, 2014

A Special Meeting of the Engineering & Operations Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 8:30 AM on November 17, 2014. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Director/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived 8:34 a.m.)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Marc Serna	Director of Engineering & Operations
Gina Hillary	Director of Human Resources
Eva Plajzer	Assistant Director of Engineering
Todd Novacek	Assistant Director of Operations
Kelly Winsor	Assistant to the General Manager
Pat Giannone	Bowie, Arneson, Wiles & Giannone
Paige Gulck	Board Secretary
Vivian Lim	Recording Secretary
Drew Atwater	MNWD
Ruth Zintzun	MNWD
Ray McDowell	MNWD
Rod Woods	MNWD
Todd Dmytryshyn	MNWD
Megan Geer	MNWD
Phil Tsunoda	Mayor, City of Aliso Viejo
Carol Gamble	Mayor, City of Rancho Santa Margarita

#2.

1. CALL MEETING TO ORDER

The meeting was called to order by Scott Colton at 8:30 a.m.

2. APPROVE THE MINUTES OF THE OCTOBER 13, 2014 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY RICHARD FIORE AND SECONDED BY GARY KURTZ, MINUTES OF THE OCTOBER 13, 2014 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH THE DIRECTORS SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE, , ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.

3. PUBLIC COMMENTS

None.

PRESENTATION ITEMS

4. OATH OF OFFICE

The Secretary will administer the Oath of Office to the newly appointed Board Member for Division 6.

Phil Tsunoda, Mayor of City of Aliso Viejo, administered the Oath of Office to the newly appointed Board Member, Duane Cave, for division 6.

Brian Probolsky arrived at 8:34 a.m.

DISCUSSION ITEMS

5. Bypass Pump Purchase

Todd Novacek presented this item. It is recommended that the Board approve the purchase of a new bypass pump from Xylem/Godwin for \$143,900. Discussion ensued regarding pump usage and cost.

6. Mathis-Oso Bypass Construction Contract Award

Eva Plajzer presented this item. It is recommended that the Board award the construction services contract to Paulus Engineering, Inc. in the amount of \$639,700; authorize the General Manager to execute the contract; and authorize the General Manager or designee to authorize change orders up to 10% of the contract value. Discussion ensued regarding impact, location change, and budget.

7. Rebate Application for Turf Removal and Synthetic Turf

Matt Collings presented this item. It is recommended that the Board authorize the General Manager or her designee to consider the rebate application for the identified project without a limitation on the maximum allowable acreage for each project. Discussion ensued regarding the inspection of the location, current process, and policy.

INFORMATION ITEMS

8. Quarterly Capital Improvement Program Report

Eva Plajzer presented the Quarterly Capital Improvement Program Report.

ADJOURNMENT

The meeting was adjourned at 9:19 a.m.

Respectfully submitted,

Vivian Lim
Recording Secretary



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** December 15, 2014

FROM: Matt Collings, Assistant General Manager

SUBJECT: Rebate Application for Turf Removal and Synthetic Turf

DIVISION: District-wide

SUMMARY:

Issue: The District has received several rebate applications that exceed the maximum allowable acreage for turf removal and/or synthetic turf installation as defined in the approved Board policy.

Recommendation: It is recommended that the Board of Directors consider the rebate application for the identified project without a limitation on the maximum allowable acreage for each project and direct staff accordingly.

Fiscal Impact: Sufficient funds are available within the Water Use Efficiency Fund to fund the identified rebate application. Additional information is provided within the staff report.

BACKGROUND:

More than half of the water used at the District is for outdoor landscapes. Water efficient landscapes can decrease water use up to 70 percent through a combination of proper plant selection and irrigation technology. However, the cost of installing climate-applicable plants is sometimes an obstacle to turning traditional grass landscapes into more water-efficient environments. The District's turf replacement program is designed to help residents, businesses, and public agencies make that conversion. Turf removal rebates are available for up to \$3.50 per square foot with \$2.00 per square foot from the Municipal Water District of Orange County (MWDOC) and \$1.50 per square foot in supplemental funding from the District. The District will provide an additional \$1.50 per square foot for synthetic turf installations.

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Rebate Applications for Turf Removal and Synthetic Turf

November 15, 2014

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However, the current program provides limitations on the amount of turf removal and/or synthetic turf installation that qualifies for the rebate.

- Residential Customers: A maximum of 1,000 square feet per customer for turf removal and synthetic turf installation.
- Commercial customers: Turf removal is limited to 3,000 square feet per customer and synthetic turf installation is limited to 3,000 square feet.

All rebates from the District are funded through the Water Use Efficiency Fund using the incremental revenue generated from the higher consumption tiers (Tiers 4 and 5) in the water budget-based rate structure.

DISCUSSION:

In recent months, the District has expanded its outreach efforts to promote water use efficiency in response to the drought emergency. Customers have responded with requests for turf removal for more than 1,080,000 square feet from seven different commercial and irrigation use-sites along with a request for more than 440,000 square feet of synthetic turf installation. The District has received nine additional requests from customers to remove more than 1.6 million square feet of turf and install approximately 178,000 square feet of synthetic turf. Table 1 identifies the customers and the rebate requests for each of the programs.

Table 1 – Rebate Requests

Customer	Proposed Turf Removal (Sq. Feet)	Proposed Synthetic Turf Installation (Sq. Feet)	Proposed Rebate Value (\$)
El Niguel Country Club (1)	520,000	NA	\$390,000
Aliso Viejo Country Club	1,045,440	174,240	\$1,829,520
Resident – Acct # 1-49750-0	1,624	1,624	\$4,872
Resident – Acct # 3-14564-0	1,518	NA	\$2,277
Resident – Acct # 3-08836-4	2,000	NA	\$3,500
Resident – Acct # 8-10055-5	1,250	NA	\$1,875
Resident – Acct # 2-03854-3	1,845	1,845	\$5,535
Baja Finisterra Condominium Association	4,314	NA	\$6,471
Briosa Owners' Association	24,000	NA	\$36,000
Total	1,601,991	177,709	\$2,280,050

- (1) The El Niguel Country Club is requesting \$2.75 per square foot to fund their project, which would require an incentive of \$0.75 from the District. The reduced rebate request is based on the actual costs incurred by the El Niguel Country Club for the first phase of the project. The actual cost to the District to fund the

Rebate Applications for Turf Removal and Synthetic Turf

November 15, 2014

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first phase was less than 40% of the District's authorization leaving more than \$400,000 remaining in the original authorization.

The values provided in the table above are based on estimates from each of the project proponents and may vary as each project becomes more defined. The proposed rebate value does not include the \$2.00 per square foot from MWDOC and is only based on the supplemental incentive provided by the District. The proposed rebate incentives for the identified projects would be funded from the Water Use Efficiency Fund. A summary of the fund balance, anticipated expenditures, adopted budget, and proposed additional rebate requests is provided below.

Water Use Efficiency Fund	
Balance (as of 6/30/14)	\$6,691,089
Fiscal Year 2014-2015 Expenditures:	
Administration	\$530,325
Rebate and Outreach Programs	\$1,438,203
Previously Authorized Turf Projects (1)	\$1,831,892
Proposed Turf Removal Projects	\$2,280,050
Subtotal of Expenditures	\$6,080,470
Fiscal Year 2014-2015 Revenues:	
Water Efficiency Rate Revenue	\$3,350,000
Investment Income	\$120,000
Subtotal of Revenues	\$3,470,000
Projected Balance (as of 6/30/15)	\$4,080,619

- (1) The previously authorized turf removal projects was reduced from \$2,235,093 by \$403,201 based on the actual costs incurred for the El Niguel Country Club – Phase 1 project.

As a condition for the rebate, all of the projects are required to be completed within the next 12 months. Staff is recommending the Board remove the maximum allowable acreage to allow the General Manager or her designee to consider the identified project application. Removal of the maximum acreage by the Board of Directors does not constitute an approval of the rebate application, but allows each application to be considered for the full amount of turf removal or synthetic turf installation.



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** December 15, 2014

FROM: Marc Serna, Director of Engineering and Operations
Eva Plajzer, Assistant Director of Engineering

SUBJECT: MNWD & ETWD Inter-tie Construction Contract Award

DIVISION: District-wide

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Proposals (Bids) for the Moulton Niguel Water District (MNWD) Inter-tie to El Toro Water District (ETWD) 24-inch R-6 Fill Line, Project No. 2006.099.

Recommendation: It is recommended that the Board of Directors award the construction services contract to T.E. Roberts, Inc. in the amount of \$362,400; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

Fiscal Impact: SMWD is responsible for all costs associated with this project per the Interconnection Agreement executed on December 19, 2013. To date, SMWD has reimbursed MNWD \$52,608 for design services.

BACKGROUND:

The MNWD and ETWD Inter-tie project will connect the MNWD potable system to ETWD’s potable system. This project was initiated through an agreement between SMWD, ETWD, and MNWD to allow transfer of SMWD potable water to ETWD via MNWD. In addition, this project will allow future Baker Water Treatment Plant water supply from the South County Pipeline (SCP) to reach ETWD as ETWD does not have a direct connection to the SCP. In December of 2013, MNWD, ETWD, and SMWD executed an interconnection agreement for this project. SMWD assumes all financial responsibility for the project while MNWD manages the design and construction.

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MNWD ETWD Inter-tie Construction Contract Award

December 15, 2014

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Construction documents for the inter-tie improvements were prepared by Tetra Tech, Inc. Construction work will include a flow meter, 200-feet of cement mortar lined and coated steel pipe, connection to MNWD's 30-inch Diemer line, connection to ETWD's 24-inch R-6 reservoir fill line, and various appurtenances.

DISCUSSION:

A request for bids was issued to seven qualified construction contractors. The District received seven sealed bids for the subject contract on November 24, 2014. The table below summarizes the received bids:

Firm	Bid
T.E. Roberts, Inc.	\$362,400
E.J. Meyer Company	\$454,444
GCI Construction, Inc.	\$475,400
Paulus Engineering, Inc.	\$482,590
ARB Inc.	\$553,000
Trautwein Construction, Inc.	\$586,750
Leatherwood Construction, Inc.	\$744,250
Engineer's Estimate	\$420,000

Staff has determined that the lowest responsible and responsive bidder is T.E. Roberts. Staff has completed its review of the contract documents and has determined that they are in order. T.E. Roberts has performed good quality work in the past for the District and is well-qualified to perform this type of work.

MNWD ETWD Inter-tie Construction Contract Award

December 15, 2014

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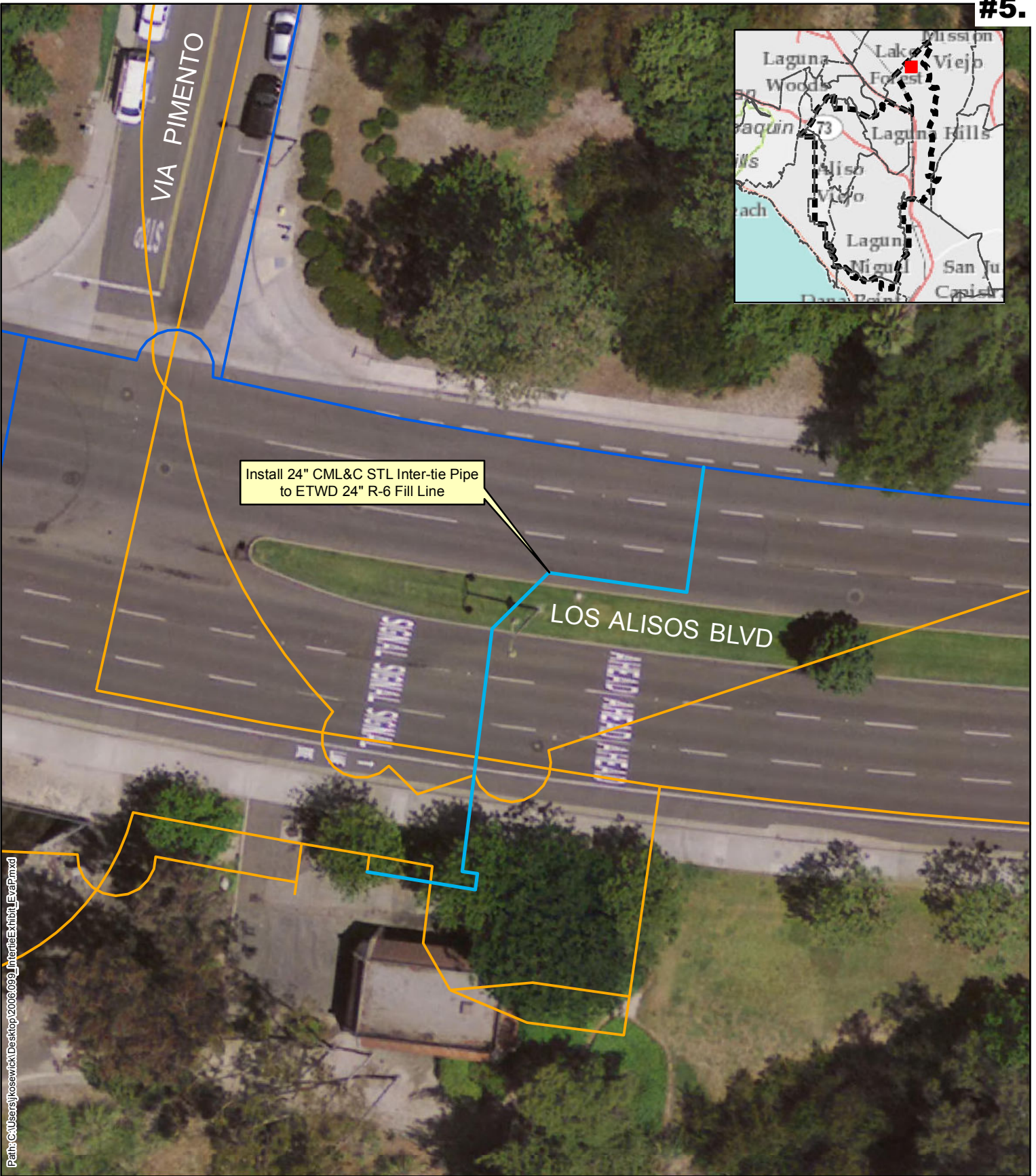
SUMMARY OF PROJECT BUDGET:

	Project Budget	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$69,500	\$69,500	\$0	\$69,500
Geotechnical	\$10,000	\$10,000	\$0	\$10,000
Construction	\$351,500	\$362,400	\$36,240	\$398,640
Other (Legal, District Labor)	\$25,000	\$25,000	\$0	\$25,000
Totals	\$456,000	\$466,900	\$36,240	\$503,140



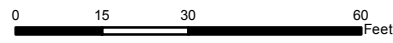
Currently Proposed Amount

Attachment: Exhibit A – Location Map



Path: C:\Users\jrosewick\Desktop\2006.099\Intertie\Exhibit_LavaP.mxd

- Inter-tie Line
- Active Distribution Main
- Active Transmission Main



Scale = 1:400

Exhibit A
Location & Improvements Map
MNWD Inter-tie to
ETWD 24\"/>

Project No. 2006.099



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** December 15, 2014

FROM: Marc Serna, Director of Engineering and Operations
Rod Woods, Principal Engineer

SUBJECT: La Siena Mainline Construction Contract Award

DIVISION: 5

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Proposals (Bids) for the La Siena Mainline Replacement, Project No. 2014.007.

Recommendation: It is recommended that the Board of Directors award the construction services contract to T.E. Roberts, Inc. in the amount of \$568,332; authorize the General Manager to execute the contract; and authorize the General Manager or designee to authorize change orders up to 10% of the contract value.

Fiscal Impact: Project No. 2014.007 is budgeted in Fund 7, Rehabilitation and Replacement with a current project budget of \$250,000. The proposed project budget is \$699,165. There are sufficient funds in the existing Fiscal Year to fund the additional cost through a budget transfer from the Potable Water Projects per Asset Management line item in the 10-year Capital Improvement Program.

BACKGROUND:

The La Siena Mainline Replacement Project is located within a condominium complex in the City of Laguna Niguel. This condominium complex along with the associated infrastructure was constructed in the late 1980s.

Following several leaks, it was determined that the waterline failures were limited to a few segments of pipeline. Staff performed a number of exploratory excavations to determine the extent of the pipeline that needs to be replaced.

Staff has also been working closely with the condominium homeowners association (HOA) regarding the timing of the work contemplated. The HOA plans to reconstruct its

#6.

La Siena Mainline Construction Contract Award

December 15, 2014

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road sections immediately following the District's completion of the waterline replacement.

In addition to the waterlines, there have been a number of valve failures throughout the tract. Staff estimates that approximately half of the valves in the tract need to be replaced. The scope of the project will replace all valves within the HOA.

Construction documents for the La Siena Mainline Replacement project were prepared by Lee & Ro, Inc. Construction work will include: removal and replacement of all ductile iron mainline, slip-lining segments that cannot be installed by conventional trenching methods, and replacing all valves within the tract.

DISCUSSION:

A request for bids was issued to six qualified construction contractors. The District received five sealed bids for the subject contract on November 18, 2014. The table below summarizes the received bids:

Firm	Bid
T.E. Roberts, Inc.	\$568,332
Paulus Engineering, Inc.	\$617,738
Shoffeitt Pipeline, Inc.	\$640,850
GCI Construction, Inc.	\$693,911
Kennedy Pipeline Construction	\$697,470
Engineer's Estimate	\$520,930

Staff has determined that the lowest responsible and responsive bidder was T.E. Roberts, Inc. Staff has completed its review of the contract documents and has determined that they are in order. T.E. Roberts, Inc. has performed quality work in the past for the District and appears to be well-qualified to perform this type of work.

The current project scope expanded from the scope of work as identified in the 2014-15 Capital Improvement Program. To accommodate the expansion of scope for additional pipe segments and valves, the budget for the project will be increased to \$699,165 from the current budget of \$250,000.

La Siena Mainline Construction Contract Award

December 15, 2014

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SUMMARY OF PROJECT BUDGET:

	Project Budget	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$49,000	\$49,000	\$0	\$49,000
Geotechnical	\$15,000	\$15,000	\$0	\$15,000
Construction	\$176,000	\$568,332	\$56,833	\$625,165
Other (Legal, District Labor)	\$10,000	\$10,000	\$0	\$10,000
Totals	\$250,000	\$642,332	\$56,833	\$699,165



Currently Proposed Amount

Attachment: Exhibit A – Location and Improvement Map

Path: G:\GIS\Projects\Projects_2014\LaSienaMainlineReplacement\Exhibit_A\Woods_2014\Maps\LaSienaMainlineReplacement_2014.mxd



- Slipline/ Pipe Burst Segments
- La Siena Mainline Replacement
- Valve Replacement Locations
- Existing Waterline



**La Siena Mainline Replacement
Project No. 2014.007
Location & Improvements Map
Exhibit "A"**



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** December 15, 2014

FROM: Marc Serna, Director of Engineering and Operations
Rod Woods, Principal Engineer

SUBJECT: Valve Replacements Construction Contract Award

DIVISION: 1, 2, 3, 4, 5, and 6

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Proposals (Bids) for the FY 2014-15 Valve Replacements, Project No. 2014.008.

Recommendation: It is recommended that the Board of Directors award the construction services contract to Paulus Engineering, Inc. in the amount of \$531,852; authorize the General Manager to execute the contract; and authorize the General Manager or designee to approve change orders up to 10% of the contract value.

Fiscal Impact: Project No. 2014.008 is budgeted in Fund 7, Rehabilitation and Replacement with a current project budget of \$600,000. The proposed project budget is \$655,037. \$55,037 will be transferred to the project budget from Fund 7 Unanticipated Projects.

BACKGROUND:

Many of the District’s valves have exceeded their useful life and require replacement to ensure reliability. The 2014-15 Valve Replacements Project will replace key valves that have been identified by Operations personnel. There are six distinct areas wherein the valve replacements will occur. These areas are within the jurisdiction of four cities: Laguna Niguel, Laguna Hills, Aliso Viejo and Mission Viejo. One of the areas involves sewer force main valves; one of the areas involves recycled water system valves; the remaining four areas involve potable water system valves. The scope of work for each area is unique with specific sequence of events required to accomplish the designated work. The total number of valves to be replaced or installed is 23.

#7.

Valve Replacements Construction Contract Award

December 15, 2014

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Construction documents for the 2014-15 Valve Replacements project were prepared by AKM Consulting Engineers utilizing the existing on-call services agreement. The work will require significant coordination with Operations personnel due to the amount of isolation that will be required.

DISCUSSION:

A request for bids was issued to six qualified construction contractors. The District received six sealed bids for the subject contract on November 18, 2014. The table below summarizes the received bids:

Firm	Bid
Paulus Engineering, Inc.	\$531,852
T.E. Roberts, Inc.	\$578,100
Shoffeitt Pipeline, Inc.	\$619,700
Kennedy Pipeline Construction	\$789,495
GCI Construction, Inc.	\$790,879
E.J. Meyer Company	\$979,999
Engineer's Estimate	\$484,500

Staff has determined that the lowest responsible and responsive bidder was Paulus Engineering, Inc. Staff has completed its review of the contract documents and has determined that they are in order. Paulus Engineering, Inc. has performed quality work in the past for the District and is well-qualified to perform this type of work.

Valve Replacements Construction Contract Award

December 15, 2014

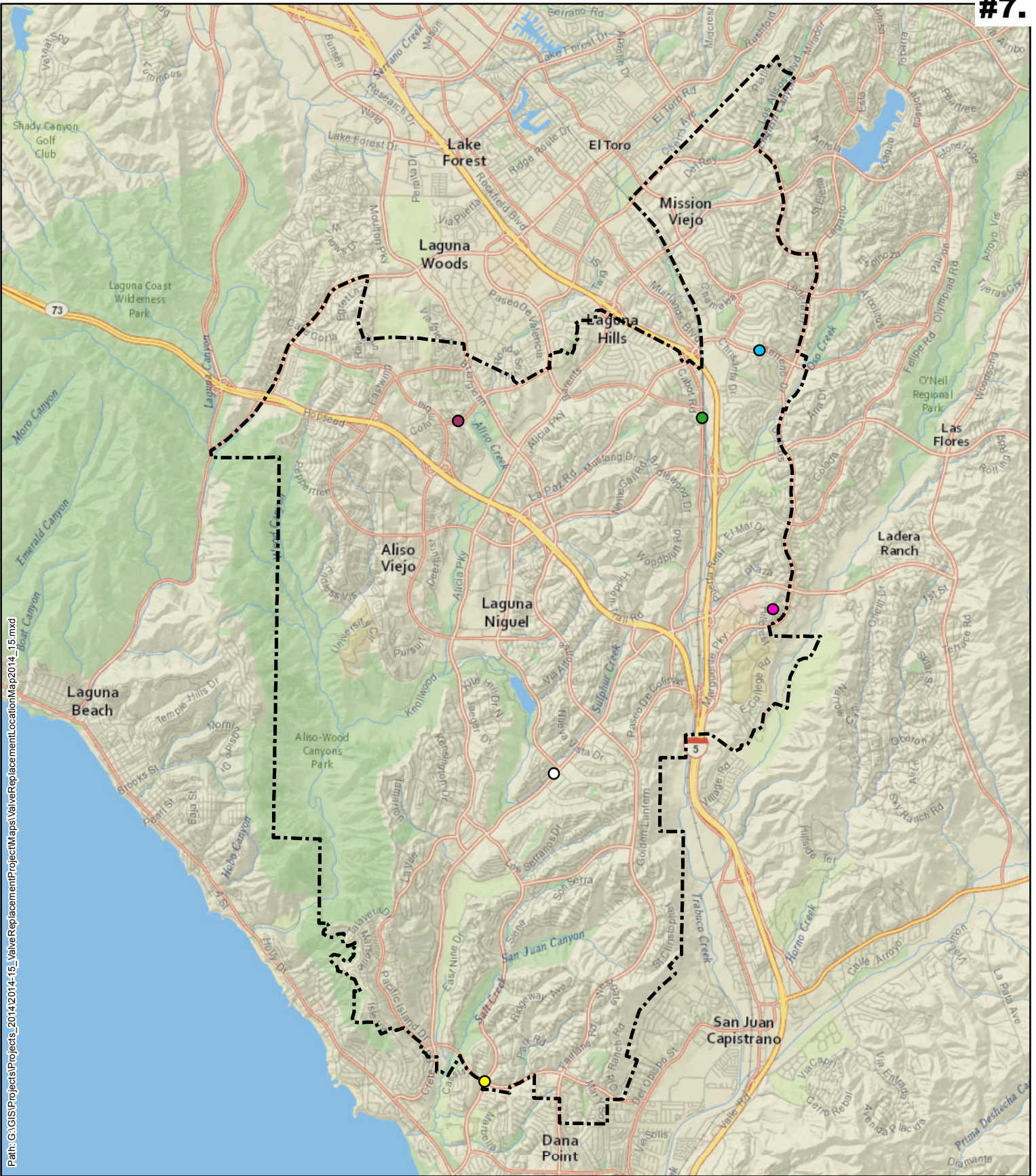
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SUMMARY OF PROJECT BUDGET:

	Project Budget	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$30,000	\$30,000	\$0	\$30,000
Geotechnical	\$15,000	\$15,000	\$0	\$15,000
Construction	\$530,000	\$531,852	\$53,185	\$585,037
Legal, Permits, District Labor	\$25,000	\$25,000	\$0	\$25,000
Totals	\$600,000	\$601,852	\$53,185	\$655,037

 Currently Proposed Amount

Attachment: Exhibit A – Location Map



Path: G:\GIS\Projects\Projects_2014\2014-15_ValveReplacement\Project\Map\ValveReplacementLocationMap2014_15.mxd

Valve Replacement Locations:

- PW-1 HILLCREST/MONTROSE
- PW-5 CABOT ROAD (SOUTH OF LA PAZ)
- PW-6 CROWN VALLEY PKWY (ADELANTO DR TO NUEVA VISTA DR)
- PW-7 LA PAZ RD (CHRISANTA DR TO MARGUERITE PKWY)
- RW-1 ALISO VIEJO PARKWAY/CEDARBROOK
- WW-1 CAMINO DEL AVION/NIGUEL RD



2014-15 Valve Replacements
Contract No. 2014.008
Location Map
Exhibit "A"

#8.

Tree Maintenance Multi-Year Service Agreement

December 15, 2014

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DISCUSSION:

Staff issued a Request for Proposal (RFP) to five (5) local tree maintenance contractors and received proposals from two (2) contractors. The RFP indicated a three-year agreement term to include Fiscal Years 2014-15 through 2016-17.

Summary of Proposals for Tree Maintenance Services	
Contractor	Total
Great Scott Tree Service, Inc.	\$225,701
West Coast Arborists, Inc.	\$235,130
Gruett Tree Company, Inc.	Non-responsive
Peterson's Tree Company, Inc.	Declined to participate
Arborwell	Declined to participate

Contractor's proposal amounts are based on estimated service levels listed in the RFP. Although the low bid proposal exceeds the requested agreement amount, staff feels that a budget of \$215,000 is sufficient for the services required by the District over the three year period of the agreement. Therefore, based on their pricing, staff is recommending the Board enter into an agreement with Great Scott Tree Service, Inc., for a not to exceed amount of \$215,000 for a three (3) year agreement term.

A draft service agreement is provided as Attachment 1 for reference. The District's standard ten (10) day termination clause is included as a provision in the agreement.

Attachment: Form of Services Agreement for Tree Maintenance Services Fiscal Years 2014-15 through 2016-17

**CONTRACT SERVICES AGREEMENT BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
GREAT SCOTT TREE SERVICE, INC.
FOR ANNUAL TREE MAINTENANCE SERVICES
FISCAL YEAR 2014-2017; OM12-13.018**

This Agreement is made and entered into as of _____, 2014 (the “Effective Date”), between the Moulton Niguel Water District, a California water district (hereafter "MNWD"), and Great Scott Tree Service, Inc., a California corporation (hereafter "Provider"). MNWD and Provider may be referred to individually as “party” or together as “parties” in this Agreement.

RECITALS

A. MNWD requires services for tree maintenance services for various facilities and facility sites MNWD owns or operates, as further described in this Agreement (“tree maintenance service”).

B. Provider represents that it has the necessary State business license, equipment, land, permits, and skills required to perform the tree maintenance services pursuant to the terms and standards set forth in this Agreement.

NOW, THEREFORE, MNWD and Provider agree as follows:

Section 1. PROVIDER'S SERVICES

1.1 Provider will perform the tree maintenance services including the provision of labor, and materials (not otherwise provided by MNWD itself), described in this section and in **Exhibit 1** attached to and incorporated in this Agreement for various facilities throughout MNWD, as directed by MNWD representatives from time to time during the term of this Agreement. The quantity of work to be performed and materials provided outlined in **Exhibit 1** is only an estimate. The expected scope and amount of tree maintenance services to be performed is based on MNWD’s accounting of the amount and types of trees found throughout the MNWD facilities. Some tree maintenance services will be a regularly scheduled and some will be periodic and provided on an as needed basis, to be determined by Provider in consultation with MNWD representatives. Provider acknowledges and agrees MNWD does not guarantee any minimum or maximum amount of work for the tree maintenance services to be provided under this Agreement and MNWD may use other service providers for tree maintenance services throughout the fiscal year, in its sole discretion.

1.2 Provider shall furnish all labor, materials (not otherwise provided by MNWD) and supplies, tools and equipment as may be required to perform the tree maintenance services under this Agreement, and complete all work pursuant to the tree maintenance services in a thorough, professional and workmanlike manner, and in accordance with generally accepted industry standards. Provider shall maintain and keep current a C-27 Landscape Contractor’s and D-49

#8.

Tree Service Contractors License issued by the State of California (“State”) during the term of this Agreement. A current copy of this license will be kept on file by MNWD.

1.3 Provider will not subcontract out any of the tree maintenance services absent prior written approval by MNWD. In the event MNWD approves any such subcontracting, Provider is required to ensure that subcontractors fully comply with all terms of this Agreement, including but not limited to the insurance requirements set forth in Section.

1.4 MNWD’s staff may make investigations as they deem necessary to determine the ability of the Provider to provide acceptable tree maintenance services to MNWD on a continuing basis during the term of this Agreement. The Provider will furnish MNWD’s representatives all information necessary for this purpose upon request.

1.5 Provider is an independent contractor and not an employee of MNWD. No permitted or required approval of MNWD representatives of costs, schedules, documents, or services of Provider, or investigations thereof, will be construed as making MNWD responsible for the manner in which Provider performs the tree maintenance services. Such approvals and investigations are intended only to give MNWD the right to satisfy itself with the quality of work performed by Provider.

1.6 No work shall be performed on days observed as “MNWD Holidays” listed below (9 days per year), except with written permission of MNWD representatives.

New Years Day – January 1
Presidents Day – Third Monday in February
Memorial Day – Last Monday in May
Independence Day – July 4
Labor Day – First Monday in September
Veterans Day – November 11
Thanksgiving Day in November
Day following Thanksgiving Day in November
Christmas Day – December 25

Section 2. SAFETY STANDARDS, COMPLIANCE WITH LAW

2.1 Provider’s tree maintenance services and operations shall be conducted so as to provide maximum safety to Provider’s employees and to the general public, and in compliance with all safety laws, rules and regulations of the State, federal, and local agencies. It is Provider’s responsibility to have a current Safety Manual that meets SB 198 requirement for injury and illness prevention and have that Safety Manual on file with MNWD.

2.2 Provider shall have OSHA certification of aerial equipment and the most recent California Highway Patrol Commercial Vehicle Inspection report for equipment to be used throughout the term of this Agreement. All personnel performing work under this Agreement must be qualified and trained in the tree maintenance industry. Provider’s staffing manager shall be ISA Certified Arborist and fluent in the English language. At all times during the tree maintenance services, the Provider shall have work crews on site that are represented by

supervisor(s) who can communicate instructions given by MNWD representatives, and other authorities as applicable.

2.3 Provider shall comply with all applicable laws, rules and regulations of the State, federal, and local agencies in performing the tree maintenance services under this Agreement.

2.4 Pursuant to the provisions of the California Labor Code for public works, Provider and any subcontractors of Provider shall pay no less than the prevailing wages established by the Director of the Department of Industrial Relations of the State. Copy of wage schedules can be obtained from MNWD. This Agreement is governed by the provisions of the Labor Code relating to prevailing wage rates (Sections 1770-17981 inclusive). Provider shall pay prevailing wages in accordance with Labor Code Section 1771 *et seq.* and comply with the terms below in a-f. In the event of any discrepancies between this Section 2.3 and any of the statutory sections cited below, or any successor provisions thereto, the statutory terms and requirements shall control and are incorporated prospectively by this reference.

a. Provider shall post a copy of the general prevailing rate of per diem wages at the job site pursuant to Section 1773.2 of the California Labor Code. Copies of the prevailing rate of per diem wages are on file at MNWD’s principal office and shall be made available upon request.

b. Provider shall comply with the certified payroll record and other requirements of Labor Code Section 1776, and furnish certified copies to MNWD, and employees and State agencies, no later than ten days after receipt of written request.

c. Provider shall, as a penalty to the State or MNWD, forfeit not more than Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rates as determined by the Labor Commissioner for any work or craft in which such worker is employed under the Agreement by the Provider or by any subcontractor under Provider in accordance with Section 1775. The difference between such stipulated prevailing wage rates and the amount paid to such worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by Provider. MNWD will withhold penalties from Provider’s payments then due upon receipt of notification by the State Department of Industrial Relations divisions.

The specified wage rates are minimum rates only, and MNWD will not consider and shall not be liable for any claims for additional compensation made by the Provider because of payment by Provider of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified shall be adjusted by the Provider at its own expense.

d. Provider shall comply with the provisions of Section 1777.5 relating to employment of indentured apprentices on public works.

e. Provider shall, as a penalty to the State or MNWD, forfeit Twenty-five dollars (\$25.00) for each worker employed under the Agreement by the Provider for each calendar day during which the worker is required or permitted to work more than eight (8) hours

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in any one calendar day and forty (40) hours in any one calendar week in violation of Section 1813. Work performed by employees of Provider in excess of eight (8) hours per day, and forty (40) hours during any one (1) week, shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours during any one week, at not less than one and one-half (1 ½) times the basic rate of pay.

f. These requirements apply to any approved subcontractors of Provider.

Section 3. TERM

3.1 The term of this Agreement is from the Effective Date to and including **June 30, 2017**, (“expiration”) unless otherwise terminated earlier by either party pursuant to Section 5.

Section 4. COMPENSATION, PAYMENT

4.1 Compensation for the tree maintenance services provided under this Agreement will be determined in accordance with the Fee Proposal Form in **Exhibit 2**, which establishes the maximum Unit Cost for each Item Description that will be paid by MNWD during the term of this Agreement. There shall be no increase to the Unit Cost if an adjustment to the number of Provider’s staff or service hours is needed to meet the Agreement requirements. The total compensation paid under this Agreement cannot exceed **Two Hundred Fifteen Thousand Dollars (\$215,000.00)**. Any work performed by Provider, at the written request of MNWD, that is outside the scope of tree maintenance services described under Section 1 above shall be paid at the rates quoted by Provider in advance of the work, as agreed to by MNWD in writing.

4.2 Compensation for tree maintenance services will be billed monthly by Provider in accordance with the MNWD requested format, and will be based upon the compensation structure set forth in Section 4.1. Provider's invoice will account for the location of work performed in addition to other sufficient details of the work and materials provided for the tree maintenance services. MNWD will make payment to the Provider within forty-five (45) calendar days of receipt and approval of the invoices by MNWD. Only one bill per month shall be submitted by Provider, showing invoices for Provider for services performed during the monthly billing period.

4.3 Acceptance and payment by MNWD for tree maintenance services furnished under this Agreement will not in any way relieve the Provider of its responsibility to provide such services in strict accordance with State, federal, and local law. Neither MNWD's acceptance of, nor payment for, any tree maintenance services will be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

Section 5. TERMINATION

5.1 Either party may terminate this Agreement by providing written notice to the other party ten (10) calendar days in advance of the date of termination; provided, MNWD may terminate the Agreement without any advance notice in the event Provider is in material breach of any of the terms of this Agreement, as determined by MNWD in its discretion. Other than as

provided under Section 6, upon termination neither party will have any further duties, obligations, responsibilities, or rights under this Agreement. On any termination, Provider will be entitled to the reasonable value of the tree maintenance services performed for which it has not received prior compensation, subject to any offset from such payment representing MNWD's damages from any material breach of the terms of this Agreement by Provider pursuant to this Section 5. In no event, will Provider be entitled to receive compensation in excess of the compensation specified under Section 4 of this Agreement.

Section 6. INDEMNITY

6.1 Provider shall indemnify, defend and hold harmless MNWD and MNWD's officers, directors, employees and agents, as well as owners of record of all property on which entry will be made to perform the tree maintenance services, from and against all claims, demands, losses, damages, costs, expenses, and legal liability connected with or resulting from (i) injury to or death of persons, including but not limited to employees of MNWD or Provider; (ii) injury to property of MNWD, Provider, or a third party, or to natural resources; and (iii) violation of any State, federal or local law, rule or regulation, including but not limited to environmental laws or regulations, or strict liability imposed by any law or regulation; arising out of, related to, or in any way connected with Provider's performance of this Agreement, except to the extent caused by the sole negligence or willful misconduct of MNWD, or its directors, officers, employees or agents.

Provider acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any State, federal, or local law, rule or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

6.2 Provider shall pay all costs and fees that may be incurred by MNWD in enforcing this indemnity, including reasonable attorney's fees.

6.3 The terms of this Section 6 shall survive the expiration or termination of this Agreement.

Section 7. INSURANCE

7.1 In addition to the requirements set forth below, during the course of the Agreement, Provider will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of Provider in connection with or related to the services or work provided under this Agreement.

7.2 Provider shall not commence work under this Agreement until it has obtained all insurance required by MNWD nor shall Provider allow any allowed subcontractor to commence work until all insurance required has been obtained.

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The general liability and business automobile insurance will be comprehensive in form, for the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to MNWD prior to any cancellation of such policies. All insurance will be issued and underwritten by insurance companies having at least an "A-" policyholder's rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide - Property/Casualty, or better, or as otherwise approved by MNWD. Provider may satisfy the limit requirements set forth below in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by Provider's first or primary policy. All policies shall name MNWD and its directors, officers, employees and agents, as well as owners of record of all property on which entry will be made to perform the tree maintenance services as additional insureds thereunder ("Additional Insureds"). All of the policies of insurance provided hereunder shall be primary insurance and not contribute with any other insurance maintained by the Additional Insureds, and the insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds. In the event any of said policies of insurance are canceled, Provider shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 7 to MNWD.

In the event MNWD consents, and Provider subcontracts any portion of the tree maintenance services under this Agreement, the contract between Provider and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of insurance that Provider is required to maintain pursuant to this Section 7, in accordance with all of the requirements of this Section 7.

7.3 Provider shall take out and maintain at all times during this Agreement the following policies of insurance, **which shall comply with the terms of Section 7.2 as well as the following:**

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employes. This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. Provider shall execute the Certificate required by Section 1861 of the Labor Code on **Exhibit 3** attached to this Agreement prior to commencement of any tree maintenance services.
- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with such aggregate to apply separately to the tree maintenance services. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 6 of this Agreement. This insurance shall name the Additional Insureds using ISO endorsement CG 20 10 11 85, or both CG 20 10 and CG 23 37 forms if later revisions are used.

- (iii) Business Automobile Insurance. Business automobile insurance with a liability limit of not less than \$1,000,000 each accident. The policy shall include coverage for owned, non-owned, and hired vehicles.

7.4 Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Provider or Provider’s insurers. Provider agrees that the provisions of Section 7 shall not be construed as limiting in any way the extent to which Provider may be held responsible for the payment of damages or other costs to MNWD, or any persons or property, resulting from Provider’s activities or the activities of any person or persons for which Provider is otherwise responsible, including Provider’s subcontractors, if any.

Section 8. ADDITIONAL PROVISIONS

8.1 Notices. All notices, bills, and payments will be made in writing and may be given by personal delivery, or by U.S. Mail, postage prepaid, and addressed as follows:

To: MNWD

Correspondence to: Moulton Niguel Water District
 Attn: Director of Engineering & Operations
 26161 Gordon Road
 Laguna Hills, CA 92653

Invoices to: Moulton Niguel Water District
 Attn: Purchasing Department
 P.O. Box 30203
 Laguna Niguel, CA 92607-0203
 (949) 831- 2500
 (949) 831-7991 FAX

To: Provider: Great Scott Tree Service, Inc.
 Attn: Scott P. Griffiths
 10761 Court Avenue
 Stanton, CA 90680
 (714) 826-1750
 (714) 826-1753 FAX

Each party shall provide the other party with written notice of any change of address or telephone number that occurs as soon as practicable.

8.2 Entire Agreement; Severability. This Agreement represents the entire understanding of MNWD and Provider as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties. If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision

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under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

8.3 Assignment. This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, the Provider shall not assign this Agreement, nor any part thereof, nor any monies due, or to become due hereunder, without prior written consent of MNWD. In no event shall any contractual relationship be created between any third party and MNWD.

8.4 Attorney Fees. In the event an action is filed by either party to enforce any rights or obligations under this Agreement, the prevailing party will be entitled to recover all attorney's fees and court costs, in addition to any other relief granted by the court.

8.5 Governing Law/Venue. The provisions of this Agreement will be interpreted and enforced in accordance with the laws of the State. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

8.6 Interpretation. The provisions contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement.

8.7 No Third Party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

8.8 Independent Contractor. It is expressly understood and agreed that Provider is an independent contractor and not an employee of MNWD while engaged in carrying out this Agreement. Provider warrants that it will not represent, at any time or in any manner, that Provider is an employee or agent of MNWD. Provider shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

MOULTON NIGUEL WATER DISTRICT

BY: _____
General Manager

DATE: _____

GREAT SCOTT TREE SERVICE, INC.

BY: _____
Authorized Officer or Representative*

TITLE: _____

DATE: _____

* Complete and attach one of the following: Corporate certificate executed by Corporate Secretary; or, Notarization of Authorized Representative

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CORPORATE CERTIFICATE*

I, _____, certify that I am the Secretary of the corporation named as PROVIDER in the foregoing Agreement; that _____, who signed said Agreement on behalf of Provider, was then President of said corporation; and that said Agreement was duly signed for and on behalf of said corporation by authority of its Governing Body and is within the scope of its corporate powers.

[_____] , Secretary

(CORPORATE SEAL)

*To be completed if Provider is a corporation. If Provider is a joint venture or partnership that includes a corporation(s), a certificate must be obtained from MNWD's office, completed and attached to this page.

EXHIBIT 1**SCOPE OF WORK**

It shall be understood that the Contractor will be required to perform and complete the tree maintenance work in a thorough and professional manner, and to provide all labor, tools, equipment, materials, and supplies necessary to complete all the work in a timely manner, fully satisfying the District's requirements. The following is a summary of the scope of work required to comply with the tree maintenance service agreement:

A. Tree Pruning

The proposed program schedule was developed based on the estimated tree inventory and is subject to modifications during the course of the service agreement. Adjustments to the Tree Maintenance Schedule shall be coordinated with the District's Landscape Manager. The Contractor shall not modify the scope of work without written notification of a change to the Tree Maintenance Schedule and before any variances to the service agreement have been formerly approved by the Landscape Manager in accordance with the provisions of this Request for Proposal.

The Tree Maintenance Schedule for Fiscal Years 2014 through 2017, which includes pruning services, will be determined by means of a site walk with the Contractor and the District's Superintendent of Facilities, to be scheduled after the contract award. This maintenance schedule will be subject to modifications during the course of the service agreement. Adjustments to the Tree Maintenance Schedule shall be coordinated with the District's Superintendent of Facilities. The Contractor shall not modify the scope of work without written notification of a change to the Tree Maintenance Schedule and before any variances to the service agreement have been formerly approved by the Superintendent of Facilities in accordance with the provisions of this Request for Proposal.

Pruning will include structural pruning, crown raising, and crown cleaning in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards. Special projects that are difficult to access require the need for specialty equipment, i.e. 95-foot tower, service request pruning, or pruning to reduce and/or pruning to restore would fall under Crew Rental. Prior to beginning the work, the Contractor shall review with the Landscape Manager various methods, tools, and work scheduling to be used on the project. Unless otherwise indicated, tree pruning shall include but not be limited to acceptable pruning activities. Daily tree pruning operations shall commence no earlier than 7:00 AM and shall be completed each day no later than 4:00 PM.

Limbs one inch (1") in diameter or greater shall be precut to prevent splitting. When there is a chance of bark tearing at the crotch, remove large limbs with three cuts. Make the first cut on the underside of the branch one foot (1') to two feet (2') from the crotch. The undercut should be at least one-third of the diameter. Make the second cut one-inch (1") to three inches (3") further from the crotch than the first. The final cut is made at the crotch in a manner to favor

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the earliest possible covering of the wound by callus growth. Cuts shall not be made so large that they will prevent sap flow. All cut branches three and one-half inches (3½") or larger in diameter shall be lowered by proper ropes to the ground. Any damage caused by dropping limbs shall be repaired within three (3) days at the Contractor's expense and to the satisfaction of the Landscape Manager. All debris resulting from tree pruning operations shall be removed from the work site on a daily basis.

On all trees, including palms, known or suspected to be diseased, pruning tools and cut surfaces shall be disinfected with a ten (10) percent chlorine bleach solution after each cut and between trees where there is danger of transmitting the disease on tools. Fresh solution shall be mixed daily.

Tree Pruning Special Provisions:

1. Contractor shall comply with Standards of CAL OSHA and the American National Standard Institute, Z133 Safety Requirements.
2. Trees requiring maintenance shall be marked with a ribbon at least 48 hours prior to actual work being performed. Ribbons shall be removed by the District's Landscape Manager upon completion of job.
3. Contractor shall notify the residences or affected businesses forty-eight (48) hours in advance of scheduled pruning, if applicable.
4. Contractor shall provide and post "No Parking" signs twenty-four (24) hours in advance of the work. Contractor shall coordinate any "No Parking" notifications with the City in which the work is taking place. Contractor shall be responsible for applying for and securing all required City permits prior to starting work.
5. Contractor shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner, which will cause the least possible interference and annoyance to the public. Work shall be performed by competent certified employees and supervised by an experienced, English speaking supervisor in tree maintenance operations. The Contractor shall be responsible for advance notification to the residents at each work location of the intended tree operations. The Contractor shall be responsible to see that private property and vehicles at work locations are not endangered or damaged during the course of work.
6. Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease and the appropriate utility company notified. Work shall then commence in accordance with instructions from the utility company. In the event that work causes excavation, the Contractor is responsible for properly marking the location and the Contractor is responsible for appropriate notification of Underground Service Alert (USA).

7. No hooks, gaffs, spurs or climbers will be used for anything other than removals.
8. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.
9. When pruning fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.
10. Topping shall not be done unless specifically requested by the Landscape Manager.
11. The specific techniques employed shall be consistent with industry practice for the size and species of tree being trimmed. All dead, broken, damaged, diseased or insect infested limbs shall be removed at the trunk or main branch. All cuts shall be made sufficiently close, ½ inch, to the parent stem so that healing can readily start under normal conditions. All limbs 2" or greater shall be undercut to prevent splitting. The remaining limbs and branches shall not be split or broken at the cut. All crossed or rubbing limbs shall be removed unless removal will result in large gaps in the general outline of the tree.
12. Cut laterals to preserve the natural form of the tree, leaving the head open enough for the branching system to show and permitting the dead material to be easily cleaned out and light to show through the head. Tree foliage shall be reduced by at least fifteen (15%) percent but no more than thirty (30%) percent.
13. Trim to remove dead wood or weak, diseased, insect-infested, broken, low, or crossing limbs. Branches with an extremely narrow angle of attachment should normally be removed.
14. Small limbs, including suckers and waterspouts, shall be cut close to the trunk or branch from which they arise.
15. Heading cuts and/or topping will not be allowed under any circumstances. Heading, rounding over, or stubbing shall not be an accepted practice for reducing the size or the framework of any tree.

B. Pruning for Traffic Clearances

Tree pruning for traffic clearances shall provide clearances of at least fourteen (14') feet and no greater than sixteen feet (16') above finish grade for moving vehicles within District facilities and the traveled roadway, for pedestrians on sidewalks in accordance with standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards under "Pruning to Raise." Clearance trims are performed as required by the District's Landscape Manager. Clearances for adjacent structures and their connecting utility lines (service drops), shall be determined by the Landscape Manager and conform to the following:

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1. The minimum clearance under trees within the street right-of-way shall be fourteen (14') feet over the traveled road, and nine feet (9') over the curb line and the sidewalk side of the tree. When pruning the bottom branches, care shall be given to obtain a balanced appearance as viewed from across the street immediately opposite the tree.
2. Cut to laterals to preserve the natural form of the tree. Remove lateral branches at their point of origin, or shorten the length of a branch by cutting to a lateral, which is large enough to assume leadership.
3. When cutting back, avoid cutting back to small suckers. Remove smaller limbs and twigs in such a manner as to leave the foliage pattern evenly distributed.

C. Pruning Palm Trees

Palm tree pruning shall consist of the removal of all dead fronds, fruit clusters and other vegetation from the trunks of all palms as identified in Program Schedule or as directed by the District's Landscape Manager in a manner selected by the Contractor and approved by the Landscape Manager and in accordance the following:

1. The use of climbing spurs or spike shoes for the purpose of climbing palm trees is prohibited, unless specifically approved by the Landscape Manager. The Contractor shall be required to use an aerial tower with sufficient height to reach the crown for the purpose of pruning District Palm trees.
2. Palm Skinning (additional service) - Dead fronds, and parts thereof, including stubs, can be removed along the entire length of the trunk of each palm, leaving a clean unsheathed appearance slicked from the ground to approximately twenty-four to thirty-six (24" - 36") inches from the base of the green fronds at the top of the tree. The frond stubs (cut close to trunk) can be left in place within a span of at least eighteen (18") inches but no greater than thirty-six (36") inches.

D. Tree Removals

The District will prepare a list of trees to be removed, marks trees, notify homeowners as necessary, and submit lists to Contractor. Contractor calls Underground Service Alert (USA) and prepares internal work order. Crew removes tree and hauls all debris. Upon request, crew shall grind stumps to a depth of eighteen inches. All holes to be backfilled; all debris shall be cleaned up and hauled away. Special projects that are difficult to access with equipment, or require the need for a crane or an aerial tower over ninety-five feet (95') would fall under Crew Rental rates. Removals shall be conducted in good workmanlike manner in accordance with the standards of the arboricultural profession.

All wood from removed trees is the property of the District and shall be disposed of at the direction of the Landscape Manager. Any wood within the public right-of-way shall be removed by the end of the workday. No wood shall be left on any District property unless

approved by the Landscape Manager. All tree parts are to be loaded into transport vehicles or containers. The vehicles or containers must have the front, sides and rear solid and the top shall be tarped, or otherwise tightly enclosed. The transporting of tree parts must be made so that no debris escapes during the transport. Branches, suckers, bark and other tree parts that are chipped are to be covered while transported and hauled to the disposal site during the workday.

The District is responsible for marking trees so that they are easily identifiable by Underground Service Alert and the Contractor. The Contractor shall be required to call Underground Alert at least 2 days before stumps are to be ground out. All tree stumps must be removed to at least 18 inches below the lowest soil level adjacent to the stump, or until deep roots are no longer encountered. The Contractor shall grind the stump a minimum distance of one and a half (1½) feet either side of the outer circumference of the stump, or until surface roots are no longer encountered.

Stumps should be cut low enough to the ground where routing can be done safely. This may be accomplished by cutting the stump at the time of grinding, or at the time of tree removal except for infrastructure conflicts. Holes created by stump and root grinding must be filled with soil and adequately compacted the same day. The resultant chips from routing may be used to cover the hole to two (2") inches above normal ground level. All excess routing chips debris will be removed and loaded into transport vehicle for disposal. Any damaged paved surfaces shall be restored to their original condition.

E. Tree Planting

Planting includes the tree, V.I.T. brand stakes, ties and complete installation and watering for ninety (90) calendar days. Planting lists should be compiled by the Landscape Manager and submitted monthly or as needed. Contractor will guarantee the quality of the tree stock and the workmanship for a period of one year.

Tree Planting Special Provisions:

1. Contractor shall provide all equipment, labor and materials necessary for the planting of trees throughout the District as identified by the Landscape Manager in accordance with the specifications herein.
2. The District shall be responsible for marking locations and the Contractor will notify Underground Service Alert (USA) prior to planting.
3. Planting pit shall be dug twice the width and the same depth of the root ball. Before placing the tree in the planting pit Contractor shall examine root ball for injured roots and canopy for broken branches. Damaged roots should be cleanly cut off at a point just in front of the break. Broken branches should be cut out of the canopy making sure that the branch collar is not damaged.
4. Tree shall be placed in the planting pit with its original growing level (the truck flare) at

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the same height of the surrounding finish grade. In grass-covered parkways, the top of the root ball shall be level or slightly higher than the surrounding soil. In a concrete tree well, the root ball shall be 3-inches below the level of the finished surface of the concrete.

5. Backfill material should be native soil. Eliminate all air pockets while backfilling the planting pit by watering the soil as it is put into the hole.
6. All trees planted shall have a 4"-6" high water retention basin built around the tree capable of holding at least ten (10) gallons of water. In a concrete tree well, soil should be raked against the edge of the concrete to create a sloping basin. Immediately after planting, the tree shall be watered thoroughly by filling the water retention basin twice.
7. All trees shall be staked with two wooded lodge poles and two V.I.T. Brand ties per pole. Minimum size of lodge poles shall be ten (10') feet long, with a one and a half (1½") inch diameter. Tree ties shall be placed at one third (1/3") and two-thirds (2/3") of the trunk height. Stakes shall not penetrate the root ball and shall be driven into the ground approximately twenty-four to thirty (24"-30") inches below grade.
8. Trunk protectors such as Arbor-Gards or an approved equal shall be placed at the base of the trunk of all new trees immediately after planting.
9. In some cases, root barriers may be required. The District will make this determination. Should a root barrier be required, the Contractor will install a mechanical barrier that redirects root growth downward, eliminating the surface rooting that damages expensive hardscapes and creates a hazard. The barrier shall be twelve (12") inches in depth and at a length determined by the District and placed in a circular fashion surrounding the tree's root system. Root barriers are not included in the unit prices.
10. Clean up all trash and any soil or dirt spilled on any paved surface at the end of each working day.
11. All trees shall be of good nursery stock that adheres to the American Standard for Nursery Stock as described in the ANSI Z60.1-1996 Standards. Trees shall be free from pests, disease and structural defects.

F. Tree Inventory

The District is requesting that the firm awarded this Service Agreement maintain an on-going tree inventory of each site. A tree inventory by site has been included with this proposal (Attachment 8) and should serve as a guide to the Contractor. The format and/or program used to update the tree inventory are at the discretion of the Contractor. The District's only requirements for the tree inventory program are the following:

1. The information required to be included in the tree inventory is to include at a minimum, site name, tree species, tree size, tree general location (i.e. north slope, etc.), and suggested

- frequency of maintenance.
2. Upon completion of each project, tree inventory updates shall be provided to the Superintendent of Facilities within 30 calendar days. All updates to the Districts tree inventory shall be completed by the Contractor and furnished to the District.
 3. The format of the selected program shall be compatible with the current District electronic programs, i.e. Microsoft 2007 versions of Word, Excel, or Access. Upon completion of the term of the Service Agreement, electronic copies of the current tree inventory shall be provided to the District.

G. Crew Rental

The standard crew is three men, one chipper truck, one chipper, one aerial tower and all necessary hand tools. The crew and equipment can be modified to complete any type of miscellaneous tasks including special projects that may consist of trimming specific trees requiring immediate attention prior to their scheduled trim. Trees requiring service prior to their regularly scheduled site visit to rectify a specific problem such as right-of-way clearance for utility lines, vehicular traffic or broken limbs may be performed under the Crew Rental rate as directed by the District's Landscape Manager.

H. Emergency Response

The Contractor shall be required to provide emergency on call response for damaged trees as a result of storms or other reasons. Emergency calls may occur at any given time. The Contractor will be provided with locations and the work to be done at each location via telephone from a District authorized representative. Emergency work shall begin within two (2) hours of the initial telephone call.

Contractor shall be required to provide a twenty-four (24) hour emergency phone number or the names of at least two (2) contact individuals upon award of contract. Should the contact persons or their phone numbers change during the course of the contract, those changes shall be submitted to the District within two (2) working days.

Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines, utility lines, or any other type of utility (fiber optic, gas, water, etc.), the Contractor shall be required to notify the responsible utility company and call Dig-Alert and request an emergency field location of all utilities.

Work performed under the emergency provision of this contract shall be paid for on a crew hour basis. This shall include all labor, tools equipment, disposal fees and necessary materials.

Failure of the Contractor or his supervisor to immediately respond to an emergency condition, or failure of the Contractor to respond within two days of written notification by the District's Landscape Manager, shall give the District the right to cause necessary work to be performed

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by other contractors, and any costs incurred in so doing shall be deducted from payment if the work is related to any work order issued to the Contractor by the District.

I. Traffic Control

Contractor shall conform to all applicable traffic safety requirements and operating rules at all times while this contract is in effect. The Contractor shall provide traffic control when applicable or as directed by the District or City representative per the latest edition of the Work Area Traffic Control Handbook (WATCH Manual).

Contractor will be responsible for supplying and using all safety equipment necessary to close or delineate traffic lanes to through traffic. This is to include a high visibility Arrow Board(s) as necessary. Prior to use, the City in which the work will be performed must approve all traffic safety equipment. The Contractor will obtain any encroachment permits that may be required to proceed with work within the City right-of-way. The Contractor will provide any necessary insurance documentation required by the appropriate City to procure necessary encroachment permits.

The Contractor shall be responsible at all times for supplying and using all safety equipment, signage, etc. to close or delineate pedestrian and vehicular traffic areas or to close a specific area to protect pedestrians and vehicular traffic from all potential hazards within the scope of the Contractor's work. Any requests made by the District's Landscape Manager to provide additional equipment or delineation shall be addressed immediately.

J. Clean Up

Contractor shall clean all job sites when work is completed, including the raking of leaves, twigs, etc. from the lawns and parkways and the sweeping of streets. Each day's scheduled work shall be completed and cleaned up and under no circumstances shall any brush, leaves, debris or equipment be left on the street overnight. Contractor's equipment may be stored overnight, with advance approval, in approved District facilities; however the District will not be responsible for security of Contractor's equipment.

Brush and debris shall be removed daily, sidewalks swept, lawns and parkways raked out and gutters cleaned. The District's Landscape Manager or authorized representative shall be the sole judge as to the adequacy of the clean-up.

K. Disposal of Debris

All tree branches produced as a result of the Contractor's operations under this contract will be reduced, reused, recycled, and/or transformed. The District will receive access to the Contractor's Greenwaste Recycling report detailing the amount of debris recycled and the location.

1. Greenwaste Recycling Report: Greenwaste that is transported to an offsite facility for grinding into mulch shall be documented and available to the Landscape Manager on a monthly basis.
2. Wood Chips:
 - a. Chips generated from pruning operations within the District may be dumped at a District designated site if requested and approved by the District's Landscape Manager.
 - b. At the direction of the Landscape Manager, wood waste generated from tree removals shall be chipped into pure wood chips with an even uniform size. These chips shall be dumped in specified locations in the District as directed by the Landscape Manager.
3. Milling (optional): At the direction of the Landscape Manager, large tree trunks, which meet proper specifications, may be milled into lumber suitable for use in a variety of applications. The District is not responsible for certifying the suitability of the milled lumber for any application and the Contractor shall assume all responsibility for the lumber.

L. Inspections

The District's Landscape Manager or his designated representative, shall, at all times, have access to the work and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials and equipment used and employed in the work.

M. Minor Modifications and/or Additional Work

The District may modify these specifications with the joint approval of the Contractor and the District's Landscape Manager. All modifications shall be in writing. Any modifications that affect the contract price shall be submitted in writing within seven (7) days of notification from the District of the change in scope of work. No work on the proposed change in scope shall proceed until the Contractor receives written approval of the change in scope of work from the District's Landscape Manager.

N. Clarification of Specifications

If any Contractor, prior to submitting their proposal should find any discrepancies and/or omissions from the specifications or other contract documents, or if they should be in doubt as to the true meaning of any part thereof, they shall at once make a written request to the District's Landscape Manager for corrections, clarification, or interpretation of the points in question. The person submitting such request shall be responsible for its prompt delivery.

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In the event that the District receives a request and it should be found that certain essential information is not clearly and fully set forth, or if the District discovers errors, omissions, or points requiring clarification in these documents, a written addendum will be mailed to each person to whom a proposal has been delivered. The District will not be responsible for any instructions, explanations, or interpretations of the documents presented to bidders in any manner other than written addendum.

O. Protection of Birds, Eggs and Nests

The Contractor shall comply with Federal and State laws protecting birds, bird eggs and bird nests while performing tree maintenance services for the District. References: Federal Migratory Bird Treaty Act – Sec 703. And California State Code – Sec. 3503 & 3503.5

P. GPS Data Collection - Tree Inventory

1. Sub-meter accuracy of GPS data collection.
2. Each tree must be tagged in the field with a unique ID number that will serve as the primary identifier.

Vendor must provide a complete export of the GPS data and tree inventory data after initial inventory is completed. MNWD also requires periodic exports of raw GIS/tabular tree data in order to keep in-house GIS/CMMS data current. Acceptable formats can include ESRI shapefiles, ESRI File or Personal Geodatabases (ArcGIS Version 10.0 or 10.1), Excel spreadsheets.

3. Vendor should provide a sample tree inventory prior to completion of overall inventory so that MNWD can verify accuracy of GPS collection and completeness of attributes.
4. Tree Attributes
 - a. Required Attributes
 - i. Tag ID Number – must be unique across entire tree inventory – no repeating of numbers
 - ii. Species
 - iii. Name of Site Where Tree is Located
 - iv. General location of tree on site
 - v. DBH – Diameter at Breast Height (Trunk Width)
 - vi. Height
 - vii. Date Installed / Planted (for new trees)
 - b. Desired Attributes
 - i. Is Near Sidewalk?
 - ii. Is Near Powerlines?
 - c. Required Maintenance History Information
 - i. Date of Maintenance
 - ii. Type of Maintenance Performed
 - iii. Cost of Maintenance Performed
 - iv. Condition

EXHIBIT 2 - FEE PROPOSAL

Item No.	Item Description	Unit Cost
1	Tree Pruning	
	0-6" Diameter	\$34.00
	7-12" Diameter	\$54.00
	13-18" Diameter	\$74.00
	19-24" Diameter	\$99.00
	25-30" Diameter	\$199.00
	31"+ Diameter	\$299.00
	13-18" Diameter (Palms)	\$49.00
2	Tree Removals	
	0-6" Diameter	\$39.00
	7-12" Diameter	\$59.00
	13-18" Diameter	\$299.00
	19-24" Diameter	\$399.00
	25-30" Diameter	\$499.00
	31"+ Diameter	\$499.00
	7-12" Diameter (Palms)	\$149.00
	13-18" Diameter (Palms)	\$199.00
3	Stump Removals	
	0-6" Diameter	\$9.00
	7-12" Diameter	\$19.00
	13-18" Diameter	\$29.00
	19-24" Diameter	\$29.00
	25-30" Diameter	\$29.00
	31"+ Diameter	\$29.00
	7-12" Diameter (Palms)	\$29.00
	13-18" Diameter (Palms)	\$29.00
4	Crew Rental (3-Man Crew/Hourly Rate)	\$195.00
5	Emergency Response (2-Man Crew/Hourly Rate)	\$75.00
6	GPS Data Collection	\$3.00

EXHIBIT 3

WORKER’S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work on this contract, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: _____ Applicant: _____

WARNING: FAILURE TO SECURE WORKERS’ COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY’S FEES.



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE: December 15, 2014**

FROM: Marc Serna, Director of Engineering/Operations
Brad Bruington, Superintendent of Utilities Maintenance

SUBJECT: Amendment No. 1 to On-Call Asphalt and Concrete Repair Services
Fiscal Year 2014-15 and Change of Contractor

SUMMARY

Issue: Staff entered into an On-Call Asphalt and Concrete Repair Services Agreement with Sanders Paving, Inc., (the “Agreement”) and requires approval of Amendment No. 1 to the, Agreement in order to contract for services through the end of Fiscal Year 2014-15.

Recommendation: It is recommended that the Board of Directors approve Amendment No. 1 to the Agreement with Sander’s Paving, Inc. valued at \$310,000 for a total not-to-exceed Agreement amount of \$380,000 for the 2014-15 Fiscal Year; and authorize the General Manager to execute the Amendment.

Fiscal Impact: Sufficient funds have been approved in the 2014-15 Fiscal Year Budget.

BACKGROUND:

Following excavation for each service line, hydrant, or other line repairs by the District’s Street Crew or other contractors working on behalf of the District, city streets and concrete curbs/sidewalks need to be repaired and/or replaced per city standard specifications and requirements.

District staff is unable to perform the surface repairs with the District’s resources and has historically contracted those services to an outside contractor. The volume of work required by the outside contractor depends on the number of repairs completed by District staff as a result of infrastructure failures or distribution system leaks.

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Amendment No. 1 to On-Call Asphalt and Concrete Repair Services FY 2014-15 and
Change of Contractor
November 15, 2014
Page 2 of 2

DISCUSSION:

In April of 2014, per staff's recommendation, the Board authorized the General Manager to enter into an On-Call Asphalt and Concrete Repair agreement with Ben's Asphalt, Inc. ("Ben's Asphalt"). Ben's Asphalt was a new provider to the District having come in as the lowest bidder to staff's RFP for asphalt and concrete repair services. Staff performed a reference check prior to signing the agreement with Ben's Asphalt. The agreement was effective as of July 1, 2014 and was terminated by the District on December 1, 2014 for performance-related issues. Termination was pursuant to the District's standard, ten-day termination clause.

In order to facilitate the transition to the second lowest bidder in the RFP process, Sanders Paving, Inc., and continue the paving and concrete services as scheduled, the District entered into an agreement under the General Manager's authority as of December 1, 2014, with Sanders Paving, Inc., in the amount of \$70,000.

At this time, staff is recommending the Board approve Amendment No. 1 to the Agreement with a value of \$310,000 for a not-to-exceed Agreement amount of \$380,000 for the remaining Fiscal Year 2014-15 services. Staff proposes to re-advertise for on-call asphalt and concrete repair services for Fiscal Year 2015-16 and 2016-17.

Attachments:

1. Amendment No. 1 to On-Call Service Agreement for Asphalt and Concrete Repairs
2. On-Call Service Agreement for Asphalt and Concrete Repairs

**AMENDMENT NO. 1 TO THE ON-CALL SERVICE AGREEMENT
BETWEEN MOULTON NIGUEL WATER DISTRICT AND SANDERS PAVING, INC.
RE ASPHALT AND CONCRETE REPAIR SERVICES
CONTRACT NO. OM12-13.016**

This Amendment No. 1 (this "Amendment") is entered into and effective as of _____, 2014, amending the On-Call Service Agreement, dated December 1, 2014, (the "Agreement") by and between Moulton Niguel Water District ("MNWD"), and Sanders Paving, Inc., ("Contractor") (collectively, the "Parties") for asphalt and concrete repair services.

RECITALS

- A. On December 1, 2014, the Parties executed the Agreement for a two month term through January 31, 2015 in the amount of \$70,000; and
- B. MNWD desires to extend the Agreement term with an additional 2014-15 fiscal year expenditure amount of \$310,000.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, MNWD and Contractor agree as follows:

- 1. The Agreement term is hereby extended to and including June 30, 2015.
- 2. Payments made for Work completed by Contractor pursuant to this Amendment shall not exceed Three Hundred Ten Thousand Dollars (\$310,000.00) for an Agreement total of Three Hundred Eighty Thousand Dollars (\$380,000.00).
- 3. All other provisions of the Agreement, as may have been amended from time to time, will remain in full force and effect. In the event of any conflict or inconsistency between the Agreement, any prior amendments and this Amendment, the terms of this Amendment shall control.
- 4. All requisite insurance policies to be maintained by the Contractor pursuant to the Agreement, as may have been amended from time to time, will include coverage for this Amendment.
- 5. The individuals executing this Amendment and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Amendment.

SIGNATURE PAGE FOLLOWS

#9.

SANDERS PAVING, INC.

MOULTON NIGUEL WATER
DISTRICT, a California Water District

By:

(Signature)

(Print name/Title)

By:

General Manager

ON-CALL SERVICE AGREEMENT

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
SANDERS PAVING, INC.
(Fiscal Year 2014-15)
Agreement No. OM12-13.016**

This ON-CALL SERVICES AGREEMENT (the "Agreement") is approved and entered into as of December 1, 2014 (the "Effective Date"), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called "District", and SANDERS PAVING, INC., hereinafter called "Contractor". District and Contractor are sometimes referred to in this Agreement individually as a "party" or jointly as the "parties."

RECITALS

- A. District requires individual asphalt and concrete repair projects to be performed in certain areas throughout the District on an on-call basis, as needed, during the fiscal year 2014-15. This Agreement, as well as each Work Order issued pursuant to Section 1, establish the terms and procedures that will apply to this Work.
- B. Contractor has submitted a cost proposal and schedule of work items to District asphalt and concrete repair projects, and Contractor is willing to provide the services in accordance with that proposal.
- C. The objective of this Agreement is for District to authorize Contractor to provide services/work on an on-call basis related to asphalt and concrete repair projects.

NOW, THEREFORE, District and Contractor for the consideration stated herein agree as follows:

1. SCOPE OF SERVICES; PRICE; PERFORMANCE STANDARDS.

a. Contractor shall perform the asphalt and concrete repair services (the "Work") in accordance with the general scope of work, repair standards and added general terms set forth in attached **Exhibit 1** ("construction standards") and the other terms of this Agreement from time to time as directed by District pursuant to a work order for specific repair work during the agreement term ("Work Order").

b. As the need for services/work arises, as determined by District, District's representative may issue Contractor a written Work Order indicating: (a) Contractor's availability to perform the services/work; (b) the not-to-exceed price to perform the services/work requested in accordance with the rate schedule ("Rate Schedule") shown in **Exhibit 2** hereto and incorporated herein by this reference; and (c) the estimated time for performance of the services/work. A Notice to Proceed ("NTP") will be issued by District to Contractor, following the acceptance of the Work Order as set forth in **Exhibit 3** by Contractor's authorized representative in writing.

c. For emergency services/work, as determined by District, circumstances may not allow time to perform the Work Order process described above. In such cases, a District representative will contact Contractor and request that Contractor perform emergency services/work on a time and materials basis in accordance with the Rate Schedule in Exhibit 2 and the terms and conditions of this Agreement, followed by the later issuance of the corresponding Work Order for performance.

d. Contractor's Rate Schedule includes all labor, supervision, materials, equipment, supplies, tools, incidentals, taxes, profit, overhead, bonding and insurance necessary to mobilize, complete the services/work, demobilize and provide cleanup and restoration of construction and work sites.

e. Contractor acknowledges and agrees that District does not guarantee any minimum or maximum amount of Work, and District may use other contractors for the Work, in its sole discretion. This is a non-exclusive Agreement. This Agreement, including all attached Exhibits, as well as the terms and conditions of any municipal permits or licenses issued or applicable in connection with the Work, if any, form the Agreement between the parties. Contractor shall provide all labor, materials, tools, equipment, supplies, utilities and transportation services required to perform the Work, subject to compliance with the Agreement requirements, and complete all Work in a thorough, professional and workmanlike manner, and in accordance with generally accepted industry standards, to the satisfaction of District.

f. The Work shall be done in accordance with the construction standards, the Work Order issued for each individual repair project during the term of this Agreement, and the permitting or other requirements of any governmental entity within whose jurisdiction the Work is performed, which are by this reference incorporated into this Agreement. It shall be the Contractor's responsibility to ascertain and keep informed of all such existing and future requirements of other governmental entities concerning the Work performed under this Agreement, including acquisition of necessary permits and licenses by municipalities related to repair work in public right of way and payment of the fees or costs thereof.

2. PUBLIC SAFETY.

a. Contractor shall be solely and completely responsible for conditions of the Work sites, including safety of all persons and property during performance of the Work. Contractor's operations for the Work shall be conducted so as to provide maximum safety to Contractor's employees, to the general public and District's representatives, and in compliance with all safety laws, rules and regulations of the State of California ("State"), federal, and local agencies. It is Contractor's responsibility to have a current safety program on file with District prior to commencement of any Work under this Agreement.

b. Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public, and shall have under construction no greater length or amount of work that it can prosecute properly with due regard to the rights of the public. Convenient access to driveways, houses and buildings along the line of the Work shall be maintained and temporary crossings shall be provided and maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time. Contractor shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the Work and to give directions to the public. Contractor shall comply with all terms of any permits issued by public agencies for the Work.

3. COMPLIANCE WITH LAW, LICENSE; STATUS.

a. Contractor shall at all times observe and comply with, and cause its agents, employees and representatives to observe and comply with, all State, federal, and local existing and future laws, rules, regulations and orders in the performance of the Work or this Agreement, including any permits issued for the Work. Contractor shall maintain and keep current all required licenses applicable to the performance of the Work issued by the applicable governing agency during the term of this Agreement. A current copy of any required licenses will be kept on file by District.

b. It is expressly understood that Contractor is an independent contractor and not an employee or agent of District. No permitted or required approval of District's representatives of costs, schedules, documents, or services of Contractor, or investigations thereof, will be construed as making District responsible for the manner in which Contractor performs the Work. Such approvals and investigations are intended only to give District the right to satisfy itself with the quality of work performed by Contractor. Contractor warrants that it will not represent, at any time or in any manner, that Contractor is an employee or agent of District. Contractor shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of District. Contractor shall be solely responsible for the payment of all federal, state and local income tax, social security tax, Workers' Compensation insurance, state disability insurance, and any other taxes or insurance Contractor, as an independent contractor, is responsible for paying under federal, state or local law. Contractor is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

4. TIME FOR COMPLETION.

Each Work Order shall be completed in an expeditious manner from the date the Work Order and NTP is issued to Contractor, and in any event no later than the completion date listed on the Work Order. Time is of the essence in the performance and completion of the Work. Performance of any Work must be coordinated with District and local municipality to ensure minimal disruption both to the public use of right of way and to the operation of District's facilities.

5. DISTRICT OBSERVATION.

Contractor's performance of Work is subject to observation by District's representatives and inspection by local municipalities. The observation, if any, by the District's representative of the Work shall not relieve Contractor of any of obligations under the Agreement as prescribed, or Contractor's obligations to perform the Work in accordance with all terms and provisions required by municipal permits and municipal inspection standards. District shall require written evidence of municipal inspection and approval prior to District's acceptance and payment for Work under each Work Order.

6. AGREEMENT PRICE; PAYMENT; TERM.

a. MNWD agrees to compensate Contractor for Work under any Work Order at the corresponding "unit prices" in the schedule of work items attached as Exhibit 3, which establishes unit

prices for components of the repair work listed under "description" in the schedule. There shall be no increase to the unit prices if an adjustment to the number of Contractor's staff or service hours is needed to meet the Agreement requirements for any Work Order; provided, (i) if any repair work is outside the scope of work listed under "description" in the schedule of work items, or (ii) if the Contractor produces written confirmation, satisfactory to District, that the price of asphalt has increased by greater than 15% from the Effective Date of the Agreement, then District and Contractor shall utilize the unit prices listed in the schedule of work items as the basis for any adjustment of compensation for such repair work. The total compensation paid for Work pursuant to separate Work Orders during the Agreement term cannot exceed Seventy Thousand Dollars (\$70,000.00) ("Agreement Maximum Amount"). The Contractor is responsible for and shall pay all sales, consumer, use, and other taxes.

b. Payments under a Work Order will be made based on submittal of invoices by Contractor, including sufficient detail on work items under the Agreement pricing. Contractor's invoice will account for the location of the Work performed in addition to sufficient cost details as required by District. Subject to District's "final acceptance" of repair work under a Work Order, District will make payment to the Contractor within thirty (30) calendar days of receipt and approval of a Work Order invoice by District, provided District may withhold amounts as necessary to satisfy properly filed claims for labor or material; estimated actual costs for correcting defective work; and amounts claimed by District as forfeiture due to delay or offsets. "Final acceptance" shall be defined as the formal action by District accepting the repair work under a Work Order as being complete, as evidenced by District's executed acceptance on the Work Order form. No certificate given or payment made under the Agreement shall be conclusive evidence of performance of the Agreement and no payment shall be an acceptance of any defective work or improper materials.

c. Invoices will include the date or period of Work, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Work performed, the total amount due and, when requested by MNWD, any support documentation sufficient to validate the charges for each invoice item. Only one bill per month shall be submitted by Contractor, showing amounts due for Contractor and each subcontractor utilized during the monthly billing period. Incomplete invoices will be returned unpaid to Contractor. Each Work Order shall be billed on a separate invoice.

d. District may withhold from each payment an amount equal to five percent (5%) of such payment amount ("Retention") as security for adequate performance for work exceeding five thousand dollars (\$5,000) in cost. Notwithstanding the foregoing, after the Work is at least fifty percent (50%) complete, if the District's Director of Engineering and Operations determines that the Work is satisfactorily progressing, District, in its sole discretion, may pay some or all of the remaining payments in full to the Contractor.

e. Acceptance and payment by District for the Work will not in any way relieve Contractor of its responsibility to perform the Work and the Agreement in strict accordance with State, Federal, and local law. Neither District's acceptance of, nor payment for, any Work will be construed to operate as a waiver of any rights under the Agreement, or of any cause of action arising out of the performance of the Agreement.

f. Summary of Public Contract Code Section 20104.50. If a local public agency fails to pay an undisputed and properly submitted payment request within thirty (30) days, the agency must pay

interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Each agency must review payment requests as soon as practicable to determine if they are proper and suitable for payment. If a payment request is not proper, the agency must return it to the contractor within seven (7) days, specifying in writing the reasons why it is not proper. If the agency returns an improper payment request to the contractor more than seven (7) days after receipt, the number of days available to the agency to make payments without incurring interest will be reduced by the number of days by which the agency exceeds the seven (7)-day return requirement.

g. The term of the Agreement is from **December 1, 2014, to and including January 31, 2015** ("expiration"), unless otherwise terminated earlier by either party pursuant to Section 14.

7. PUBLIC LAW REQUIREMENTS; PREVAILING WAGE.

District is a public agency in the State and is subject to the provisions of law relating to public contracts. It is agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein. Contractor represents and warrants that it is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects, and will be comply with the Prevailing Wage Laws, including but not limited to the payment of prevailing wages, and in accordance with the terms of **Exhibit 4** to this Agreement. District shall provide Contractor with a copy of the prevailing rates of per diem wages in effect prior to the commencement of work under this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Work available to interested parties upon request, and shall post copies at the Contractor's principal place of business and the work sites.

8. AGREEMENT DOCUMENTS. The Agreement includes all of the Agreement documents as follows: the construction standards; this Agreement; all exhibits to the foregoing documents; and, the executed Work Orders.

9. NO SUBCONTRACTORS. Contractor agrees and represents that none of the Work will be subcontracted, and that Contractor will perform all Work. It is agreed and acknowledged that should Contractor fail to conform hereto or with any of the requirements of Section 4100 *et seq.* of the Public Contract Code, Contractor shall be subject to the applicable statutory penalties, and to the requirements of Labor Code Sections 1777.1 or 1777.7 relating to payment of wages to ineligible subcontractors' employees, and the corresponding return of all subcontracting payments to District.

10. BONDS.

a. All bonds required hereunder shall be in the amount of 100% of the Agreement Maximum Amount, and shall be in such form, and with such California corporate surety, as are satisfactory to the District, in the District's sole discretion. The amount of the bonds shall be increased in accordance with any increase in the Agreement Maximum Amount as established by a Change Order to the Agreement. Contractor shall deliver all bonds required hereunder to the District prior to the commencement of Work, or if the Work is commenced prior thereto in response to a notice to proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the District that such bonds will be issued.

b. Contractor shall furnish a payment bond approved by District as required by Section 9550 of the Civil from a single surety licensed and admitted in the State with an agent for service of process in California. Contractor shall pay the cost of obtaining the payment bond and Contractor shall use District's form for the payment bond, which is attached as Exhibit 5.

c. Contractor shall furnish a performance bond securing the faithful performance of the Agreement covering the Work. Contractor shall pay the cost of obtaining the performance bond and Contractor shall use District's form for the performance bond, which is attached as Exhibit 6.

11. INSURANCE

a. In addition to the requirements set forth herein, during the entire term of the Agreement, Contractor will pay for and maintain, in full force and effect, all insurance required by District as listed in this Section 11. Contractor shall not commence Work under the Agreement until it has obtained all insurance required by the Agreement. Two (2) sets of originally executed certificates of insurance and all required endorsements evidencing the required coverage detailed in this Section 11 shall be provided by Contractor with the Contractor's executed copy of this Agreement, and prior to commencement of any Work.

b. The general liability and business automobile insurance will be comprehensive in form, and extend through the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to District prior to any cancellation of such policies. All insurance will be issued and underwritten by insurance companies having at least an "A-" policyholder's rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide - Property/Casualty, or better, or as otherwise approved by District. Contractor may satisfy the limit requirements set forth below in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by Contractor's first or primary policy. *All policies shall name Moulton Niguel Water District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and each of their directors, elected officials, officers, employees and agents, and any other public entities issuing permits for entry in public right of way to perform the Work, and owners of record of all property on which entry will be made to perform the Work as additional insureds thereunder ("Additional Insureds").* All of the policies of insurance provided hereunder shall be primary insurance and not contribute with any other insurance maintained by the Additional Insureds, and the insurer shall waive all rights of subrogation and contribution it may have against the Additional Insureds; these requirements shall be set forth in endorsements to policies. In the event any of said policies of insurance are canceled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 11 to District.

c. In the event District consents, and Contractor subcontracts any portion of the Work under the Agreement, the Agreement between Contractor and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of insurance that Contractor is required to maintain pursuant to this Section, in accordance with all of the requirements of this Section.

d. Contractor shall take out and maintain at all times during the Agreement the following

policies of insurance, which shall comply with the other terms of Section 11 as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employs, **which will include the subrogation and additional insured terms and endorsements described under subsection (c) above.** This insurance shall be in strict accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. In accordance with Labor Code Sections 1860 and 1861, concurrent with execution and delivery of the Agreement, Provider shall execute and deliver to District the certification form attached to this Agreement as **Exhibit 7** whereby Provider acknowledges its responsibility to secure workers' compensation insurance in conformance with the requirements of Labor Code Section 3700, et seq.
- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate with such aggregate to apply separately to the Work. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 12 of this Agreement, **as well as the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.** This insurance shall name the Additional Insureds using ISO endorsement CG 20 10 11 85, or both CG 20 10 and CG 23 37 forms if later revisions are used.
- (iii) Business Automobile Insurance. Business automobile insurance with liability limits of not less than \$1,000,000 each accident. The policy shall include coverage for owned, non-owned, and hired vehicles, **and include the subrogation, primary insurance/non-contribution and Additional Insureds terms and endorsements described under subsection (c) above.**

e. Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section 11 shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages or other costs to District, or any persons or property, resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible, including Contractor's subcontractors, if any.

12. INDEMNIFICATION.

a. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend District, City of Aliso Viejo, City of Dana Point, City of Laguna Hills, City of Laguna Niguel, City of Mission Viejo, and their directors, elected officials, officers, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, in connection with, or resulting from, or alleged to have arisen out of or resulted from the performance of

the Work hereunder, provided that any such claim, damage, losses and expenses are: (a) attributable to bodily or personal injury, sickness, disease and death, or for damage to, or loss or destruction of property including the loss of use resulting therefrom; and (b) caused or alleged to have been caused by any negligent or willful act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder (except for the sole negligence or willful misconduct of such indemnified party); or (c) due to failure, neglect or refusal of the Contractor to faithfully perform the Work and any of the Contractor's obligations under the Agreement. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified in this Section 12.

b. In any and all claims against the indemnified parties by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

c. This indemnity obligation shall survive the termination or expiration of the Agreement and the completion of the Work hereunder.

13. WARRANTY.

a. Contractor shall and hereby does warranty all Work, including materials and installation, for a period of six (6) months from the District's *final acceptance (see Section 6 (b) for definition)* of the Work under this agreement ("Warranty Period"), and shall repair and replace any and all Work, together with any other work which may be displaced in so doing, that may prove defective in workmanship and/or materials, or that does not meet the requirements set forth in any applicable specifications, within the Warranty Period, without expense whatsoever to District and with ordinary wear and tear and unusual abuse or neglect excepted. In the event of Contractor's failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, District is hereby authorized to proceed to have the defects repaired or replaced and made good at the expense of Contractor who hereby agrees to pay the cost of and charges therefore immediately on demand. If, in the opinion of District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to District or to prevent interruption of operations of District, District will attempt to give the notice required by this Section 13. If Contractor cannot be contacted or does not comply with District's request for correction within a reasonable time as determined by District, District may, notwithstanding the provisions of this Section 13, proceed to make such correction or provide such attention, and the costs of such corrections or attention shall be charged against Contractor. Such action by District will not relieve Contractor of the guarantees provided in this Section 13 or elsewhere in the Agreement.

b. This section does not in any way limit the warranty on any items for which a longer warranty is specified or on any items for which Contractor or a manufacturer or supplier gives a warranty for a longer period. The Contractor agrees to furnish District with all appropriate warranty certificates upon completion of the Work. No warranty whether provided for in this Section 13 or elsewhere shall in any way limit the liability of Contractor or its sureties or insurers under the indemnity or insurance

provisions of the Agreement. This warranty obligation shall survive the termination or expiration of the Agreement as to all completed Work.

14. TERMINATION.

Either party may terminate this Agreement by providing written notice to the other party ten (10) business days in advance of the date of termination; provided, District may terminate the Agreement without any advance notice in the event Contractor is in material breach of any of the terms of this Agreement, as determined by District in its discretion. In the event Contractor terminates this Agreement, Contractor is responsible for the completion of any Work still outstanding in accordance with the terms of the Agreement. Contractor's indemnity and warranty obligations shall survive the expiration or termination of this Agreement, as well as any outstanding obligations of Contractor at the time of termination. On any termination, Contractor will be entitled to the reasonable value of the Work performed for which it has not received prior compensation under this Agreement, subject to any offset from such payment representing District's damages from any material breach of the terms of the Agreement by Contractor or as otherwise provided for under Section 6. In no event, will Contractor be entitled to receive compensation in excess of the compensation specified under Section 6 of this Agreement. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

15. RECORDS.

Contractor shall preserve and retain any and all records of or related to the Work, including all records of or related to this Agreement and the Work and obligations contained herein, for a period of no less than four (4) years commencing upon final payment to Contractor under the Agreement or, if an examination, review or audit is commenced but not completed within such period, until such examination, review or audit has been completed. Additionally, pursuant to Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy such records during the three (3) year period following final work order and payment to Contractor pursuant to the Agreement. Contractor, upon request, shall make the records of the work available for the purposes described in this Section at all reasonable times during the period Contractor is required to preserve and maintain such records.

16. SUCCESSORS; ASSIGNMENT.

This Agreement is binding on the successors of the parties. This Agreement may not be assigned by Contractor except upon written consent of District.

17. ATTORNEYS' FEES.

In the event of any declaratory or other legal or equitable action instituted between District and Contractor in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its attorneys' fees, and costs and expenses.

18. CLAIMS RESOLUTION.

The provisions set forth in attached Exhibit 8 shall apply to those claims governed by Public Contract Code Section 20104 *et seq.* arising out of the Agreement.

19. DISTRICT NOTICE OF THIRD-PARTY CLAIM.

In accordance with Public Contract Code Section 9201, District shall timely notify Contractor if District receives any third-party claim relating to the Work or the Agreement. District shall be entitled to recover from Contractor District's reasonable costs incurred in providing such notification.

20. NOTICE.

Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person or to an officer or duly authorized representative of the other party or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, and addressed to the party for whom intended, as follows:

If to Contractor: Sanders Paving, Inc.
10645 Standford Avenue, Unit B
Garden Grove, CA 92840
Attn: Pat Sanders, President

If to District: Correspondence:
Moulton Niguel Water District
Attn: Director of Engineering & Operations
27500 La Paz Road
Laguna Niguel, CA 92677

Invoices:
Moulton Niguel Water District
Attn: Accounting Department
P.O. Box 30203
Laguna Niguel, CA 92607-0203

Fax: (949) 831-2500

Any notice to Contractor's surety (or any other person) shall be addressed to the addresses provided in the Agreement or such substitute addresses in accordance with the terms provided herein. Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be fully delivered and received 24 hours after mailing as provided above.

21. INTEGRATION; ATTACHMENTS.

This Agreement supersedes any and all agreements between the parties hereto which are prior in time to this Agreement. Neither District nor Contractor shall be bound by any understanding, agreement, promise, representation or stipulation expressed or implied not specified herein. The Exhibits attached

hereto are incorporated herein as part of this Agreement, and all executed work orders are deemed to form part of the Agreement terms upon execution.

22. PARTIAL INVALIDITY.

If any section of this Agreement or provision of the Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or enforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of the Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole.

23. AMENDMENTS.

No addition to or modification of any provision contained in the Agreement shall be effective unless fully set forth in a writing signed by both District and Contractor.

24. GOVERNING LAW; VENUE.

The Agreement shall be construed in accordance with and governed by the laws of the State. In the event of any legal action to enforce or interpret the Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

25. DUE AUTHORITY OF SIGNATORIES; COUNTERPARTS.

Each person signing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the party he or she represents to execute, and thereby bind such party to, this Agreement. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and both of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

[remainder of page left blank]

IN WITNESS WHEREOF, the parties hereto have entered this Agreement as of the Effective Date referenced the day and year written below.

“DISTRICT”: MOULTON NIGUEL WATER DISTRICT

By: 
Title: General Manager

“CONTRACTOR”: SANDERS PAVING, INC.


By:  Owner / Rep
Title: Authorized Officer/Representative*

* Complete and attach one of the following: Corporate Certificate executed by Corporate Secretary; or, Notarization of Authorized Officer/Representative signature

[Signature page for On-Call Maintenance Services Agreement]

CORPORATE CERTIFICATE*

I, MICHELLE SANDERS, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that PAT SANDERS, who signed said Agreement on behalf of Contractor, was then President of said corporation; and that said Agreement was duly signed for and on behalf of said corporation by authority of its Governing Body and is within the scope of its corporate powers.



[MICHELLE SANDERS], Secretary

(CORPORATE SEAL)

*To be completed if Contractor is a corporation. If Contractor is a joint venture or partnership that includes a corporation(s), a certificate must be obtained from District's office, completed and attached to this page.

EXHIBIT 1

Scope of Work, Construction Standards

I. General Terms-

1. Schedule with the District and the affected city within two weeks of issuance of Work Order.
2. Perform repair work to the satisfaction of District representatives and city regulations.
3. Use proper traffic control devices and safety equipment per District and city regulations (see, Section 1- Public Safety for added terms).
4. Remove debris (asphalt, concrete, dirt, etc.) as necessary from Work site.
5. Repair and replace asphalt in different size patches. This includes base paving using 3/4" rock asphalt followed by a 2" grind and cap using the city specified final asphalt mix, up to and including rubberized mix. Each site may differ.
6. Repair/replace concrete gutters, curbs and sidewalk panels per District and city specifications.
7. Slurry seal reservoir sites and other District facilities.
8. One (1) year warranty for material and installation.

All construction as part of this Agreement shall be completed per the District standard specifications and the latest editions of the APWA Standard Specifications for Public Works Construction ("Greenbook") and the requirements and regulations as determined by the City having authority over the project site.

II. District's General Provisions [attached]: *Note- in the event of any conflict between the terms in the Agreement and those Sections of the General Provisions listed below, the Agreement terms shall control.*

- a. Section 4, subdivisions 1, 3-6
- b. Section 5, subdivisions 1, 4, 7-8, 10-13
- c. Section 6, subdivisions 1-2, 5-6
- d. Section 7, subdivisions 1-10, 16-18, 23, 25-26
- e. Section 9, subdivisions 4-5

**** In the event any statutory sections cited or referred to in the General Provisions above are updated at the time a work order is executed, all such updates and terms shall be deemed controlling, and are incorporated prospectively by this reference.**

General Provisions

SECTION 4 SCOPE OF WORK

a. Subdivisions 1, 3-6

4-1 WORK TO BE DONE

The Work to be done consists of furnishing all transportation, labor, materials, tools, equipment, services, permits, utilities and all other items which are necessary or appurtenant to construct and complete the entire project and construct the project designated in the Agreement Documents, and to leave the grounds in a neat and presentable condition.

4-3 OBSTRUCTIONS

The Contractor shall remove and dispose of all structures, debris, or other obstructions of any character necessary to accommodate the Work. Where such obstructions consist of improvements not required by law to be removed by the Owner thereof, all such improvements shall be removed, maintained, and permanently replaced by the Contractor at his expense except as otherwise specifically provided in the Agreement Documents.

4-4 UTILITIES

The Engineer/Architect has endeavored to determine the existence of utilities at the site of the Work from the records of the Owners of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown on the Plans. The service connections to these utilities are not shown on the Plans.

The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of existing service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the Work. If the Contractor discovers Utility facilities not identified in the Plans or Specifications or in a position different from that shown in the Plans and Specifications, he shall immediately notify in writing the Owner's Representative and the Owner of the Utility facility.

The Owner shall have the responsibility for the timely removal, relocation, protection, and temporary maintenance of existing main or trunkline Utility facilities, which are not indicated in the Plans and Specifications with reasonable accuracy.

In case it would be necessary to remove, relocate, protect, or temporarily maintain a Utility because of interference with the Work, the Work on such Utility shall be performed and paid for as follows:

When it is necessary to remove, relocate, protect, or temporarily maintain an existing main or trunkline Utility facility not indicated in the Plans and Specifications with reasonable accuracy, the Owner will compensate the Contractor for the cost of locating, for the costs of repairing damage not due to the failure of the Contractor to exercise reasonable care, for the costs of removing, relocating, protecting, or temporarily maintaining such Utility facilities, and for the costs for

Exhibit I

equipment on the site necessarily idled during such Work. These costs, the Work to be done by the Contractor in locating, removing, relocating, protecting or temporarily maintaining such Utility facilities shall be covered by a written change order conforming to the provisions of Section 4.2, CHANGES IN THE WORK, and Section 9.1, PAYMENT FOR CHANGES IN THE WORK. The Owner may make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, protect, or temporarily maintain such Utility facilities or to reduce the costs of the Work involved in removing, relocating, protecting or temporarily maintaining such Utility facilities. Changes in alignment and grade will be ordered in accordance with Section 4.2, CHANGES IN THE WORK. The Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by a failure of the owner of the utility to provide for removal or relocation of such facility.

When it is necessary to remove, relocate, protect, or temporarily maintain a Utility (other than (1) existing main or trunkline Utility facilities not indicated in the Plans and Specifications with reasonable accuracy, or (2) existing service laterals or appurtenances when their presence cannot be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the Work) the cost of which is not required to be borne by the Owner thereof, the Contractor shall bear all expenses incidental to the Work on the Utility or damage thereto. The Work on the Utility shall be done in a manner satisfactory to the Owner thereof; it being understood that the Owner of the Utility has the option of doing such Work with his own forces, or permitting the Work to be done by the Contractor. No representations are made that the obligations to remove, relocate, protect, or temporarily maintain any Utility and to pay the cost thereof is or is not required to be borne by the Owner such Utility, and it shall be the responsibility of the Contractor to investigate to find out whether or not said cost is required to be borne by the Owner of the Utility.

SECTION 5 QUALITY OF THE WORK

b. Subdivisions 1, 4, 7-8, 10-13

5-1 AUTHORITY OF THE OWNER'S REPRESENTATIVE

The Owner's Representative shall decide any and all questions which may arise as to the interpretation of the Plans and Specifications and shall have authority to disapprove or reject materials and equipment furnished and Work performed which, in his opinion, is not in accordance with the Agreement Documents.

5-4 MANUFACTURER'S INSTRUCTIONS

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise specifically provided in the Agreement Documents.

5-7 ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR

It is the duty of the Contractor to promptly notify the Owner's Representative in writing of any design, materials, or specified method that the Contractor believes may prove defective or insufficient. If the Contractor believes that a defect of insufficiency exists in design, materials, or specified method and fails to promptly notify the Owner's Representative in writing of this belief, the Contractor waives any right to assert that defect or insufficiency in design materials, or specified method at any later date in any legal or equitable proceeding against the Owner, or in any subsequent arbitration or settlement conference between the Owner and the Contractor. The Owner's Representative, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any Work done by the Contractor after he comes to the belief that a defect or insufficiency exists in design, materials, or specified method which is directly or indirectly affected by such alleged defect or insufficiency in design, materials, or specified method will be at his own risk and he shall bear all cost arising therefrom.

If the Contractor, either before commencing Work or in the course of the Work, finds any discrepancy between the Specifications and the Plans or between either of them and the physical conditions at the site of the Work or finds any error or omission in any of the Plans or in any survey, he shall promptly notify the Owner's Representative of such discrepancy, error, or omission. If the Contractor observes that any Plans or Specifications are at variance with any applicable law, ordinance, regulation, order or decree, he shall promptly notify the Owner's Representative in writing of such conflict. The Owner's Representative, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any Work done by the Contractor after his discovery of such error, discrepancy, or conflict which is directly or indirectly affected by such error, discrepancy, or conflict will be at his own risk and he shall bear all costs arising therefrom.

5-8 SUPERVISION AND SUPERINTENDENCE

The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Agreement Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be solely responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence, or procedure of construction which is indicated in and required by the Agreement Documents except as otherwise provided in the Section 5.7 ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR.

The Contractor shall be responsible to see that the completed Work complies with the Agreement Documents.

The Contractor shall designate and keep on the Work site at all times during its progress a competent superintendent, who shall not be replaced without written notice to the Owner's Representative. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. During periods when the Work is suspended, the Contractor shall make appropriate arrangements for any emergency Work which may be required.

Whenever the superintendent is not present on any particular part of the Work where the Owner's Representative may desire to inform the Contractor relative to interpretation of the Plans and Specifications or to disapproval or rejection of materials or Work performed, the Owner's Representative may so inform the foreman or other worker in charge of the particular part of the Work in reference to which the information is given. Information so given shall be as binding as if given to the superintendent.

5-10 QUALITY AND SAFETY OF MATERIALS AND EQUIPMENT

All equipment, materials, and supplies to be incorporated in the Work shall be new, unless otherwise specified. All equipment, materials, and supplies shall be produced in a good and workmanlike manner. When the quality of a material, process, or article is not specifically set forth in the Plans and Specifications, the best available quality of the material, process, or article shall be provided.

Whenever any material, process, or article is indicated or specified by grade, patent or proprietary name, or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials, process, or articles desired and shall be deemed to be followed by the words "or equal", and the Contractor may offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified; provided, however, that if the material, process or article ordered by the Contractor is not, in the opinion of the Owner's Representative, equal or better in every respect to that specified, then the Contractor must furnish the material, process, or article or one that in the opinion of the Owner's Representative is the substantial equal or better in every respect. In the event that the Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by the Contractor.

In accordance with Section 4380 of the Government Code, the Contractor shall submit data substantiating requests for substitution of "equal" items within 35 Days after award of the Contract. This 35-day period of time is included in the number of Days allowed for the completion of the Work.

All materials, equipment, and supplies provided shall, without additional charge to Owner, fully conform with all applicable state and federal safety laws, rules, regulations, and orders, and it shall be Contractor's responsibility to provide only such materials, equipment, and supplies notwithstanding any omissions in the Agreement Documents therefor or that a particular material, equipment, or supply was specified.

5-11 STANDARDS, CODES, SAMPLES AND TESTS

Whenever reference is made to a standard, code, specification, or test and the designation representing the date or adoption or latest revision thereof is omitted, it shall mean the latest revision of such standard, code, specification, or test in effect on the day the Notice Inviting Sealed Proposals (Bids) is dated.

The tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the Plans and Specifications. The Contractor shall furnish without charge such samples for testing as may be

required by the Owner's Representative. Tests and samples may be required at the source of materials as well as at the site of the Work.

5-12 OBSERVATION OF WORK BY OWNER'S REPRESENTATIVE

The Owner's Representative shall at all times have access to the Work during construction and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials and equipment used and employed in the Work.

Whenever the Contractor varies the normal period during which Work or any portion of it is carried on each day, he shall give timely notice to the Owner's Representative so that the Owner's Representative may, if he wishes, be present to observe the Work in progress. If the Contractor fails to give such timely notice, any Work done in the absence of the Owner's Representative will be subject to rejection.

The Contractor shall give timely notice to the Owner's Representative in advance of backfilling or otherwise covering any part of the Work so that the Owner's Representative may, if he wishes, observe such part of the Work before it is concealed.

The observation, if any, by the Owner's Representative of the Work shall not relieve the Contractor of any of his obligations to fulfill the Agreement as prescribed. Defective Work shall be made good, and materials, and equipment furnished and Work performed which is not in accordance with the Agreement Documents may be rejected notwithstanding the fact that such materials, equipment, and Work have been previously observed by the Owner's Representative or that payment therefor has been included in an estimate for payment.

5-13 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

Any Work which does not conform to the requirements of the Agreement Documents shall be remedied or removed and replaced by the Contractor, together with any other Work which may be displaced in so doing, and no compensation will be allowed him for such removal, replacement, or remedial Work. All nonconforming materials shall be immediately removed from the site.

Any Work done beyond the lines and grades shown on the Plans or established by the Owner's Representative or any changes in, additions to, or deductions from the Work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered remedied, removed, or replaced by the Contractor.

Upon failure on the part of the Contractor to comply promptly with any order of the Owner's Representative made under the provisions of this Section, the Owner's Representative shall have authority to cause nonconforming materials, rejected Work, or unauthorized Work to be remedied, removed, or replaced at the Contractor's expense and to deduct the costs from any monies due or to become due the Contractor.

SECTION 6 PROSECUTION AND PROGRESS**c. Subdivisions 1-2, 5-6****6-1 SUBCONTRACTING**

If the Contractor shall subcontract any part of Contract, the Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractor and of the persons either directly or indirectly employed by his Subcontractor as he is for the acts and omissions of persons directly employed by himself. Nothing contained in the Agreement Documents shall create any contractual relationship between any Subcontractor and the Owner. The Contractor shall bind every Subcontractor to be bound by the terms of the Agreement Documents as applicable to its Work.

The divisions and sections of any Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or suppliers or delineating work to be performed by any specific trade. The divisions of the Specifications are complementary, and anything mentioned or shown in a division of the Specifications or in a specific trade drawing shall be of like effect as if shown in all divisions of the Specifications and in all Drawings.

Contractor is prohibited from performing any of the Work with a Subcontractor who is ineligible to perform such Work pursuant to Section 1777.1 or 1777.7 of the Labor Code. Contractor agrees that in accordance with Public Contract Code Section 6109, a subcontract with an ineligible Subcontractor is void as a matter of law, amounts paid to the Subcontractor shall be returned to Owner, and Contractor is responsible for paying wages of the Subcontractor's employees if the Subcontractor is allowed to perform any part of the Work.

Contractor shall not award work to Subcontractors in excess of 50% percent of the Contract amount without prior written approval of Owner. Except as provided by law, Contractor shall not employ any Subcontractor, supplier, or other person or organization (including but not limited to those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection.

Contractor shall give prompt written notice to Owner as to the identity and qualifications of any Subcontractor, supplier, or other person or organization to whom Contractor intends to award work, and of Contractor's intent to remove or replace a Subcontractor, supplier, or other person.

All Work performed for Contractor by a Subcontractor, supplier or other person or organization will be in accordance with an appropriate subagreement between Contractor and the Subcontractor, supplier, or other person or organization which specifically binds the Subcontractor, supplier, or other person or organization to the applicable terms and conditions of the Agreement Documents for the benefit of Owner.

If requested in writing by Owner, Contractor shall deliver to Owner a copy of each subagreement with a Subcontractor, supplier, or other person or organization performing a part of the Work within seven days of Owner's request.

6-2 ASSIGNMENT

The performance of the Contract shall not be assigned, except upon the written consent of the Owner. Consent will not be given to any proposed assignment, which would relieve the original

Exhibit I

Contractor or his surety of their responsibilities under the Agreement, nor will the Owner consent to any assignment of a part of the Work under the Agreement.

Upon obtaining a prior written consent of the Owner, the Contractor may assign monies due or to become due him under the Agreement, to the extent permitted by law, but any assignment of monies shall be subject to all proper setoffs in favor of the Owner and to all deductions provided for in the Agreement, and particularly all money withheld, whether assigned or not, shall be subject to being used by the Owner for the completion of the Work in the event that the Contractor should be in default therein.

No assignment of this Agreement will be approved unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the Work called for under the Agreement in favor of all persons, firms, or corporations rendering such services or supplying such materials and that the Owner may withhold funds due until all Work required by the Agreement Documents is completed to the Owner's satisfaction.

6-5 EXTENSION OF TIME

The time specified for completion of all of the Work or any part of the Work may be extended only by a written change order executed by the Owner or other written form executed by the Owner.

Requests for an extension of time must be delivered to the Owner's Representative within ten consecutive Days following the date of the occurrence, which caused the delay. The request must be submitted in writing and must state the cause of the delay, the date of the occurrence causing the delay, and the amount of additional time requested. Requests for extensions of time shall be supported by all evidence reasonably available or known to the Contractor, which would support the extension of time requested. Requests for extensions of time failing to include the information specified in this Section and requests for extensions of time which are not received within the time specified above shall result in the forfeiture of the Contractor's right to receive any extension of time requested.

If the Contractor is requesting an extension of time because of weather, he shall supply daily written reports to the Owner's Representative describing such weather and the Work which could not be performed that day because of such weather or conditions resulting therefrom and which he otherwise would have performed.

The Owner's acceptance of the daily reports shall not be deemed an admission of the Contractor's right to receive an extension of time or a waiver of the Owner's right to strictly enforce the time provisions contained in the Agreement Documents.

When the Contractor has submitted a request for an extension of time in accordance with the procedures of this Section and the Section on TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY, the Owner will ascertain the facts and extent of the delay and extend the time for completing the Work if, in its judgment, the findings of fact justify such an extension, and its findings of facts thereon shall be final and conclusive. An extension of time may be granted by the Owner after the expiration of the time originally fixed in the Agreement or as previously

extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.

Any extension of time shall not release the sureties upon any bond required under the Agreement.

6-6 USE OF COMPLETED PORTIONS

When the Work or any portion of it is sufficiently complete to be utilized or placed into service, the Owner shall have the right upon written notification to the Contractor to utilize such portions of the Work and to place the operable portions into service and to operate same.

Upon said notice and commencement of utilization or operation by the Owner, the Contractor shall be relieved of the duty of maintaining the portions so utilized or placed into operation; provided, however, that nothing in this Section shall be construed as relieving the Contractor of the full responsibility for completing the Work in its entirety, for making good defective Work and materials, for protecting the Work from damage, and for being responsible for damage, and for the Work as set forth in the General Provisions and other Agreement Documents nor shall such action by the Owner be deemed completion and Acceptance, and such action shall not relieve the Contractor, its sureties, or insurers of the provisions of the Sections on CONTRACTOR'S INSURANCE, INDEMNITY, and GUARANTEES.

SECTION 7 LEGAL RELATIONS AND RESPONSIBILITIES

d. Subdivisions 1-10, 16-18, 23, 25-26

7-1 OBSERVING LAWS AND ORDINANCES

The Contractor shall keep himself fully informed of all existing and future laws, ordinances, and regulations which in any manner affect those engaged or employed in the Work or the materials used in the Work or which in any way affect the conduct of the Work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency is discovered in the Plans, Specifications, or Agreement for the Work in relation to any such law, ordinance, regulation, order, or decree, he shall forthwith report the same to the Owner's Representative in writing and cease operations on that part of the Work until the Owner's Representative has given him appropriate instructions as provided for in the Section on ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR.

The Contractor shall at all times observe and comply with and shall cause all his agents, employees, Subcontractors, and suppliers to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees, and shall hold harmless, indemnify, and defend the Owner, the Engineer/Architect, the Owner's Representative, and their consultants, and each of their directors, officers, employees, and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, by the Contractor, his employees, agents, Subcontractors, or suppliers.

7-2 PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

7-3 INVENTIONS, PATENTS, AND COPYRIGHTS

The Contractor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product, or device which is the subject of patent rights or copyrights.

The Contractor shall hold harmless, indemnify, and defend the Owner, the Engineer/Architect, the Owner's Representative, and their consultants, and each of their directors, officers, employees, and agents from and against all claims, damages, losses, expenses, and other costs, including costs of defense attorneys' fees, arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, materials, equipment, product or device, and shall defend all such claims in connection with any alleged infringement of such right.

7-4 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public, and he shall have under construction no greater length or amount of Work that he can prosecute properly with due regard to the rights of the public. Convenient access to driveways, houses and buildings along the line of Work shall be maintained and temporary crossings shall be provided and maintained in good condition. Not more than one crossing or intersecting street or road shall be closed at any one time.

The Contractor shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the construction Work and to give directions to the public.

7-5 RESPONSIBILITY FOR LOSS, DAMAGE, OR INJURIES

The Contractor shall be responsible for all claims demands, or liability from any cause arising out of or resulting from or in connection with the performance of the Work, excepting only those as may be caused solely and exclusively by the fault or negligence of the Owner, Engineer/Architect, the Owner's Representative, or their consultants, or their directors, officers, employees, and agents. Such responsibility shall extend to claims, demands, or liability for loss, damage, or injuries occurring after completion of the Work as well as during the progress of the Work.

7-6 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

Until the Acceptance of the Work, the Contractor shall have the responsible charge and care of the Work and of the materials to be used therein (including materials for which he has received partial payment or materials which have been furnished by the Owner) and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work.

The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or materials occasioned by any cause before its completion and Acceptance and shall bear the expense thereof. Where necessary to protect the Work or materials from damage, the Contractor shall at his expense provide suitable drainage and erect such temporary structures

as are necessary to protect the Work or materials from damage. The suspension of the Work or the granting of any extension of time from any cause whatever shall not relieve the Contractor of his responsibility for the Work and materials as herein specified.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorizations, is authorized to act at his discretion to prevent such threatened loss or injury.

Notwithstanding the foregoing provisions of this Section, the Contractor shall not be responsible for the cost of repairing and restoring damage to the Work, which damage is determined to have been proximately caused by an Act of God, in excess of 5% of the contracted amount, provided that the Work damaged is built in accordance with accepted and applicable building standards and the Plans and Specifications. For the purposes of this paragraph, "Acts of God" shall include only the following occurrences or conditions and effect: earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.

7-7 PRESERVATION OF PROPERTY

The Contractor shall exercise due care to avoid injury to existing improvement or facilities, Utility facilities, adjacent property, and trees and shrubbery that are not to be removed.

All trees, shrubbery, and landscaping that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and waterlines, all highway or street facilities, and any other improvements or facilities within or adjacent to the Work shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operation, they shall be replaced or restored at the Contractor's expense to a condition as good as when the Contractor entered upon the Work or as good as required by the Plans and Specifications if any such objects are a part of the Work being performed.

The fact that any such pipe or other underground facility is not shown on the Plans shall not relieve the Contractor of his responsibility under this Section.

In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the site of the Work which are in any way affected by the excavations or other operations connected with the performance of the Work. Whenever any notice is required to be given by the Owner or the Contractor to any adjacent or adjoining landowner or other party before commencement of any Work such notice shall be given by the Contractor.

In any emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorizations, is authorized to act at his discretion to prevent such threatened loss or injury.

7-8 EXCAVATION AND/OR DIGGING TRENCHES

As required by Labor Code Section 6705, if the total amount of the Agreement is in excess of \$25,000, the Contractor shall submit to the Owner for Acceptance, in advance of excavation, a

Exhibit 1

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 5 feet or more in depth. The plan shall be prepared by a registered civil or structural Engineer. As a part of the plan, a note shall be included stating that the registered civil or structural Engineer certifies that the plan complies with the CAL-OSHA Construction Safety Orders, or that the registered civil or structural Engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

The Owner or the Engineer/Architect or their consultants may have made investigations of the subsurface conditions in areas where the Work is to be performed. If so, these investigations are identified in the Special Provisions and the records of such investigations are available for inspection at the office of the Engineer/Architect. The detailed plan showing the design of shoring, etc., which the Contractor is required to submit to the Owner for Acceptance in advance of excavation will not be accepted by the Owner if the plan is based on subsurface conditions which are more favorable than those revealed by the investigations made by the Owner or the Engineer/Architect or their consultants; nor will the plan be accepted if it is based on soils related design criteria which is less restrictive than the criteria set forth in the report on the aforesaid investigations of subsurface conditions.

The detailed plan showing the design of shoring, etc., shall include surcharge loads for nearby embankments and structures, for spoil banks, and for construction equipment and other construction loadings. The plan shall indicate for all trench conditions the minimum horizontal distances from the side of the trench at its top to the near side of the surcharge loads.

Nothing contained in this Section shall be construed as relieving the Contractor of the full responsibility for providing shoring, bracing, sloping, or other provisions, which are adequate for worker protection.

As required by Public Contracts Code Section 7104, in any Agreement which involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

Owner shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in the Agreement.

In the event that a dispute arises between the Owner and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by the Agreement or by law which pertain to the resolution of disputes and protests between the parties.

7-9 SAFETY

In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property during performance of the Work, and the Contractor shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety of the public and workers.

The right of the Engineer/Architect or the Owner's Representative to conduct construction review or observation of the Contractor's performance will not include review or observation of the adequacy of the Contractor's safety measure in, on, or near the construction site.

7-10 PERSONAL LIABILITY

No director, officer, employee, or agent of the Owner, the Engineer/Architect, the Owner's Representative, or their consultants shall be personally responsible for any liability arising under or by virtue of the Agreement.

7-16 WARRANTY OF TITLE

No materials, supplies, or equipment for the Work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the Work and agrees upon completion of all Work to deliver the premises together with all improvements and appurtenances constructed or placed thereon by him to the Owner free from any claims, liens, encumbrances, or charges and further agrees that neither he nor any person, firm, or corporation furnishing any material or labor for any Work covered by the Agreement shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of Utility companies or of municipalities, the title of which commonly retained by the Utility company or the municipality. Nothing contained in this Section, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection, or any right under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this Section shall be inserted in all subcontracts and material contracts, and notices of its provision shall be given to all persons furnishing materials for the Work when no formal Agreement is entered into for such materials.

7-17 PROPERTY RIGHTS IN MATERIALS

Nothing in the Agreement shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment

has been made for materials delivered to the site of the Work, or stored subject to or under the control of the Owner.

All such materials shall become the property of the Owner upon being so attached or affixed or upon payment for materials delivered to the site of the Work or stored subject to or under the control of the Owner.

Soil, stone, gravel, and other materials found at the site of the Work and which conform to the Plans and Specifications for incorporation into the Work may be used in the Work. No other use shall be made of such materials except as may be otherwise described in the Plans and Specifications.

7-18 MUTUAL RESPONSIBILITY OF CONTRACTORS

Nothing in the Agreement shall be interpreted as granting to the Contractor exclusive occupancy of the site of the project. The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by the Owner in the construction of the project, to the end that the Contractor may perform this Agreement in the light of such other contracts, if any.

The Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on the project. If the performance of any contract for the project is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Owner's Representative shall decide which Contractor shall cease Work temporarily and which Contractor shall continue or whether the Work under the contracts can be coordinated so that the Contractors may proceed simultaneously. On all questions concerning conflicting interest of Contractors performing related Work, the decision of the Owner's Representative shall be binding upon all Contractors concerned and the Owner, the Engineer/Architect, the Owner's Representative, and their consultants shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance of attempted performance of any other contract or contracts on the project or caused by a decision or omission of the Owner's Representative respecting the order of precedence in the performance of the contracts.

If through acts of neglect on the part of the Contractor, any other contractor or any Subcontractor shall suffer loss of damage on the Work, the Contractor agrees to settle with such other contractor or Subcontractor by agreement or arbitration, if such other contractor or Subcontractor will so settle. If such other contractor or Subcontractor shall assert any claim against the Owner, the Engineer/Architect, the Owner's Representative, or their consultants, on account of any damage alleged to have been so sustained, the Owner shall notify Contractor who shall hold harmless, indemnify, and defend the Owner, the Engineer/Architect, the Owner's Representative, and their consultants and each of their directors, officers, employees, and agents against any such claim, including all attorneys' fees and any other costs incurred by the indemnified parties relative to any such claim.

7-23 LANDS AND RIGHTS-OF-WAY

The lands and rights-of-way for the facility to be constructed will be provided by the Owner. The Contractor shall make his own arrangements and pay all expenses for additional area required by him outside the limits of the Owner's lands and rights-of-way.

Work in public right-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located in addition to conforming to the Plans and Specifications. If a permit is not required, the Work shall conform to the standards of the public agency involved in addition to conforming to the Plans and Specifications.

7-25 TAXES

The Contractor shall pay all sales, consumer, use, and other taxes.

NOTICE OF TAXABLE POSSESSORY INTEREST - The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

7-26 ASSIGNMENT OF ANTI-TRUST ACTIONS

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body 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.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Owner tenders final payment to the Contractor, without further acknowledgment by the parties.

In submitting a bid to a public purchasing body, the Bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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.C. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

SECTION 9 ESTIMATES AND PAYMENTS**e. Subdivisions 4-5****9-4 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF; RETENTION OF PROCEEDS**

In addition to the amount which the Owner may retain under Section 9.2 **PROGRESS PAYMENTS**, the Owner may withhold a sufficient amount or amounts from any payment otherwise due to the Contractor as in his judgment may be necessary to cover:

Payments which may be past due and payable for properly filed claims against the Contractor or any Subcontractors for labor or materials furnished in or about the performance of the Work on the project under the Agreement.

Estimated or actual costs for correcting defective Work not remedied.

Amounts claimed by the Owner as forfeiture due to delay or other offsets.

The Owner may apply such withheld amount or amounts to the payment of such claims in his discretion. In so doing, the Owner shall be deemed the agent of the Contractor and any payments so made by the Owner shall be considered as a payment made under the Agreement by the Owner to the Contractor, and the Owner shall not be liable to the Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. The Owner will render to the Contractor a proper account of such funds disbursed on behalf of the Contractor.

Pursuant to Section 7107 of the Public Contract Code, within 60 days after the date of completion of the Agreement, the retention proceeds withheld from any payment by the Owner to the Contractor shall be released. In the event of a dispute between the Owner and the Contractor, the Owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

Within ten days from the time that all or any portion of the retention proceeds are received by the Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor if the payment is consistent with the terms of the subcontract. The Contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the Contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

In the event that retention payments are not made within the time periods specified above, the Owner or Contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amounts in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

9-5 SUBSTITUTION OF SECURITIES FOR AMOUNTS WITHHELD

Pursuant to Section 4590 of the Government Code, the Contractor may substitute securities for any money withheld by the Owner to ensure performance of the Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner or with a state or federally chartered bank as the escrow agent, who shall release such securities to Contractor following the expiration of 40 Days from the date of filing of a Notice of Completion of the Work by the Owner, to the extent such securities have not previously been utilized by Owner for purposes as provided hereinafter or are not then subject to withholding by Owner to satisfy stop notices or other claims and costs associated therewith.

Exhibit I

The request for substitution of securities to be deposited with the Owner, or with a state or federally chartered bank as escrow agent, shall be submitted on the form set forth following this section, which when executed by the Contractor and the Owner shall constitute a Supplemental Agreement forming a part of this Agreement. The Owner shall have 30 Days from receipt of any such written request, properly completed and signed by the Contractor and, if applicable, accompanied by an escrow agreement in a form acceptable to Owner, to approve said request and effect the substitution. Owner shall not unreasonably withhold approval of said request. Owner shall determine the value of any security so deposited. Such Supplemental Agreement and any escrow agreement shall provide for the release of the securities to Contractor as set forth herein and shall also set forth the manner in which Owner may convert the securities or portions thereof to cash and apply the proceeds to the accomplishment of any purposes for which monies may be withheld and utilized as described in the Agreement, including but not limited to the completion of the Agreement, correction of defective Work and the answering of any stop notice claims and litigation cost thereof.

Securities eligible for investment under this section shall be those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit.

The Contractor shall be the beneficial Owner of any securities substituted for monies withheld and shall receive any interest thereon.

9-6 RESOLUTION OF CONSTRUCTION CLAIMS

This Section is intended as a summary of the provisions of Section 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code ("Claims Resolution Statute") and is subject to the actual provisions of the Claims Resolution Statute. This Section shall govern the resolution of any claim of \$375,000 or less which may be made by the Contractor hereunder.

As used in this Section, "claim" is defined as a separate demand by the Contractor for (a) a time extension, (b) payment of money or damages arising from the Work, payment for which is not otherwise expressly provided for or Contractor is not otherwise entitled to, or (c) an amount, the payment of which is disputed by the Owner.

The Contractor shall make all claims in writing and include the documents necessary to substantiate the claims. Any claim by the Contractor which is intended to invoke the procedures under the Claims Resolution Statute shall specify that the claim is being made pursuant to the Claims Resolution Statute. All claims by the Contractor must be filed on or before the date of final payment; provided, however, nothing in this Section is intended to extend the time limits or supersede notice requirements which may otherwise be provided within the Agreement Documents for the filing of claims by the Contractor including, but not limited to, those provided in Section 6-4 (Time for Completion and Forfeiture Due to Delay), Section 6-5 (Extension of Time) and Section 4-2 (Changes in the Work).

Claims Less Than \$50,000.

The Owner shall respond in writing within 45 Days of receipt of the claim, or the Owner may request, in writing, within 30 Days of receipt of the claim, any additional documentation

Exhibit 1

supporting the claim or relating to defenses or claims the Owner may have against the Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the Owner and the Contractor. If the Owner requests additional documentation, the Owner's written response to the claim shall be submitted to the Contractor within 15 Days after receipt of the additional documentation, or within the same time period as used by the Contractor in producing the additional documentation, whichever is greater.

Claims Over \$50,000 But Less Than \$375,000.

The Owner shall respond in writing within 60 Days of receipt of the claim, or may request, in writing, within 30 Days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the Owner may have against the Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the Owner and the Contractor. If the Owner requests additional documentation, the Owner's written response to the claim shall be submitted to the Contractor within 30 Days after receipt of the additional documentation, or within the same time period as used by the Contractor in producing the additional information, whichever is greater.

Procedure Following Owner's Response

If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may, by giving written notice to the Owner within 15 Days of receipt of the Owner's response (or within 15 Days of the Owner's failure to respond), demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, the Owner shall schedule a meet and confer conference within 30 Days.

If after the meet and confer conference, any portion of the claim remains in dispute, the Contractor may file a claim pursuant to Government Code Section 900 *et seq.* If a court action is thereafter filed to resolve the claim, the court must, within the time specified by law, submit the matter to nonbinding mediation unless waived by mutual stipulation of the Owner and the Contractor. If after the mediation process, the matter remains in dispute, the case must then be submitted to judicial arbitration pursuant to the applicable law.

END OF SECTION

EXHIBIT 2**Rate Schedule
ASPHALT AND CONCRETE REPAIRS**

DESCRIPTION	UNIT PRICE
ASPHALT REPAIR STANDARD 5 X 5 FEET	\$1,150.00
ASPHALT REPAIR STANDARD 10 X 10 FEET	\$1,550.00
ASPHALT REPAIR STANDARD 20 X 20 FEET	\$3,300.00
ASPHALT REPAIR 36-INCH MANHOLE (APPROX. 1-FOOT WIDE)	\$675.00
ASPHALT REPAIR WATER VALVE CAN (APPROX. 1-FOOT WIDE)	\$675.00
STANDARD 10-FOOT CONCRETE SIDEWALK PANEL	\$1,900.00
SLURRY SEAL RESERVOIR SITE (ROAD) FT2 - TYPE 1	\$0.73
PARKING LOT SLURRY	\$0.12

Project requests by the District under this Agreement may vary, but will be based on the descriptions and pricing above. Contractor's compensation will be computed upon the basis of the actual quantities of the completed Work in accordance with the applicable Work Order and the terms of this Agreement.

EXHIBIT 3

Work Order Form

[To be executed by DISTRICT and CONTRACTOR prior to commencement of job; again by DISTRICT for formal acceptance of completed work]

This Work Order is executed pursuant to the "AGREEMENT FOR ON-CALL ASPHALT AND CONCRETE REPAIR SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____ (Contract No. _____)" dated _____, 20__ ("Agreement"). The Agreement terms are fully incorporated in this Work Order. Terms used in this Work Order have the same meanings given in the Agreement.

Work Order No.: _____

Work Order Scope of Work: _____

Work Cost: \$ _____ [where not-to-exceed quote given]

Work Location: (address/intersection, City) _____

City Permit No.: _____

Time for Completion: _____

Notice to Proceed Given: [Date] _____

EXECUTED, ACKNOWLEDGE AND AGREED:

District's Representative /Title

Contractor's Authorized Representative- (print name here)

II. DISTRICT's ACCEPTANCE:

Pursuant to Section 6(b) of the Agreement, District accepts all work completed under this Work Order on the date below, subject to all terms of the Agreement.

_____ Date: _____

EXHIBIT 4**Prevailing Wage Requirements****PREVAILING WAGE**

The Contractor and any of its subcontractors shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to the State or District, not more than \$200.00 for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates as determined by the Labor Commissioner for such work or craft in which such worker is employed for any work done under the Agreement by the Contractor or by any of its subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Contractor. District will withhold penalties from Contractor's payments then due upon receipt of notification by the State Department of Industrial Relations divisions.

The specified wage rates are minimum rates only, and District will not consider and shall not be liable for any claims for additional compensation made by the District because of payment by District of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified shall be adjusted by the District at its own expense.

TRAVEL AND SUBSISTENCE PAYMENTS

Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements.

APPRENTICES

Attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any of its subcontractors.

The Contractor and any of its subcontractors shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Willful violations of Section 1777.5 will result in a forfeiture of not more than \$100.00 for each calendar day of non-compliance which shall be withheld from progress payments by District upon notice from the Department of Industrial Relations. The District or any of its subcontractors that knowingly commits a second or subsequent violation of Section 1777.5 shall forfeit as a civil penalty the sum of not more than \$300.00 for each full calendar day of noncompliance. (Labor Code Section 1777.7.)

HOURS OF LABOR

The Contractor shall forfeit as a penalty to the District \$25.00 for each worker employed in the execution of the Agreement by the Contractor or any of its subcontractors for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractor in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times

the basic rate of pay as provided in said Section 1815.

PAYROLL RECORDS

It shall be the responsibility of the Contractor to maintain an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee in accordance with Labor Code Section 1776, and to ensure that each subcontractor also complies with all provisions of Labor Code Section 1776 and this Agreement provision.

All payroll records shall be certified as accurate by the applicable Contractor or Contractor or its agent having authority over such matters.

The Contractor shall ensure that all payroll records are available for inspection at the Contractor's principal office during normal business hours and shall notify the District, in writing, of the place where all payroll records are located from time to time.

The Contractor shall furnish a copy of all payroll records, upon request, to employees or their authorized agents, to the District, to the Division of Labor Standards Enforcement, and to the Division of Apprenticeship Standards of the Department of Industrial Relations. The Contractor shall also furnish a copy of payroll records to the general public upon request provided the public request is made through the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. In no event shall members of the general public be given access to payroll records at the Contractor's principal office.

Records made available to the general public in accordance with the prior paragraph shall be marked or obliterated in such a manner that the name and address of the Contractor and/or Contractor and the name, address, and telephone number of all employees does not appear on the modified record.

The Contractor shall file a certified copy of any requested payroll records with the entity that requested such records within ten days of the date a written request for payroll records has been received.

Failure of the Contractor to comply with any provision of this article or Labor Code Section 1776 within ten days of the date a written request for compliance is received shall result in a forfeiture of \$25.00 per calendar day or portion thereof, for each worker, until strict compliance is obtained. Upon notification by the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, the District shall withhold penalties under this article or Labor Code Section 1776 from the Contractor's payments then due.

COPY OF PREVAILING WAGE RATES

The District shall post a copy of the general prevailing rate of per diem wages at the job site pursuant to Section 1773.2 of the California Labor Code. Copies of the prevailing rate of per diem wages are on file at District's principal office and shall be made available upon request.

*** In the event of any discrepancies between this Exhibit and any of the statutory sections cited above, or any successor provisions thereto, the statutory terms and requirements shall control and are incorporated prospectively by this reference.**

#9.

EXHIBIT 5

Payment Bond

PAYMENT BOND

We, _____, as Principal, and _____, as Surety, jointly and severally bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the MOULTON NIGUEL WATER DISTRICT (herein called "Owner") for payment of the penal sum of _____ Dollars (\$ _____), lawful money of the United States. Owner has awarded Principal a Contract for the construction of:

**ON-CALL ASPHALT AND CONCRETE REPAIR SERVICES
CONTRACT NO. OM12-13.016 (14-15)**

If principal or any of his subcontractors fails to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department Franchise Tax Board from the wages of employees of the Contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, then Surety will pay the same in an amount not exceeding the sum specified above, and also will pay, in case suit is brought upon this bond, such reasonable attorney's fees as shall be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the work to be performed thereunder or the plans and specifications accompanying the name shall in any way affect its obligation on this bond. Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or the plans and specifications.

Principal and Surety agree that should Owner become a party to any action on this bond, with or without suit, that each will also pay Owner reasonable attorney's fees incurred therein in addition to the sum above set forth.

NOTICE

No substitution or revision to this bond form will be accepted. Sureties must be admitted and authorized to do business in and have an agent for service of process in California. A Certified copy of Power of Attorney must be attached.

#9.

Executed in three original counterparts on _____, 20__.

Principal

By _____

(CORPORATE SEAL)

Title

* (ATTACH ACKNOWLEDGMENT OF AUTHORIZED REPRESENTATIVE OF PRINCIPAL)

Any claims under this bond may be addressed to:

(Name and address of Surety) _____

(Name and address of agent or representative in California if different from above) _____

(Telephone number of agent/Surety in California) _____

* (ATTACH ACKNOWLEDGMENT) _____

Surety

Attorney-in-Fact

APPROVED AS TO FORM:

(Attorney for Owner)

EXHIBIT 6

Performance Bond

PERFORMANCE BOND

We, _____, as Principal, and _____, as Surety, jointly and severally bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the MOULTON NIGUEL WATER DISTRICT (herein called "Owner") for payment of the penal sum of _____ Dollars (\$ _____), lawful money of the United States. Owner has awarded Principal a Contract for the construction of:

**ON-CALL ASPHALT AND CONCRETE REPAIR SERVICES
CONTRACT NO. OM12-13.016 (14-15)**

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things abide by and well and truly keep and perform the covenants, and agreements in the said Contract, and any alteration thereof made as therein provided, on his part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the Owner, the engineer/architect, the Construction Manager, the Owner's representative, and their consultants, and each of their directors, officers, employees and agents, as therein stipulated, this obligation shall become null and void, otherwise, it shall be and remain in full force and effect.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or the work to be performed thereunder, or the plans and specifications shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay Owner's reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

NOTICE

No substitution or revision to this bond form will be accepted. Sureties must be admitted and authorized to do business in and have an agent for service of process in California. A Certified copy of Power of Attorney must be attached.

Executed in three original counterparts on _____, 20__.

Principal

By _____

(CORPORATE SEAL)

Title

* (ATTACH ACKNOWLEDGMENT OF AUTHORIZED REPRESENTATIVE OF PRINCIPAL)

Any claims under this bond may be addressed to:

(Name and address of Surety)

(Name and address of agent or representative in California if different from above)

(Telephone number of agent/Surety in California)

* (ATTACH ACKNOWLEDGMENT)

Surety

Attorney-in-Fact

APPROVED AS TO FORM:

(Attorney for Owner)

EXHIBIT 7

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2013-14)**

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED, AND FORM SIGNED BELOW)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement.

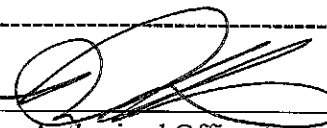
I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the repair work to be performed under this Agreement. My workers' compensation insurance carrier and policy number are:

Carrier STATE FUND

Policy Number 9084329-14

I certify that, in the performance of the repair work on this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date: 12-2-14

Contractor:  owner / Pres
Authorized Officer/ Representative

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

EXHIBIT 8**Resolution of Construction Claims***

This Addendum is intended as a summary of the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code ("Claims Resolution Statute") and is subject to the actual provisions of the Claims Resolution Statute. This Addendum/ the Claims Resolution Statute shall govern the resolution of any claim of \$375,000 or less which may be made by the Contractor hereunder.

As used in this Addendum and the Claims Resolution Statute, "claim" is defined as a separate demand by Contractor for (a) a time extension, (b) payment of money or damages arising from the work, payment for which is not otherwise expressly provided for or Contractor is not otherwise entitled to, or (c) an amount, the payment of which is disputed by District.

Contractor shall make all claims in writing and include the documents necessary to substantiate the claims. Any claim by Contractor which is intended to invoke the procedures under the Claims Resolution Statute shall specify that the claim is being made pursuant to the Claims Resolution Statute. All claims by Contractor must be filed on or before the date of final payment; provided, however, nothing in this Addendum or the Claims Resolution Statute is intended to extend the time limits or supersede notice requirements which may otherwise be provided within the Agreement or the filing of claims by Contractor.

Claims Less Than \$50,000

District shall respond in writing within 45 days of receipt of the claim, or District may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims District may have against Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of District and Contractor. If District requests additional documentation, District's written response to the claim shall be submitted to Contractor within 15 days after receipt of the additional documentation, or within the same time period as used by Contractor in producing the additional documentation, whichever is greater.

Claims Over \$50,000 But Less Than \$375,000

District shall respond in writing within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims District may have against Contractor. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of District and Contractor. If District requests additional documentation, District's written response to the claim shall be submitted to Contractor within 30 days after receipt of the additional documentation, or within the same time period as used by Contractor in producing the additional information, whichever is greater.

Procedure Following District's Response

If Contractor disputes District's written response, or District fails to respond within the time prescribed, Contractor may, by giving written notice to District within 15 days of receipt of District's response (or within 15 days of District's failure to respond), demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, District shall schedule a meet and confer conference within 30 days.

If after the meet and confer conference, any portion of the claim remains in dispute, Contractor may file a claim pursuant to Government Code Section 900 *et seq.*

*** In the event of any discrepancies between this Exhibit and the Claims Resolution Statute, the statute shall control.**