



**ENGINEERING & OPERATIONS
BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
March 16, 2015
8:30 AM
Approximate Meeting Time: 2 Hours**

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE FEBRUARY 17, 2015 SPECIAL ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING
3. PUBLIC COMMENTS - CLOSED SESSION

CLOSED SESSION

4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS, Pursuant to Government Code Section 54956.8

Property: 4 Liberty, Aliso Viejo, 92656

Under Negotiation: Price and terms of payment

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

5. RETURN TO OPEN SESSION

The Board of Directors will return to open session at 9:00 a.m.

6. PUBLIC COMMENTS - OPEN SESSION

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.

PRESENTATION ITEMS

7. Plant 3A Operation Transfer
8. Baker Treatment Plant Update

DISCUSSION ITEMS

9. On-Call Asphalt Repair Contract
10. Electrical Facilities Safety Assessment Project
11. Beacon Hill Pump Replacement Construction Contract Award

ACTION ITEMS

12. ASSOCIATION OF CALIFORNIA WATER AGENCIES JOINT POWERS INSURANCE AUTHORITY EXECUTIVE COMMITTEE NOMINATIONS (RESOLUTION NOS. 15-)

Recommended Action: As directed by the Board of Directors

INFORMATION ITEMS

13. Meter Lifecycle
14. Update on Water Purchases
15. Future Agenda Items (Any items added under this section are for discussion at future meetings only)
16. 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

17. CONFERENCE INVOLVING A JOINT POWERS AGENCY: SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA)

Pursuant to Government Code Section 54956.96 (a) (1) and (b), Closed Sessions will be conducted for the following purposes:

Pursuant to Government Code Section 54956.9(a)-(d)(2), a Closed Session will be conducted to confer with legal counsel to discuss threatened litigation;

Pursuant to Government Code Section 54956.9(a)-(d)(4), a Closed Session will be conducted to confer with legal counsel on initiation of litigation.

SOCWA ANTICIPATED LITIGATION - ONE CASE

Name of MNWD representative on SOCWA Board: Director Larry Lizotte

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

February 17, 2015

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 February 17, 2015. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President (arrived at 9:20 a.m.)
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President

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
Jeff Hoskinson	Bowie, Arneson, Wiles, and Giannone
Paige Gulck	Board Secretary
Megan Geer	MNWD
Ray McDowell	MNWD
Megan Schneider	MNWD
Kelly Winsor	MNWD
Rod Woods	MNWD
Ruth Zintzun	MNWD

#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 JANUARY 12, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY GARY KURTZ AND SECONDED BY DUANE CAVE, MINUTES OF THE JANUARY 12, 2015 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, GARY KURTZ, LARRY LIZOTTE, AND BRIAN PROBOLSKY ALL VOTING 'AYE'. DONALD FROELICH WAS ABSENT.

3. PUBLIC COMMENTS

None.

PRESENTATION ITEMS

4. Will Serve Process

Mark Mountford presented on the Will Serve Letter Process. Topics of discussion included types of letters, the process, required language, and the impact of the will serve process on the District's facilities.

Donald Froelich arrived at 9:20 a.m.

DISCUSSION ITEMS

5. Joint Regional Wastewater Treatment Plant Agreement Amendment

Eva Plajzer provided details on the Joint Regional Wastewater Treatment Plant (JRWTP) Agreement Amendment. Staff recommends that the Board of Directors approve Addendum 1 to Amendment No. 6 of the "Agreement for Construction, Use, Operation, Maintenance, Repair, and Replacement of JWRTTP Reclamation Sludge Solids Handling Facility on behalf of Project Committee 17."

6. Amendment to Professional Services Agreement for Strategic Real Estate Consulting

Matt Collings provided details on the Professional Services Agreement (PSA) for Strategic Real Estate Consulting. Staff recommends the approval of Amendment No. 3 to the PSA with Starpointe valued at \$72,000 for a total not-to-exceed contract amount of \$135,200; and authorizing the General Manager to execute the Amendment.

INFORMATION ITEMS

7. Joint Powers Authority Quarterly Update

Matt Collings provided an update on the Joint Powers Authorities. Topics of discussion included South Orange County Wastewater Authority (SOCWA) Executive Committee, Santa Margarita Water District's operation of Plant 3A, and the Groundwater Management Plan.

8. Quarterly Capital Improvement Program Report

Eva Plajzer provided details on the Quarterly Capital Improvement Program Report.

9. Quarterly Communications License Program Report

Eva Plajzer provided details on the Quarterly Communications License Program Report.

The Board took a short break and reconvened at 10:21 a.m.

Brian Probolsky recused himself from the closed session item regarding the SOCWA - AWMA Bridge.

CLOSED SESSION

The Board of Directors entered closed session at 10:21a.m. Closed session ended at 10:42. a.m.

10. **CONFERENCE INVOLVING A JOINT POWERS AGENCY: SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA)**

Pursuant to Government Code Section 54956.96 (a) (1) and (b), Closed Sessions will be conducted for the following purposes (Legal Counsel in attendance):

Discussion will concern: Conference with Real Property Negotiators, price and terms for conveyance of AWMA Bridge to County of Orange

PROPERTY - the AWMA Bridge is located at the intersection of AWMA Road and Alicia Parkway at the entrance to the County's Woods Canyon/Aliso Canyon Wilderness Parks

NEGOTIATING PARTIES - SOCWA, County of Orange/Stacy Blackwood

SOCWA NEGOTIATORS - General Manager, Director of Operations, Authority Legal Counsel

UNDER NEGOTIATION - Price, terms of payment Name of MNWD representative on SOCWA Board: Director Larry Lizotte

Donald Froelich stated that there was no reportable action taken on this item.

#2.

ADJOURNMENT

The meeting was adjourned at 10:43 a.m.

Respectfully submitted,

Paige Gulck
Board Secretary

DRAFT



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** March 16, 2015

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

SUBJECT: On-Call Asphalt and Concrete Repair Services

SUMMARY

Issue: Staff issued a Request for Proposals (RFP) for Asphalt and Concrete Repair Services for the remainder of the 2014-15 Fiscal Year (FY) through FY 2016-17. Additionally, Staff requires authorization to increase the amount of the current On-Call Asphalt Agreement.

Recommendation: It is recommended that the Board of Directors authorize the General Manager to execute the following agreement documents:

1. On-Call Asphalt and Concrete Repair Agreement with Hardy & Harper, Inc., for a not-to-exceed amount of \$87,500 to perform the subject services during the remainder of the 2014-15 FY and a not-to-exceed amount of \$450,000 per year for the 2015-16 FY and 2016-17 FY for a total agreement amount of \$987,500.
2. On-Call Asphalt and Concrete Repair Agreement with G.M. Sager Construction Co., Inc. for a not-to-exceed amount of \$87,500 to perform the subject services during the remainder of the 2014-15 FY and a not-to-exceed amount of \$450,000 per year for the 2015-16 FY and 2016-17 FY for a total agreement amount of \$987,500.
3. Amendment No. 2 to the On-Call Asphalt and Concrete Repair Agreement with Sanders Paving, Inc., in the not-to-exceed amount of \$75,000 during the remainder of the 2014-15 FY, for a total Agreement amount of \$455,000.

#9.

On-Call Asphalt and Concrete Repair Services

March 16, 2015

Page 2 of 4

Fiscal Impact: There are sufficient funds in the FY 2014-15 Operating Budget for the increased paving costs. Sufficient funds will be requested in the 2015-16 and 2016-17 Fiscal Year Budget to cover each agreement's value.

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 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. Expenditures for asphalt and construction repairs are budgeted based on past services and projected work required for each fiscal year. Due to continued increases in hydrant, service line, and line break repairs, asphalt and concrete repair needs have correspondingly increased significantly each year and are projected at \$900,000 annually over each of the next two fiscal years.

DISCUSSION:

In December 2014, the Board authorized the General Manager to sign Amendment No. 1 to extend the District's On-Call Service Agreement with Sanders Paving, Inc., through June 30, 2015, for a total agreement amount of \$380,000. However, due to the increase of service line leaks and line breaks throughout the District's facilities, the need for asphalt and concrete repair work has increased resulting in accelerated depletion of the existing On-Call paving contract. In order to maintain paving activities, additional paving resources will be required for the remainder of this fiscal year, along with the next two fiscal years.

Staff developed a request for proposals (RFP) for providing On-Call Asphalt and Concrete Repair Services for the remainder of this fiscal year and for Fiscal Years 2015-16 and 2016-17.

Staff issued an RFP to thirteen contractors and received seven proposals (see below). Staff reached out to local agencies, cities and industry associations for contractor referrals and compiled a list of contractors potentially capable of performing the services. Staff contacted each contractor to establish capabilities and experience with small patch paving and concrete work in order to identify the list of thirteen qualified contractors. The complete list of contractors considered for the RFP is attached hereto as Attachment 1, Contractor Sourcing Detail.

On-Call Asphalt and Concrete Repair Services

March 16, 2015

Page 3 of 4

Proposals were evaluated with an established set of criteria that included cost, references, and experience with other municipalities on projects similar in scope. Below is the summary.

Pricing Summary - Asphalt and Concrete Repair Services	
Contractor	Pricing ⁽¹⁾
Hardy & Harper, Inc.	\$6,070
GM Sager Construction Co, Inc.	\$6,200
A&Y Company, Inc.	\$7,682
Sanders Paving, Inc.	\$9,200
Ben's Asphalt, Inc.	\$9,850
Caliber Paving Company, Inc.	\$10,085
Quickel Paving	Not responsive
Note:	
1. Pricing consists of the top five most common projects, including asphalt patching and concrete repair.	

Staff is recommending the Board authorize the General Manager enter into agreements with GM Sager Construction Co., Inc. and Hardy & Harper, Inc., in the amounts of \$87,500 each for the remaining months of FY 2014-15 and \$450,000 each for FY 2015-16 and FY2016-17, for a total agreement amount of \$987,500 with each contractor. The agreements are attached for reference and include the standard ten day termination clause.

Staff anticipates that the contract execution process will take three to four weeks after contract award. Although the RFP includes services for asphalt and concrete repair through the remainder of the 2014-15 FY, in order to seamlessly transition the asphalt and concrete services under the new agreements, Staff requests the Board authorize the General Manager to sign Amendment No. 2 to the current On-Call Asphalt and Concrete Repair Agreement with Sanders Paving, Inc., in the not-to-exceed amount of \$75,000. This will enable the pavement repairs to continue without delays while the subsequent awarded contracts are executed between the District and the contractors. Amendment No. 2 is attached for reference.

Attachments:

1. Contractor Sourcing Detail
2. On-Call Service Agreement – Asphalt and Concrete Repair with GM Sager Construction Co., Inc.
3. On-Call Service Agreement – Asphalt and Concrete Repair with Hardy & Harper, Inc.
4. Amendment No. 2 to On-Call Service Agreement with Sanders Paving, Inc.

#9.

On-Call Asphalt and Concrete Repair Services

March 16, 2015

Page 4 of 4

Attachment 1

Contractor Sourcing Detail

The list of potential bidders was compiled from several sources; known contractors, participants in bids for other public agencies in Orange County, and the California Asphalt Paving Association. Initially, twenty-two contractors were contacted by staff to gauge an interest in participating in the RFP. Of these, thirteen contractors expressed interest and received the RFP. Four contractors (Shamrock, Excel, All-American, El Camino) did not attend the mandatory pre-proposal meeting, which left nine active participants; of which seven submitted proposals.

Sourced Contractor List

Sanders Paving
Hardy and Harper
Ben's Asphalt
Quickel Paving
A&Y Company, Inc.
JB Bostick Company
G.M. Sager Construction
Caliber Paving Company
Beach Paving
El Camino Asphalt Paving Corp.
All-American Asphalt
Excel Paving
Shamrock Paving
RJ Noble
Mark Company
Glaeser Builders Inc.
Preferred Paving
United Paving
Oliver Mahon Asphalt Inc.
Champion Paving
George Weir Asphalt
Eagle Paving

Participating Contractors

Sanders Paving
Hardy and Harper
Ben's Asphalt
A&Y Company, Inc.
G.M. Sager Construction
Caliber Paving Company
Quickel Paving

ON-CALL SERVICE AGREEMENT

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2014-15 – Fiscal Year 2016-17)
Agreement No. OM14-15.028**

This ON-CALL SERVICES AGREEMENT (the “Agreement”) is approved and entered into as of _____, 2015 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “District”, and G.M. SAGER CONSTRUCTION, INC., a corporation under the laws of California, 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 through fiscal year 2016-17. 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 the District’s General Provisions 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 contract 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

#9.

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 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 the District's General Provisions (attached on Exhibit 1), generally accepted industry standards, and 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 hold, maintain and keep current a valid California Contractors' State License Board (CSLB) type "A" General Engineering Contractor's License or type "C-12", Earthwork and Paving License, and meet all current licensing and registration requirements as may be required by the CSLB, the California Department of Industrial Relations (DIR) and the cities of Laguna Niguel, Aliso Viejo, Mission Viejo, Laguna Hills and Dana Point. A current copy of any required licenses will be kept on file by District.

b. Contractor must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code. Contractor must provide its DIR Registration number to the District.

c. 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. Any delay in performance by Contractor of Work as scheduled shall constitute a material breach of this Agreement. 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

#9.

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 Contract 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 Contract, 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 to Contractor during the term of this Agreement shall not exceed **Nine Hundred Eighty-Seven Thousand Five Hundred Dollars (\$987,500)** (the "Agreement Maximum Amount"). Notwithstanding the foregoing, the total compensation paid for Work pursuant to separate Work Orders during the District's 2014-15 Fiscal Year shall not exceed **Eighty-Seven Thousand Five Hundred Dollars (\$87,500)** and for each year of the Agreement term thereafter, compensation shall not exceed **Four Hundred Fifty Thousand Dollars (\$450,000)** per year. 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 Contract 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 Contract shall be conclusive evidence of performance of the Contract 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 the Effective Date to and including June 30, 2017 (“expiration”), unless otherwise terminated earlier by either party pursuant to Section 14.

7. PREVAILING WAGE.

Under the provisions of the California Labor Code, the Director of the California Department of Industrial Relations has determined the prevailing rate of wages for the locality in the Work is to be performed and DISTRICT has adopted said prevailing rate of wages. A copy of these prevailing wage rates are on file with the Department of Industrial Relations and can be found online with the State of California at <http://www.dir.ca.gov/dlsr/pwd>. A copy of such prevailing wage rates shall be posted on the jobsite by CONTRACTOR.

It shall be mandatory for the bidder to whom the Work is awarded, and upon any subcontractor under the successful bidder, to pay not less than the specified rates to all workers employed by them in the execution of the Work.

Contractors submitting bids on this project must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code. Bids will not be accepted after March 1, 2015, and contracts/subcontracts shall not be entered into after April 1, 2015, with any contractor without proof of current registration to perform work consistent and in compliance with the requirements of Sections 1725.5 and 1771.1. Contractors shall be responsible for ensuring that each subcontractor is registered and qualified. Contracts entering into with any Contractor or subcontractor, in violation of Section 1771.1(a), shall be subject to cancellation by the DISTRICT at the sole discretion of the DISTRICT consistent with Section 1771.1(e).

Contractors submitting bids on this project acknowledge that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#9.

The Contractor and all subcontractors selected to perform work on the project shall post job site notices, pursuant to the requirements set forth in the Labor Code and related applicable regulations, including but not limited to, those provisions addressing the posting of notice relating to prevailing wage compliance.

The Contractor and all subcontractors selected to perform work on the project shall be responsible for furnishing those records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, pursuant to the procedures set forth in Section 1771.4 of the Labor Code.

8. CONTRACT DOCUMENTS. The Contract includes all of the Contract 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. Before commencing performance of the Work contracted for hereunder, Contractor shall furnish Payment and Performance bonds (the "Bonds") as required by Section 9550 of the Civil Code, and as approved by District, from a single surety licensed and admitted in the State with an agent for service of process in California and acceptable to the District in the District's sole discretion.

b. Bonds shall be purchased by Contractor in increments of \$100,000.00 each (both Payment and Performance bonds), for surety coverage of the initial \$100,000.00 of Work performed. Once Work performed by Contractor reaches 80% of the bonded amounts, Contractor shall purchase subsequent Bonds to cover the next \$100,000.00 of Work, consecutively, through the Agreement term, and up to the Agreement Maximum Amount. At no time shall any Work be performed by Contractor without the required bonding in place. It shall be Contractor's responsibility to ensure that all Work performed be in compliance with the bonding requirements set forth herein.

c. 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 Work Order, the Contractor shall, submit evidence satisfactory to the District that such Bonds will be issued.

d. District agrees to reimburse 100% of the total amount of the Bond premiums paid by the Contractor under this Agreement in consideration of Contractor maintaining availability for on-call Work during the term of this Agreement. District will reimburse such premium amounts within forty-five (45) days of District's receipt of invoice and following Contractor's posting of Bonds.

e. Contractor shall use District's forms, which are attached hereto as Exhibit 4 and Exhibit 5, for the Bonds.

f. Nothing in the insurance requirements set forth in this Agreement or under the bonding terms is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section 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.

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:

#9.

- (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 employ, **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 6** 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 1**, District General Provisions, Section 9-6, 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 Contract. 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: G.M. Sager Construction, Inc.
 1380 S. East End Avenue
 Pomona, CA 91766
 Attn: Michael Sager

If to District: Notices:

 Moulton Niguel Water District
 27500 La Paz Road
 Laguna Niguel, CA 92677
 Attn: Director of Engineering and Operations

If to District: Billing:

 Moulton Niguel Water District
 P.O. Box 30203
 Laguna Niguel, CA 92607-0203
 Attn: Director of Engineering & Operations
 (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

#9.

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.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“DISTRICT”: MOULTON NIGUEL WATER DISTRICT

By: _____
Title: General Manager

“CONTRACTOR”: G.M. SAGER CONSTRUCTION, INC.

By: _____
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 Asphalt and Concrete Repair Services Agreement]

#9.

CORPORATE CERTIFICATE*

I, _____, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that _____, 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.

[_____] , 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, General Provisions****I. Asphalt Repairs**

The majority of asphalt work will likely consist of small (5' x 5') patches. Other types of asphalt repairs will be medium (10' x 10') or large (20' x 20') patches, 36" manholes, 2' wide water valves, street valve, manhole leveling and asphalt repair, seal coat and other work related to asphalt repairs, all in accordance with respective city requirements.

II. Concrete Repairs

Concrete work will typically consist of curb & gutter replacement, sidewalk panel replacement (4' x 6' and 4' x 12'), driveway approaches and rebar work, all in accordance with respective city requirements.

III. Average Workload

The typical average amount of weekly work assigned to the Contractor is six to ten (6 -10) project sites which, ideally, have a two-day turnaround for completion.

IV. No Subcontracting

The Contractor will be responsible for self-performing the following services in-house (no subcontracting):

- Asphalt Paving
- Concrete (curb and gutter, sidewalk panels, driveway approaches, rebar work)
- Seal coat

V. Allowed Subcontracting

The Contractor will be responsible for the following work, but may use subcontractors:

- Striping
- Thermal
- Traffic Loops
- Saw Cutting
- Specialty or Patterned Concrete Work
- Road Slurry
- Other, as approved by the District

VI. REPAIR FACTORS

The work can potentially be assigned anywhere in a 37 square mile area, covering five cities. Success for this project is challenging on both a logistical and quality basis. The work must be finished within a reasonable time frame from start to completion to maintain compliance with District standards of customer service and safety. Each of the five cities has its own regulations and specifications, which must be adhered to in all stages of the work, including traffic control, types of base and asphalt, depth of repair, etc. All work has to be completed to the satisfaction of the District and the responsible city inspector of the cities mentioned above.

Contractor will be expected to perform the following scope of work within a two week period following notification of necessary repair:

1. Within two weeks of notification of necessary repairs, schedule with the District and the affected city.
2. Perform repair work to the satisfaction of the District staff and city regulations
3. Use proper traffic control devices and safety equipment per the District and city regulations.
4. Remove debris (asphalt, concrete, dirt, etc.) as necessary from work site.
5. The District will bring the excavation site to the bottom of the asphalt cement layer and compact the area to the required compaction as per the various cities. The Contractor will be responsible for removal of existing temporary patch and placement and compaction of the final asphalt cement.
6. 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.
7. Repair/replace concrete gutters, curbs and sidewalk panels per the District and city specifications.
8. Seal coat reservoir sites and other District facilities.
9. One (1) year warranty for material and installation.
10. Additional items may be added as necessary to each task order as site conditions require.

All construction as part of this contract shall be completed per the District standard specifications (District General Provisions, attached), 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.

EXHIBIT 1 (CONT'D)
DISTRICT GENERAL PROVISIONS

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 Contract 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 Contract 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 equipment on the site necessarily idled during such Work. These costs, the Work to be done by the Contractor in locating, removing, relocating,

#9.

protecting or temporarily maintaining such Utility facilities shall be covered by a written change order. 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.

The right is reserved to governmental agencies and to Owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

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 Contract 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 Contract 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 Contract 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 Contract 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 Contract 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

#9.

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 Contract 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 Contract as prescribed. Defective Work shall be made good, and materials, and equipment furnished and Work performed which is not in accordance with the Contract 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 Contract 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.

6-1 SUB-CONTRACTING

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 Contract 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 Contract Documents as applicable to its Work.

The divisions and sections of any Specifications and the identifications of any Drawings shall not control

#9.

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 sub-agreement 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 Contract Documents for the benefit of Owner.

If requested in writing by Owner, Contractor shall deliver to Owner a copy of each sub-agreement 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 Contractor or his surety of their responsibilities under the Contract, nor will the Owner consent to any assignment of a part of the Work under the Contract.

Upon obtaining a prior written consent of the Owner, the Contractor may assign monies due or to become due him under the Contract, 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 Contract, 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract.

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

#9.

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 Contract 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.

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 Contract 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

#9.

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 Contract is in excess of \$25,000, the Contractor shall submit to the Owner for Acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 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 Contract 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 Contract.

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 Contract.

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 Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by the Contract 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.

#9.

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 Contract.

7-12 HOURS OF LABOR

The Contractor shall forfeit as a penalty to the Owner \$25.00 for each worker employed in the execution of the Contract by the Contractor or any Subcontractor under him 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.

7-13 PREVAILING WAGE

- A. The Contractor shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to the Owner \$200.00 for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such Work or craft in which such worker is employed for any Work done under the Contract by him or by any Subcontractor under him 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.
- B. For all contracts for which bids are opened on or after March 1, 2015, or contracts are awarded on or after April 1, 2015, the Contractor and any subcontractor shall be registered with the Department of Industrial Relations and qualified to perform work pursuant to Sections 1725.5 and 1771.1 of the California Labor Code. Pursuant to Sections 1725.5 and 1771.1, as applicable, the Contractor shall be responsible for providing proof of current registration for both the Contractor and any subcontractor prior to performing any work. Notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its subcontractors, which is otherwise required by law to be registered with DIR, is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the DIR revokes the registration), the DISTRICT may cancel the Contract and/or replace the Contractor or subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.

- C. The Contractor acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- D. The Contractor and all subcontractors shall be responsible for posting appropriate job site notices, pursuant to the requirements set forth in the Labor Code and related regulations. Furthermore, the Contractor and all subcontractors shall be responsible for furnishing the records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, pursuant to the procedures set forth in Section 1771.4 of the Labor Code.

7-14 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 filed in accordance with Labor Code Section 1773.8.

7-15 APPRENTICES

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him.

The Contractor and any Subcontractor under him 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 up to \$100 for each calendar day of non-compliance (or up to \$300 per day if prior violation(s)) which shall be withheld from progress payments by Owner upon notice from the Department of Industrial Relations. (Labor Code Section 1777.7)

7-16 WARRANTY OF TITLE

No materials, supplies, or equipment for the Work under this Contract 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 Contract 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.

#9.

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 Contract is entered into for such materials.

7-17 PROPERTY RIGHTS IN MATERIALS

Nothing in the Contract 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 Contract 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 Contract 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.

7-27 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

#9.

1776, and to ensure that each Subcontractor also complies with all provisions of Labor Code Section 1776 and this Contract.

All payroll records shall be certified as accurate by the applicable Contractor or Subcontractor 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 Owner, 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 Owner, 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 Owner, 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 Subcontractor 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 provisions of this Section or Labor Section Code 1776 within ten Days of the date a written request for compliance is received shall result in a forfeiture of \$100.00 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 Owner shall withhold penalties under this Section or Labor Code Section 1776 from the Contractor's payments then due.

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 Contract.

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 Contract 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 Contract, 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 seven days from the time that all or any portion of the retention proceeds are received by the Contractor, 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% 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 22300 of the Public Contract Code, the Contractor may substitute securities for any money withheld by the Owner to ensure performance of the Contract. 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.

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 in this Contract, which when executed by the Contractor and the Owner shall constitute a Supplemental Agreement forming a part of this Contract. 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

#9.

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 Contract, including but not limited to the completion of the Contract, 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 Contract 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 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.

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

ITEM NO.	QTY	DESCRIPTION	UNIT PRICE
1	1	ASPHALT REPAIR 5' X 5' (6" Thickness)	\$ 650.00
2	1	ASPHALT REPAIR 10' X 10' (6" Thickness)	\$ 900.00
3	1	ASPHALT REPAIR 20' X 20' (6" Thickness)	\$ 2,700.00
4	1	ASPHALT REPAIR 36-INCH MANHOLE	\$1,400.00
5	1	ASPHALT REPAIR 2' WATER VALVE CAN	\$ 650.00
7	1	4 x 6 FT. CONCRETE SIDEWALK PANEL (4" Thickness)	\$ 850.00
8	1	4 x 12 FT. CONCRETE SIDEWALK PANEL (4" Thickness)	\$1,100.00
9	1	SEAL COAT 1,000 FT ²	\$ 1,200.00 Per 1 Coat
10	1	SEAL COAT 10,000 FT ²	\$ 2,500.00 Per 1 Coat
11	100 LF	STRIPING (WHITE)	\$ Min. \$600 plus \$5.00 Per LF
12	100 LF	STRIPING (THERMAL)	\$ Min. \$800 plus \$10.00 Per LF
13	1	PAYMENT/PERFORMANCE BOND	\$ 3,000.00 Per each \$100,000

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.: _____

Bond Number/Date Issued: _____

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: _____

#9.

EXHIBIT 4
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

**(Fiscal Year 2014-15, 15-16, 16-17)
Agreement No. OM14-15.028**

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 5

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

**(Fiscal Year 2014-15, 15-16, 16-17)
Agreement No. OM14-15.028**

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 6

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2014-15)**

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 _____

Policy Number _____

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: _____

Contractor: _____

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.

ON-CALL SERVICE AGREEMENT

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2014-15 – Fiscal Year 2016-17)
Agreement No. OM14-15.028**

This ON-CALL SERVICES AGREEMENT (the “Agreement”) is approved and entered into as of _____, 2015 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “District”, and HARDY & HARPER, INC., a corporation under the laws of California, 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 through fiscal year 2016-17. 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 the District’s General Provisions 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 contract 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

#9.

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 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 the District's General Provisions (attached on Exhibit 1), generally accepted industry standards, and 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 hold, maintain and keep current a valid California Contractors' State License Board (CSLB) type "A" General Engineering Contractor's License or type "C-12", Earthwork and Paving License, and meet all current licensing and registration requirements as may be required by the CSLB, the California Department of Industrial Relations (DIR) and the cities of Laguna Niguel, Aliso Viejo, Mission Viejo, Laguna Hills and Dana Point. A current copy of any required licenses will be kept on file by District.

b. Contractor must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code. Contractor must provide its DIR Registration number to the District.

c. 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. Any delay in performance by Contractor of Work as scheduled shall constitute a material breach of this Agreement. 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 Contract 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 Contract, 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 to Contractor during the term of this Agreement shall not exceed **Nine Hundred Eighty-Seven Thousand Five Hundred Dollars (\$987,500)** (the “Agreement Maximum Amount”). Notwithstanding the foregoing, the total compensation paid for Work pursuant to separate Work Orders during the District’s 2014-15 Fiscal Year shall not exceed **Eighty-Seven Thousand Five Hundred Dollars (\$87,500)** and for each year of the Agreement term thereafter, compensation shall not exceed **Four Hundred Fifty Thousand Dollars (\$450,000)** per year. 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 Contract 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 Contract shall be conclusive evidence of performance of the Contract 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 the Effective Date to and including June 30, 2017 (“expiration”), unless otherwise terminated earlier by either party pursuant to Section 14.

7. PREVAILING WAGE.

Under the provisions of the California Labor Code, the Director of the California Department of Industrial Relations has determined the prevailing rate of wages for the locality in the Work is to be performed and DISTRICT has adopted said prevailing rate of wages. A copy of these prevailing wage rates are on file with the Department of Industrial Relations and can be found online with the State of California at <http://www.dir.ca.gov/dlsr/pwd>. A copy of such prevailing wage rates shall be posted on the jobsite by CONTRACTOR.

It shall be mandatory for the bidder to whom the Work is awarded, and upon any subcontractor under the successful bidder, to pay not less than the specified rates to all workers employed by them in the execution of the Work.

Contractors submitting bids on this project must be registered with the Department of Industrial Relations pursuant to the requirements of Sections 1725.5 and 1771.1 of the California Labor Code. Bids will not be accepted after March 1, 2015, and contracts/subcontracts shall not be entered into after April 1, 2015, with any contractor without proof of current registration to perform work consistent and in compliance with the requirements of Sections 1725.5 and 1771.1. Contractors shall be responsible for ensuring that each subcontractor is registered and qualified. Contracts entering into with any Contractor or subcontractor, in violation of Section 1771.1(a), shall be subject to cancellation by the DISTRICT at the sole discretion of the DISTRICT consistent with Section 1771.1(e).

Contractors submitting bids on this project acknowledge that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Contractor and all subcontractors selected to perform work on the project shall post job site

#9.

notices, pursuant to the requirements set forth in the Labor Code and related applicable regulations, including but not limited to, those provisions addressing the posting of notice relating to prevailing wage compliance.

The Contractor and all subcontractors selected to perform work on the project shall be responsible for furnishing those records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, pursuant to the procedures set forth in Section 1771.4 of the Labor Code.

8. CONTRACT DOCUMENTS. The Contract includes all of the Contract 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. Before commencing performance of the Work contracted for hereunder, Contractor shall furnish Payment and Performance bonds (the "Bonds") as required by Section 9550 of the Civil Code, and as approved by District, from a single surety licensed and admitted in the State with an agent for service of process in California and acceptable to the District in the District's sole discretion.

b. Bonds shall be purchased by Contractor in increments of \$100,000.00 each (both Payment and Performance bonds), for surety coverage of the initial \$100,000.00 of Work performed. Once Work performed by Contractor reaches 80% of the bonded amounts, Contractor shall purchase subsequent Bonds to cover the next \$100,000.00 of Work, consecutively, through the Agreement term, and up to the Agreement Maximum Amount. At no time shall any Work be performed by Contractor without the required bonding in place. It shall be Contractor's responsibility to ensure that all Work performed be in compliance with the bonding requirements set forth herein.

c. 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 Work Order, the Contractor shall, submit evidence satisfactory to the District that such Bonds will be issued.

d. District agrees to reimburse 100% of the total amount of the Bond premiums paid by the Contractor under this Agreement in consideration of Contractor maintaining availability for on-call Work during the term of this Agreement. District will reimburse such premium amounts within forty-five (45) days of District's receipt of invoice and following Contractor's posting of Bonds.

e. Contractor shall use District's forms, which are attached hereto as Exhibit 4 and Exhibit 5, for the Bonds.

f. Nothing in the insurance requirements set forth in this Agreement or under the bonding terms is to be construed as limiting the liability of Contractor or Contractor's insurers or sureties. Contractor agrees that the provisions of this Section 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.

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.

#9.

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, **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 6** 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 1, District General Provisions, Section 9-6, 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 Contract. 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: Hardy & Harper, Inc.
1312 E. Warner Avenue
Santa Ana, CA 92705
Attn: Corey Kirschner, Vice President

If to District: Notices:

Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677
Attn: Director of Engineering and Operations

If to District: Billing:

Moulton Niguel Water District
P.O. Box 30203
Laguna Niguel, CA 92607-0203
Attn: Director of Engineering & Operations
(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

#9.

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.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

“DISTRICT”: MOULTON NIGUEL WATER DISTRICT

By: _____
Title: General Manager

“CONTRACTOR”: HARDY & HARPER, INC.

By: _____
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 Asphalt and Concrete Repair Services Agreement]

#9.

CORPORATE CERTIFICATE*

I, _____, certify that I am the Secretary of the corporation named as Contractor in the foregoing Agreement; that _____, 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.

[_____] , 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, General Provisions

I. Asphalt Repairs

The majority of asphalt work will likely consist of small (5' x 5') patches. Other types of asphalt repairs will be medium (10' x 10') or large (20' x 20') patches, 36" manholes, 2' wide water valves, street valve, manhole leveling and asphalt repair, seal coat and other work related to asphalt repairs, all in accordance with respective city requirements.

II. Concrete Repairs

Concrete work will typically consist of curb & gutter replacement, sidewalk panel replacement (4' x 6' and 4' x 12'), driveway approaches and rebar work, all in accordance with respective city requirements.

III. Average Workload

The typical average amount of weekly work assigned to the Contractor is six to ten (6 -10) project sites which, ideally, have a two-day turnaround for completion.

IV. No Subcontracting

The Contractor will be responsible for self-performing the following services in-house (no subcontracting):

- Asphalt Paving
- Concrete (curb and gutter, sidewalk panels, driveway approaches, rebar work)
- Seal coat

V. Allowed Subcontracting

The Contractor will be responsible for the following work, but may use subcontractors:

- Striping
- Thermal
- Traffic Loops
- Saw Cutting
- Specialty or Patterned Concrete Work
- Road Slurry
- Other, as approved by the District

VI. REPAIR FACTORS

The work can potentially be assigned anywhere in a 37 square mile area, covering five cities. Success for this project is challenging on both a logistical and quality basis. The work must be finished within a reasonable time frame from start to completion to maintain compliance with District standards of customer service and safety. Each of the five cities has its own regulations and specifications, which must be adhered to in all stages of the work, including traffic control, types of base and asphalt, depth of repair, etc. All work has to be completed to the satisfaction of the District and the responsible city inspector of the cities mentioned above.

Contractor will be expected to perform the following scope of work within a two week period following notification of necessary repair:

1. Within two weeks of notification of necessary repairs, schedule with the District and the affected city.
2. Perform repair work to the satisfaction of the District staff and city regulations
3. Use proper traffic control devices and safety equipment per the District and city regulations.
4. Remove debris (asphalt, concrete, dirt, etc.) as necessary from work site.
5. The District will bring the excavation site to the bottom of the asphalt cement layer and compact the area to the required compaction as per the various cities. The Contractor will be responsible for removal of existing temporary patch and placement and compaction of the final asphalt cement.
6. Repair and replace asphalt in different size patches. This includes base paving using ¾” 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.
7. Repair/replace concrete gutters, curbs and sidewalk panels per the District and city specifications.
8. Seal coat reservoir sites and other District facilities.
9. One (1) year warranty for material and installation.
10. Additional items may be added as necessary to each task order as site conditions require.

All construction as part of this contract shall be completed per the District standard specifications (District General Provisions, attached), 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.

EXHIBIT 1 (CONT'D)
DISTRICT GENERAL PROVISIONS

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 Contract 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 Contract 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 equipment on the site necessarily idled during such Work. These costs, the Work to be done by the Contractor in locating, removing, relocating,

#9.

protecting or temporarily maintaining such Utility facilities shall be covered by a written change order. 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.

The right is reserved to governmental agencies and to Owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

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 Contract 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 Contract 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 Contract 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 Contract 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 Contract 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

#9.

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 Contract 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 Contract as prescribed. Defective Work shall be made good, and materials, and equipment furnished and Work performed which is not in accordance with the Contract 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 Contract 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.

6-1 SUB-CONTRACTING

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 Contract 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 Contract Documents as applicable to its Work.

The divisions and sections of any Specifications and the identifications of any Drawings shall not control

#9.

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 sub-agreement 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 Contract Documents for the benefit of Owner.

If requested in writing by Owner, Contractor shall deliver to Owner a copy of each sub-agreement 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 Contractor or his surety of their responsibilities under the Contract, nor will the Owner consent to any assignment of a part of the Work under the Contract.

Upon obtaining a prior written consent of the Owner, the Contractor may assign monies due or to become due him under the Contract, 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 Contract, 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract.

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

#9.

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 Contract 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.

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 Contract 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

#9.

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 Contract is in excess of \$25,000, the Contractor shall submit to the Owner for Acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 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 Contract 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 Contract.

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 Contract.

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 Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by the Contract 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.

#9.

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 Contract.

7-12 HOURS OF LABOR

The Contractor shall forfeit as a penalty to the Owner \$25.00 for each worker employed in the execution of the Contract by the Contractor or any Subcontractor under him 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.

7-13 PREVAILING WAGE

- A. The Contractor shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to the Owner \$200.00 for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such Work or craft in which such worker is employed for any Work done under the Contract by him or by any Subcontractor under him 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.
- B. For all contracts for which bids are opened on or after March 1, 2015, or contracts are awarded on or after April 1, 2015, the Contractor and any subcontractor shall be registered with the Department of Industrial Relations and qualified to perform work pursuant to Sections 1725.5 and 1771.1 of the California Labor Code. Pursuant to Sections 1725.5 and 1771.1, as applicable, the Contractor shall be responsible for providing proof of current registration for both the Contractor and any subcontractor prior to performing any work. Notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its subcontractors, which is otherwise required by law to be registered with DIR, is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the DIR revokes the registration), the DISTRICT may cancel the Contract and/or replace the Contractor or subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.

- C. The Contractor acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- D. The Contractor and all subcontractors shall be responsible for posting appropriate job site notices, pursuant to the requirements set forth in the Labor Code and related regulations. Furthermore, the Contractor and all subcontractors shall be responsible for furnishing the records specified in Section 1776 of the Labor Code directly to the Labor Commissioner, pursuant to the procedures set forth in Section 1771.4 of the Labor Code.

7-14 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 filed in accordance with Labor Code Section 1773.8.

7-15 APPRENTICES

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him.

The Contractor and any Subcontractor under him 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 up to \$100 for each calendar day of non-compliance (or up to \$300 per day if prior violation(s)) which shall be withheld from progress payments by Owner upon notice from the Department of Industrial Relations. (Labor Code Section 1777.7)

7-16 WARRANTY OF TITLE

No materials, supplies, or equipment for the Work under this Contract 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 Contract 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.

#9.

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 Contract is entered into for such materials.

7-17 PROPERTY RIGHTS IN MATERIALS

Nothing in the Contract 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 Contract 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 Contract 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.

7-27 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

#9.

1776, and to ensure that each Subcontractor also complies with all provisions of Labor Code Section 1776 and this Contract.

All payroll records shall be certified as accurate by the applicable Contractor or Subcontractor 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 Owner, 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 Owner, 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 Owner, 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 Subcontractor 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 provisions of this Section or Labor Section Code 1776 within ten Days of the date a written request for compliance is received shall result in a forfeiture of \$100.00 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 Owner shall withhold penalties under this Section or Labor Code Section 1776 from the Contractor's payments then due.

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 Contract.

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 Contract 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 Contract, 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 seven days from the time that all or any portion of the retention proceeds are received by the Contractor, 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% 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 22300 of the Public Contract Code, the Contractor may substitute securities for any money withheld by the Owner to ensure performance of the Contract. 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.

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 in this Contract, which when executed by the Contractor and the Owner shall constitute a Supplemental Agreement forming a part of this Contract. 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

#9.

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 Contract, including but not limited to the completion of the Contract, 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 Contract 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 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.

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

ITEM NO.	QTY	DESCRIPTION	UNIT PRICE
1	1	ASPHALT REPAIR 5' X 5' (6" Thickness)	\$ 600.00
2	1	ASPHALT REPAIR 10' X 10' (6" Thickness)	\$ 1,100.00
3	1	ASPHALT REPAIR 20' X 20' (6" Thickness)	\$ 2,800.00
4	1	ASPHALT REPAIR 36-INCH MANHOLE	\$240.00
5	1	ASPHALT REPAIR 2' WATER VALVE CAN	\$ 240.00
7	1	4 x 6 FT. CONCRETE SIDEWALK PANEL (4" Thickness)	\$ 660.00
8	1	4 x 12 FT. CONCRETE SIDEWALK PANEL (4" Thickness)	\$910.00
9	1	SEAL COAT 1,000 FT ²	\$ 1,000.00 Per 1 Coat
10	1	SEAL COAT 10,000 FT ²	\$ 1,700.00 Per 1 Coat
11	100 LF	STRIPING (WHITE)	\$ 35.00 Per LF
12	100 LF	STRIPING (THERMAL)	\$ 45.00 Per LF
13	1	PAYMENT/PERFORMANCE BOND	\$ 1,000.00 Per each \$100,000

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.: _____

Bond Number/Date Issued: _____

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: _____

#9.

EXHIBIT 4
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

**(Fiscal Year 2014-15, 15-16, 16-17)
Agreement No. OM14-15.028**

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 5

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

**(Fiscal Year 2014-15, 15-16, 16-17)
Agreement No. OM14-15.028**

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 6

**MOULTON NIGUEL WATER DISTRICT
ASPHALT AND CONCRETE REPAIR SERVICES
(Fiscal Year 2014-15)**

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 _____

Policy Number _____

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: _____

Contractor: _____

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.

**AMENDMENT NO. 2 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. 2 (this "Amendment") is entered into and effective as of March ____, 2015, 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. WHEREAS, On December 19, 2015, the Parties executed Amendment No. 1 to the Agreement extending the term through June 30, 2015 and increasing the Agreement not-to-exceed amount to \$380,000; and

B. WHEREAS, the Parties desire to increase the Agreement not-to-exceed amount by an additional \$75,000 to be expended in the 2014-15 Fiscal Year.

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

1. All Payments made for Work completed by Contractor pursuant to this Amendment shall not exceed **Seventy-Five Thousand Dollars (\$75,000.00)**.
2. The Parties agree that the total Agreement amount, including this Amendment and all prior amendments, shall not exceed **Four Hundred Fifty-Five Thousand Dollars (\$455,000.00)**.
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.

SANDERS PAVING, INC.

MOULTON NIGUEL WATER DISTRICT,
a California Water District

By: _____
(Signature)

By: _____
General Manager

(Print Name/Title)



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** March 16, 2015

FROM: Marc Serna, Director of Engineering and Operations
Adrian Tasso, Superintendent of Operations

SUBJECT: Electrical Facilities Safety Assessment Project

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute an agreement for the Electrical Facilities Safety Assessment Project.

Recommendation: It is recommended that the Board of Directors authorize the General Manager to execute an agreement with Eaton Corporation for an amount of \$83,236, plus a 10% contingency, for a total authorized not-to-exceed amount of \$91,560 to perform the Electrical Facilities Safety Assessment.

Fiscal Impact: The funds for this project are included in the FY 2014-15 Operating Budget.

BACKGROUND:

The District owns and operates fifty-six (56) pump and lift stations within its service area. Commercial power is provided by San Diego Gas Electric and Southern California Edison. Equipment within these facilities includes motor control centers, variable frequency drives, pumps, and main breaker enclosures. The number of pumps and pumping capacity varies at each of these locations.

The Electrical Facilities Safety Assessment will provide staff with essential information to identify possible hazards and subsequent improvements that can be made to the facilities. This project is an important aspect of the District's safety program, and is in line with the District's commitment to maintaining a safe work environment.

#10.

Electrical Facilities Safety Assessment Project

March 16, 2015

Page 2 of 2

The Electrical Safety Assessment has two distinct components: the Short Circuit and Protective Device Coordination Study (the “Coordination Study”) and the Arc Flash Risk Assessment (the “Arc Flash Assessment”). During the Coordination Study, data will be gathered and analyzed on all electrical equipment within the District owned facilities. Optimal settings for the District’s electrical equipment and recommendations for potential upgrades will be determined during this phase of the project.

The Arc Flash Assessment will identify and label all potential electrical hazards within the District’s pump and lift station facilities. In addition, work zone buffers, personal protective equipment requirements within certain work areas, and compliance with applicable electrical and fire codes will be analyzed. Safety training for staff with regard to safe work practices and potential hazardous electrical exposures will also be performed as part of this study.

DISCUSSION:

Staff issued a Request for Proposal (RFP) to six (6) qualified electrical consulting firms and received four (4) proposals. The table below summarizes the proposals received:

Consultant / Firm	Proposed Fee
Eaton Corporation	\$83,236
Electrical Reliability Services	Did Not Submit
Lee & Ro	Did Not Submit
Lewellyn Technology	\$52,866
P2S Engineering	\$168,250
Schneider Electric	\$132,114

Staff performed a thorough review of all proposals to determine the overall best value provided for the professional services contract required. Based on the consultants project understanding, proposal content, and cost, staff recommends Eaton Corporation be awarded the professional services contract.

Attachment: Electrical Services Agreement

**ELECTRICAL SERVICES AGREEMENT
BETWEEN MOULTON NIGUEL WATER DISTRICT AND EATON CORPORATION
AGREEMENT NO. OM14-15.024**

THIS AGREEMENT is made and entered into on _____, 2015 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter referred to as “MNWD”, and EATON CORPORATION hereinafter referred to as “Consultant”. MNWD and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

RECITALS

- A. MNWD requires electrical safety assessment services at MNWD’s pump and lift station locations.
- B. MNWD desires to utilize Consultant to provide the electrical safety assessment services, as further defined in Exhibit “A” attached hereto (hereinafter, the “Services”).
- C. Consultant is qualified to accomplish the necessary Services and has agreed to provide such Services to MNWD.

NOW, THEREFORE, in consideration of the promises and mutual benefits, which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

AGREEMENT

1. Scope of Agreement.

MNWD agrees to retain Consultant, and Consultant agrees to provide all Services as described in “Exhibit A” attached hereto and incorporated herein by reference. Consultant agrees that its provision of Services under this Agreement shall be within accepted standards for such services. The service locations are listed in Exhibit “B” attached hereto and incorporated herein.

2. Term.

The Agreement shall commence on the Effective Date and continue through June 30, 2015, unless otherwise terminated by either party pursuant to Section 6 herein.

3. Time for Completion.

The time for completion of the Services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to reasonable schedules established by MNWD. Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or

#10.

of MNWD, riot, embargo, fuel or energy shortage, car shortage, wrecks or delays in transportation, or due to any other cause beyond Consultant's reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

4. Compensation.

A. MNWD shall pay Consultant total compensation for Services in accordance with the pricing listed in "Exhibit C" attached hereto and by reference made a part of this Agreement. The total compensation paid for services pursuant to the Agreement shall not exceed **Eighty-Three Thousand Two Hundred Thirty-Six Dollars (\$83,236)**.

B. Consultant shall submit detailed invoices on a monthly basis, based upon services provided, accompanied by backup documentation as requested by MNWD. Consultant shall provide MNWD with a monthly itemization of all work performed, and the fees accrued thereon, in complete and sufficient detail to fully apprise MNWD thereof.

5. Non-Exclusive Agreement.

This is a non-exclusive Agreement. Consultant acknowledges and agrees that MNWD does not guarantee any minimum or maximum amount of Services and MNWD may use other Consultants for the Services in its sole discretion.

6. Termination.

A. Either party may terminate this Agreement in whole or in part at any time, without cause, upon giving the other party ten (10) days' written notice. In the event of such termination, Consultant shall be entitled to compensation for work performed through and including the effective date of termination.

B. Additionally, MNWD may suspend performance by Consultant of any or all services listed in the Scope of Work under this Agreement by providing written notice to Consultant at least five (5) working days prior to the date on which MNWD wishes to suspend; provided, upon receipt of such notice, Consultant shall immediately suspend any work or services hereunder, unless otherwise instructed by MNWD in such notice.

C. Consultant shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from MNWD to resume performance. MNWD and Consultant agree that in the event MNWD suspends or terminates performance by Consultant for any cause other than the intentional or negligent error or omission of Consultant, Consultant shall be entitled to payment of compensation incurred prior to the effective date of the suspension or termination, as determined under Section 4 of this Agreement.

7. Relationship Between the Parties.

A. The relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a MNWD employee. During the performance of this

Agreement, Consultant and its officers, employees, agents, and subcontractors shall act in an independent capacity and shall not act as MNWD officers, employees, or agents. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither MNWD nor any of its officers, employees, agents, or subcontractors shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, agents, or subcontractors shall not maintain an office or any other type of fixed business location at MNWD's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against MNWD, or bind MNWD in any manner.

C. No MNWD benefits shall be available to Consultant, its officers, employees, agents, or subcontractors in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, MNWD shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. MNWD shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents, or subcontractors for injury or sickness arising out of performing Services hereunder.

8. Insurance.

A. In addition to the requirements set forth herein, during the entire term of the Agreement, Consultant will pay for and maintain, in full force and effect, all insurance required by MNWD as listed in this Section 8. Consultant shall not commence Services under the Agreement until it has obtained all insurance required by the Agreement. Executed certificates of insurance and all required endorsements evidencing the required coverage detailed in this Section 8 shall be provided by Consultant with the Consultant's executed copy of this Agreement, and prior to commencement of any Services.

1. General Liability / Automobile Liability Insurance. Consultant and each of its subcontractors shall maintain throughout the term of this Agreement a General Liability policy of insurance for bodily injury and/or death, personal injury and property damage claims which may arise from or in connection with the performance of the work under this Agreement by Consultant and its subcontractors, and each of their agents, representatives, or employees. Such public liability and property damage insurance (which shall cover claims, injury, death, loss or damage or accidents arising the use or operation of any automobiles, trucks and/or other mobile or stationary equipment, whether owned, non-owned or hired) shall be comprehensive in form and shall be on a "per occurrence" basis in a minimum amount of One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit in a minimum amount at least twice the per occurrence limit specified in this Section with such aggregate to apply separately to the Project.

All insurance provided under this Section 8.A.1 shall name MNWD and its' directors, officers, employees and representatives as additional insureds under each such policy

#10.

(“additional insureds”) and an additional insured endorsement shall be provided in a form acceptable to MNWD, and consistent with the requirements under Section 8.B below.

2. Worker’s Compensation. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and that Consultant will comply with such provisions before commencing the performance of work under this Agreement. Consultant and subcontractors shall maintain throughout the term of this Agreement workers’ compensation insurance with limits no less than the statutory limits, and Employer’s Liability insurance with limits no less than One Million Dollars (\$1,000,000) per accident and per disease for their employees and shall file with the MNWD the certificate required by Labor Code Section 3700. The workers compensation/Employer’s Liability insurance shall be endorsed with a waiver of subrogation in favor of MNWD and its’ directors, officers, employees and representatives.

3. Professional Liability Insurance. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals’ errors and omissions. The following provisions shall apply if the professional liability coverage’s are written on a claims-made form:
 - i. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the Services.
 - iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the Services. MNWD shall have the right to exercise, at the Consultant’s sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
 - iv. A copy of the claim reporting requirements will be provided to MNWD upon request.

4. Requirements of All Policies. All policies of insurance required under this Section 8 shall be from insurance providers who are either admitted or licensed to do business in California, or are Surplus Lines Carriers authorized to do business in California, and who have financial size and ratings of no less than A-, Class VII, and in either case are

otherwise acceptable to MNWD. All such policies shall include a provision and executed endorsement for thirty (30) days prior written notice by certified mail, return receipt requested, to MNWD of any cancellation or material alteration of such insurance. Consultant shall provide original certificates and endorsements for all such insurance on forms approved by MNWD in conformity with all requirements of this Agreement prior to commencement of any work or professional services. The policies required hereunder shall be endorsed to include contractual liability.

B. In the case of additional insured provisions, any insurance afforded the additional insureds by this Agreement is primary insurance as to the additional insureds. Any insurance or self-insurance maintained by the additional insureds shall be excess of the Consultant's (and its subcontractor's) insurance, and shall not contribute to such insurance.

C. Maintenance of insurance coverage as specified in this Agreement is a material term of this Agreement, and any failure to maintain or renew coverage, or to provide evidence thereof, as required by the terms is a material breach of this Agreement.

D. Nothing in the insurance requirements set forth in this Agreement is to be construed as limiting the liability of Consultant or Consultant's insurers or sureties. Consultant agrees that the provisions of this Section 8 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages or other costs to MNWD, or any persons or property, resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible, including Consultant's subcontractors, if any.

9. Indemnity.

A. Notwithstanding any other terms in this Agreement, to the fullest extent allowed by law, Consultant agrees to indemnify, defend and hold harmless MNWD, its Board Members, officers, officials, agents and employees, (the "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands, including reasonable attorney's fees brought against the Indemnified Parties for bodily injury, death and property damage arising out of or resulting from or in connection with the performance of the Services, both on and off the site provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property, including the loss of use, and (2) is caused in whole or in part by the Consultant, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whom any of them may be liable, regardless of whether or not it is caused in part by any act or omission of a party indemnified. However, to the extent that liability is caused by the active negligence or willful misconduct of a party indemnified hereunder, Consultant's indemnification obligation shall be reduced in proportion to the indemnified party's share of liability for its active negligence or willful misconduct, if any.

B. In addition to, and as part of the obligations set forth above, Consultant, at its sole cost and expense, shall defend each and every claim, demand, action, and other proceeding within the

#10.

scope of this Section initiated against any Indemnified Parties. In the event Consultant or its insurer refuses or fails to provide a legal defense to MNWD after receiving written notice of the legal action and a tender and demand for defense, MNWD shall have the right to select counsel of its own choice to represent all the MNWD's interests.

C. This indemnity obligation shall survive the expiration or termination of this Agreement or the performance or completion of the Services. This indemnity obligation shall apply to all liability regardless of whether any insurance is applicable, and the policy limits of any insurance shall not act as a limitation upon the indemnification, and amounts related thereto, to be provided by Consultant under this Agreement.

10. Compliance with Law.

Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, or national origin. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any Services, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

11. Notices.

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To MNWD: Correspondence:

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

Invoices:

Moulton Niguel Water District
Attn: Purchasing Department
P.O. Box 30203

Laguna Niguel, CA 92607-0203

To CONSULTANT: Eaton Corporation
Attn: Frank Watson
13039 Crossroads Parkway South
Industry, CA 91746

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

12. Licenses and Qualifications.

Consultant represents and warrants to MNWD that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Consultant represents and warrants to MNWD that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit or approval which is legally required for Consultant to perform its professional duties under this Agreement.

13. Warranty.

A. **Warranty for Services; Setting Adjustments and Sticker Placement:** Consultant warrants that the Services performed by it hereunder will be performed in accordance with generally accepted professional standards. The Services, which do not so conform, shall be corrected by Seller upon notification in writing by the MNWD within one (1) year after completion of the Services. Unless otherwise agreed to in writing by Consultant, Consultant assumes no responsibility with respect to the suitability of MNWD's equipment or with respect to any latent defects in equipment not supplied by Consultant. This warranty does not cover damage to MNWD's equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition.

B. **Warranty for Power Systems Studies:** Consultant warrants that any power systems studies performed by it will conform to generally accepted professional standards. Any portion of the studies, which does not so conform, shall be corrected by Consultant upon notification in writing by the MNWD within six (6) months after completion of the studies. All warranty work shall be performed in a single shift straight time basis Monday through Friday.

C. The forgoing warranties are exclusive except for the warranty of title. Consultant disclaims all other warranties including any implied warranties of merchantability and fitness for a particular purpose. Correction of non-conformities in the manner and for the period of time provided above shall constitute Consultant's sole liability and MNWD's exclusive remedy for failure of Consultant to meet its warranty obligations set forth in this Section 13, whether claims of MNWD for breach of warranty are based in contract in tort (including negligence or strict liability) or otherwise.

#10.

14. Liability - Limitation on Damages to MNWD Property.

In the event the remedies provided hereunder fail of their essential purpose, MNWD shall have all rights and remedies at law and equity. Otherwise remedies contained under this Agreement shall be sole and exclusive. Notwithstanding any provision in this Agreement to the contrary, in no event shall Consultant be liable in contract, in tort (including negligence or strict liability) or otherwise, for damage to property or equipment owned by MNWD other than products sold hereunder, loss of profits or revenue, loss of use of products, cost of capital, or any special, indirect, incidental or consequential damages resulting from such MNWD property damage whatsoever, regardless of whether such potential damages are foreseeable or if Consultant has been advised of the possibility of such damages. The total cumulative liability of Consultant arising from or related to this contract whether the claims are based in contract, in tort (including negligent or strict liability) or otherwise, shall not exceed five hundred thousand dollars (\$500,000).

15. Jurisdiction.

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. 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. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

16. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which he may be entitled.

17. Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, and term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

18. Modifications and Amendments to Agreement.

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

19. Successors in Interest.

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

20. Agreement Execution Authorization.

Each of the persons executing this Agreement represent and warrant that they are authorized to sign this Agreement on behalf of the entity for which he/she is signing and empowered to bind such entity.

21. Assignments.

No assignment by Consultant of this Agreement or any part hereof, or of funds to be received hereunder, will be recognized by MNWD unless such assignment has had prior written approval and consent of MNWD, which consent will not be unreasonably withheld.

22. Entire Agreement.

This Agreement and its Exhibits constitutes the entire understanding and agreement of the Parties hereto and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to the subject matter hereof. No parol evidence shall be permitted to contradict or vary the terms of this Agreement.

23. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

24. Recitals.

The Recitals above are hereby incorporated into this Section as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

#10.

25. Conflicts.

To the extent that there is any conflict between the provisions of this Agreement and any other agreement or document between the parties regarding the subject matter of this Agreement, the terms and conditions of this Agreement shall govern.

IN WITNESS WHEREOF, this Agreement has been executed in the name of MNWD, by its officers thereunto duly authorized, and Consultant as of the Effective Date of the Agreement as defined herein.

Moulton Niguel Water District

By: _____

Joone Lopez

General Manager

CONSULTANT: Eaton Corporation

By: _____

Title: _____

EXHIBIT A
SCOPE OF WORK

PART 1 GENERAL OVERVIEW

1.01 SCOPE

- A. The Consultant shall furnish short-circuit and protective device coordination studies which shall be prepared by a Registered Professional Electrical Engineer.
- B. The Consultant shall furnish an Arc Flash Hazard Analysis Study per NFPA 70E - Standard for Electrical Safety in the Workplace, reference Article 130.5 and Informative Annex D.

1.02 QUALIFICATIONS

- A. The short-circuit, protective device coordination and arc flash hazard analysis studies shall be conducted under the supervision and approval of a Registered Professional Electrical Engineer skilled in performing and interpreting the power system studies. The Registered Professional Electrical Engineer shall be a full-time employee of the Consultant's engineering services organization and be registered in the State of California.
- B. Consultant shall be located within a reasonable distance from Moulton Niguel Water District (Orange County or South Los Angeles County) and employ a team of power systems engineers and field service technicians and engineers to provide local support.

1.03 FINAL REPORTS DELIVERABLE

- A. The results of the short-circuit, protective device coordination and arc flash hazard analysis studies shall be summarized in a final report. Two (2) bound copies of the complete final report shall be submitted to the Moulton Niguel Water District (MNWD) Electrical Superintendent, Greg McDowell. One additional copy shall also be provided in PDF format, stored on CD or flash drive. The report shall include the following sections:
 - 1. A comprehensive and accurate record single line drawing, signed and stamped by a California Registered Electrical Engineer showing protective device ampere ratings and associated designations, cable size & lengths, transformer kVA & voltage ratings, motor & generator kVA ratings, and switchgear/switchboard/panelboard designations
 - 2. Tabulations of the worst-case calculated short circuit duties as a percentage of the applied device rating (automatic transfer switches, circuit breakers, fuses, etc.); the short circuit duties shall be upward-adjusted for X/R ratios that are above the device design ratings
 - 3. Protective device time versus current coordination curves with associated one line diagram identifying the plotted devices, tabulations of ANSI protective relay functions and adjustable circuit breaker trip unit settings
 - 4. Multi-function relay setting file printouts including all ANSI protective relay functions and associated logic and control. Metering, communication, and control logic settings not associated with ANSI protective functions are not required.

#10.

5. Fault study input data, case descriptions, and current calculations including a definition of terms and guide for interpretation of the computer printout.
6. Incident energy and arc flash boundary calculations.
7. Executive Summary including source of information and assumptions made.
8. Comments and recommendations for system improvements, where needed, with minor code corrections detailed separately

PART 2 STUDY AND ANALYSIS REPORTS – DETAIL SPECIFICATIONS

2.01 DATA COLLECTION

- A. Consultant shall furnish all field data as required by the power system studies. The Engineer performing the short-circuit, protective device coordination and arc flash hazard analysis studies shall furnish the Consultant with a listing of required data immediately after award of the contract. The Consultant shall expedite collection of the data from MNWD to eliminate unnecessary delays and assure completion of the studies.
- B. Source combination may include present and future utility supplies, motors, and generators.
- C. Load data utilized may include existing and proposed loads obtained from Contract Documents provided by Moulton Niguel Water District or Consultant.
- D. Include fault contribution of existing motors in the study, with motors < 50 hp grouped together. The Consultant shall obtain required existing equipment data, if necessary, to satisfy the study requirements.
- E. The Consultant shall include in their bid, an allowance to field survey each job site location to collect data that cannot be obtained through as built drawings or where accurate documentation for load data is unavailable. Moulton Niguel Water District shall make the equipment available and will provide shutdowns as necessary to document the existing equipment.
- F. Consultant's representatives shall wear appropriate PPE and observe safety precautions, including directives conveyed by MNWD staff, while conducting field work, data collection and other activities requiring access to electrical equipment.
- G. Moulton Niguel Water District will work with the utilities (Southern California Edison and San Diego Gas & Electric) to obtain data required to complete the study including but not limited to transformer data, cabling size and material and upstream fuse or protective relay information. Any fees associated with the data request from the utility will be included in the Consultant bid.

2.02 SHORT-CIRCUIT AND PROTECTIVE DEVICE EVALUATION STUDY

CONSULTANT shall furnish short-circuit and protective device coordination studies as prepared by a Registered Professional Electrical Engineer. The coordination study shall begin with the utility company's feeder protective device and include all of the electrical protective devices down to and include the largest feeder circuit breaker and motor starter in the 480 Volt motor control centers and power distribution panelboards. The study shall also include variable frequency drives, harmonic filters, power factor

correction equipment, transformers and protective devices associated with variable frequency drives, emergency and standby generators associated paralleling equipment and distribution switchgear

- A. Use actual conductor impedances if known. If unknown, use typical conductor impedances based on IEEE Standards 141, latest edition.
- B. Transformer design impedances and standard X/R ratios shall be used when test values are not available.
- C. Provide the following:
 1. Calculation methods and assumptions
 2. Selected base per unit quantities
 3. One-line diagram of the system being evaluated with available fault at each bus, and interrupting rating of devices noted
 4. Source impedance data, including electric utility system and motor fault contribution characteristics
 5. Typical calculations
 6. Tabulations of calculated quantities
 7. Results, conclusions and recommendations
- D. Calculate short-circuit momentary and interrupting duties for a three-phase bolted fault at each:
 1. Electric utility's supply termination point
 2. Incoming switchgear
 3. Unit substation primary and secondary terminals
 4. Low voltage switchgear
 5. Motor control centers
 6. Standby generators and automatic transfer switches
 7. Branch circuit panelboards
 8. Other significant locations throughout the system
- E. For grounded systems, provide a bolted line-to-ground fault current study for areas as defined for the three-phase bolted fault short-circuit study.
- F. Protective Device Evaluation:
 1. Evaluate equipment and protective devices and compare to short circuit ratings
 2. Adequacy of switchgear, motor control centers, and panelboard bus bracing to withstand short-circuit stresses
 3. Adequacy of transformer windings to withstand short-circuit stresses
 4. Cable and busway sizes for ability to withstand short-circuit heating

#10.

5. Notify Moulton Niguel Water District in writing of existing, circuit protective devices which are improperly rated for the calculated available fault current

2.03 PROTECTIVE DEVICE COORDINATION STUDY

- A. Proposed protective device coordination time-current curves shall be graphically displayed on log-log scale paper.
- B. Include on each curve sheet a complete title and one-line diagram with legend identifying the specific portion of the system covered.
- C. Terminate device characteristic curves at a point reflecting maximum symmetrical or asymmetrical fault current to which device is exposed.
- D. Identify device associated with each curve by manufacturer type, function, and, if applicable, tap, time delay, and instantaneous settings recommended.
- E. Plot the following characteristics on the curve sheets, where applicable:
 1. Electric utility's protective device
 2. Medium voltage equipment relays
 3. Medium and low voltage fuses including manufacturer's minimum melt, total clearing, tolerance and damage bands
 4. Low voltage equipment circuit breaker trip devices, including manufacturer's tolerance bands
 5. Transformer full-load current, magnetizing inrush current and ANSI transformer withstand parameters
 - a. Conductor damage curves
 - b. Ground fault protective devices, as applicable
 - c. Pertinent motor starting characteristics and motor damage points
 - d. Pertinent generator short-circuit decrement curve and generator damage point
 - e. Other system load protective devices for the largest branch circuit and the largest feeder circuit breaker in each motor control center
- F. Provide adequate time margins between device characteristics such that selective operation is provided, while providing proper protection.
- G. Select each primary protective device required for a delta-wye connected transformer so that the characteristics or operating band is within the transformer parameters which includes a parameter equivalent to 58% of the ANSI withstand point to afford protection for secondary line-to-ground faults.
- H. Separate low voltage power circuit breakers from each other and the associated primary protective device by a 16% current margin for coordination and protection in the event of secondary line-to-line faults.
- I. Engineer shall provide settings file printouts for all multifunction relays supplied under this contract including all ANSI protective relay functions and associated logic and control.

Metering, communication, and control logic settings not associated with ANSI protective functions are not required.

2.04 ARC FLASH HAZARD ANALYSIS

The Consultant shall furnish an Arc Flash Hazard Analysis Study per NFPA 70E - Standard for Electrical Safety in the Workplace, reference Article 130.5 and Informative Annex D.

- A. The arc flash hazard analysis shall be performed according to the IEEE 1584 equations that are presented in NFPA70E-2012, Informative Annex D.
- B. When appropriate, the short circuit calculations and the clearing times of the phase overcurrent devices will be retrieved from the short-circuit and coordination study model. Alternative methods shall be presented in the proposal.
- C. The arc flash boundary and the incident energy shall be calculated at all significant locations in the electrical distribution system (switchboards, switchgear, motor-control centers, panelboards, busway and splitters) where work could be performed on energized parts.
- D. The Arc-Flash Hazard Analysis shall include all MV, 575v, & 480v locations and significant locations in 240 volt and 208 volt systems fed from transformers equal to or greater than 125 kVA.
- E. Safe working distances shall be specified for calculated fault locations based upon the calculated arc flash boundary considering an incident energy of 1.2 cal/cm².
- F. The Arc Flash Hazard analysis shall include calculations for maximum and minimum contributions of fault current magnitude. The minimum calculation shall assume that the utility contribution is at a minimum and shall assume a minimum motor load. Conversely, the maximum calculation shall assume a maximum contribution from the utility and shall assume motors to be operating under full-load conditions.
- G. Arc flash computation shall include both line and load side of main breaker calculations, where necessary.
- H. Arc Flash calculations shall be based on actual overcurrent protective device clearing time. Maximum clearing time will be capped at 2 seconds based on IEEE 1584-2002 section B.1.2.

2.05 REPORT SECTIONS

- A. Input Data:
 - 1. Utility three-phase and line-to-ground available contribution with associated X/R ratios
 - 2. Short-circuit reactance of rotating machines with associated X/R ratios
 - 3. Cable type, construction, size, # per phase, length, impedance and conduit type
 - 4. Bus duct type, size, length, and impedance
 - 5. Transformer primary & secondary voltages, winding configurations, kVA rating, impedance and X/R ratio
 - 6. Reactor inductance and continuous ampere rating
 - 7. Aerial line type, construction, conductor spacing, size, number per phase and length

#10.

B. Short-Circuit Data:

1. Source fault impedance and generator contributions
2. X to R ratios
3. Asymmetry factors
4. Motor contributions
5. Short circuit kVA
6. Symmetrical and asymmetrical fault currents

C. Recommended Protective Device Settings:

1. Phase and Ground Relays:
 - a. Current transformer ratio
 - b. Current setting
 - c. Time setting
 - d. Instantaneous setting
 - e. Specialty non-overcurrent device settings
 - f. Recommendations on improved relaying systems, if applicable.
2. Circuit Breakers:
 - a. Adjustable pickups and time delays (long time, short time, ground)
 - b. Adjustable time-current characteristic
 - c. Adjustable instantaneous pickup
 - d. Recommendations on improved trip systems, if applicable.

D. Incident energy and arc flash boundary calculations.

1. Arcing fault magnitude
2. Device clearing time
3. Duration of arc
4. Arc flash boundary
5. Working distance
6. Incident energy
7. Recommendations for arc flash energy reduction including the use of arc reduction maintenance switches, replacement of overcurrent protective devices and/or trip units, or replacement of equipment with arc resistant or preventative designs. The Engineering Services Organization shall provide a turnkey proposal for implementing the arc flash reduction strategies.

2.06 FIELD ADJUSTMENT

- A. Adjust relay and protective device settings according to the recommended settings table provided by the coordination study. Field adjustments to be completed by the Consultant or alternatively by the engineering services division that performed the study.

2.07 ARC FLASH WARNING LABELS

- A. Electrical equipment that is likely to require examination or maintenance while energized will be marked with a clearly visible sign or label warning qualified persons of a potential arc flash hazard. Switchboards, panel boards, industrial control panels, meter socket enclosures and motor control centers all present potential hazards and should be marked, per NFPA 70e and NEC 110.16.
- B. The Consultant shall provide and install a 4 inch x 4 inch, thermal transfer type label of high adhesion polyester for each work location analyzed.
- C. LABEL INFORMATION

The label shall have a red header with the wording, "**WARNING, SHOCK & ARC FLASH HAZARD, Authorized Personnel Only**" with an Arc Flash pictogram. Labels shall include the following additional information:

1. Arc Flash Boundary
 2. Incident Energy
 3. Working Distance
 4. Required Level of Personal Protective Equipment (PPE)
 5. Nominal System Voltage
 6. Shock Boundaries
 1. Limited Approach
 2. Restricted Approach
 3. Prohibited Approach
 7. Equipment Identification
 8. Engineering report number, revision number and issue date
- D. Labels shall be machine printed, easily readable, with no field markings
 - E. Arc flash labels shall be provided and installed in the following manner and all labels shall be based on overcurrent device settings.
 1. For each 600, 480 and applicable 208 volt panelboards and disconnects, one arc flash label shall be provided
 2. For each motor control center, one arc flash label shall be provided
 3. For each low voltage switchboard, one arc flash label shall be provided
 4. For each switchgear, one flash label shall be provided

#10.

5. For medium voltage switches one arc flash label shall be provided

F. Labels shall be field installed by the Consultant after field adjustments have been completed but prior to Arc Flash Training portion of services.

G. Labeling should comply with all NFPA 70E and NEC 110.16 specifications.

Sample Labels are included as Attachment 8.

2.08 TRAINING

A. The Consultant shall provide training to Moulton Niguel Water District personnel regarding the potential arc flash hazards associated with working on energized equipment (minimum of 4 hours). Maintenance procedures in accordance with the requirements of NFPA 70E, Standard For Electrical Safety Requirements For Employee Workplaces, shall be provided in the equipment manuals.

2.09 COMPLETION OF SERVICES

A. Consultant shall complete all required services on or before Monday, June 01, 2015.

2.10 REFERENCES

A. Institute of Electrical and Electronics Engineers, Inc. (IEEE):

IEEE 141 – Recommended Practice for Electric Power Distribution and Coordination of Industrial and Commercial Power Systems

IEEE 242 – Recommended Practice for Protection and Coordination of Industrial and Commercial Power Systems

IEEE 399 – Recommended Practice for Industrial and Commercial Power System Analysis

IEEE 241 – Recommended Practice for Electric Power Systems in Commercial Buildings

IEEE 1015 – Recommended Practice for Applying Low-Voltage Circuit Breakers Used in Industrial and Commercial Power Systems

IEEE 1584 – Guide for Performing Arc-Flash Hazard Calculations

B. American National Standards Institute (ANSI):

ANSI C57.12.00 – Standard General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers

ANSI C37.13 – Standard for Low Voltage AC Power Circuit Breakers Used in Enclosures

ANSI C37.010 – Standard Application Guide for AC High Voltage Circuit Breakers Rated on a Symmetrical Current Basis

ANSI C 37.41 – Standard Design Tests for High Voltage Fuses, Distribution Enclosed Single-Pole Air Switches, Fuse Disconnecting Switches and Accessories

ANSI C37.5 – Methods for Determining the RMS Value of a Sinusoidal Current Wave and Normal-Frequency Recovery Voltage, and for Simplified Calculation of Fault Currents

C. The National Fire Protection Association (NFPA)

NFPA 70 - National Electrical Code, latest edition

NFPA 70E – Standard for Electrical Safety in the Workplace

EXHIBIT B
LOCATIONS

JRTP AWT No. 2 RW Pump Station	Bear Brand Pump Station
Regional Lift Station	Casa De Oso Pump Station
Pacific Park Pump Station	Crown Valley R.W. Pump Station
Southridge R.W. Pump Station	Rancho Pump Station
Rolling Hills Pump Station	La Paz Underground
Alicia R.W. Pump Station	P.I.D. #1
Aliso Viejo R.W. Pump Station	P.I.D. #2
Sheep Hills Pump Station	Saddleback Pump Station
Wood Canyon Pump Station	Saddleback R.W. Pump Station
Highlands Pump Station	Upper Salada Lift Station
La Paz Pump Station	Beacon Hill Pump Station
Audubon Lift Station	Crown Point Pump Station
Big Niguel Pump Station	Del Avion Lift Station
Boundary Oak Lift Station	Golden Lantern R.W. Pump Station
Crown Valley/Highlands R.W. P.S.	Little Niguel Pump Station
El Dorado Pump Station	Marguerite Pump Station
North Aliso Lift Station	Oso Pump Station
San Joaquin Hills Lift Station	P.I.D. #3
Southwing Lift Station	Plant 2A
Country Village Pump Station	Valencia Pump Station
Galivan R.W. Pump Station	

EXHIBIT C
FEE SCHEDULE

REPRESENTATIVE SITE	SINGLE SITE FEE	SITE MULTIPLIER
Country Village <i>Site has 5 pumps or more. There are 7 similar sites</i>	\$2,293.00	X 7 Sites = \$16,051.00
Aliso Viejo <i>Site has 4 pumps. There are 9 similar sites</i>	\$1,695.00	X 9 Sites = \$15,255.00
PID2 <i>Site has 3 pumps. There are 9 similar sites</i>	\$1,695.00	X 9 Sites = \$15,255.00
Boundary Oak <i>Site has 2 pumps. There are 15 similar sites</i>	\$1,695.00	X 15 Sites = \$25,425.00
Report Presentation/Arc Flash Training		\$3,650.00
SCE Fee for 19 Sites @ \$400 per site		\$7,600.00
TOTAL FEE		\$83,236.00



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** March 16, 2015

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

SUBJECT: Beacon Hill Pump Replacement Construction Contract Award

DIVISION: 2, 4, and 5

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Proposals (Bids) for the Beacon Hill Pump Station High-Flow Pump and Gas Engine Drive Replacement, Project No. 2012.009.

Recommendation: It is recommended that the Board of Directors award the construction services contract for the Beacon Hill Pump Station High-Flow Pump and Gas Engine Drive Replacement Project No. 2012.009 to Pascal & Ludwig Constructors in the amount of \$420,049; 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. 2012.009 is budgeted in Fund 7, Rehabilitation and Replacement with a current project budget of \$611,098.

BACKGROUND:

The Beacon Hill Pump Station, in conjunction with the Rancho Pump Station, supplies potable water to residents in the City of Laguna Niguel in the 750 pressure zone. This project replaces the existing auxiliary fire (“high flow”) pump and gas engine drive at the Beacon Hill Pump Station. Spare parts for the equipment are no longer available and the maintenance requirements have increased.

Construction documents for the Beacon Hill Pump Station High-Flow Pump and Gas Engine Drive Replacement project were prepared by Psomas. The work generally includes: installation of a Tier 4 diesel engine with pump (including associated piping, valves, and accessories); retrofit of existing building to accommodate the engine

#11.

Beacon Hill Pump Replacement Construction Contract Award

March 16, 2015

Page 2 of 3

radiator and louvers; miscellaneous site improvements such as concrete slab, above ground diesel tank, and fuel lines; and associated electrical work.

This project was originally bid in December 2014. The apparent low bidder withdrew his bid in accordance with the requirements of Public Code Section 5103. On January 15, 2015, the Board of Directors rejected all bids. Construction documents were updated to re-bid the project.

DISCUSSION:

A request for bids was issued to five qualified contractors. On February 19, 2015, the District received three sealed bids. The table below summarizes the bids received:

Firm	Bid
Pascal & Ludwig Constructors	\$420,049
Olsson Construction, Inc.	\$617,000
R C Foster Corporation	\$660,000
Jamison Engineering	Did not submit
DPC Inc.	Did not submit
Engineer's Estimate	\$498,000

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

Beacon Hill Pump Replacement Construction Contract Award

March 16, 2015

Page 3 of 3

SUMMARY OF PROJECT BUDGET:

	Project Budget	Proposed / Approved Contract *	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$100,000	\$100,000	\$0	\$100,000
Construction	\$491,098	\$420,049	\$42,005	\$462,054
Legal, Permits, District Labor	\$20,000	\$20,000	\$0	\$20,000
Totals	\$611,098	\$540,049	\$42,005	\$582,054

*Costs Expended-to-date: \$91,894

Currently Proposed Amount

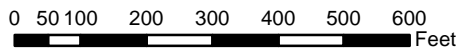
Attachment: Exhibit A – Location Map



Path: G:\GIS\Projects\Projects_2014\CapitalImprovement\Exhibits\2014\Maps\BeaconHill\PS_2012.009.mxd



 Site



Scale = 1:3,500

**Exhibit "A" Location Map
Beacon Hill Pump Replacement
Contract No. 2012.009**



Moulton Niguel Water District

STAFF REPORT

TO: Board of Directors **MEETING DATE:** March 16, 2015

FROM: Joone Lopez, General Manager

SUBJECT: Association of California Water Agencies Joint Powers Insurance Authority Executive Committee Nominations

DIVISION: District-wide

SUMMARY:

Issue: Executive Committee elections are being held May 4, 2015, for Association of California Water Agencies Joint Powers Insurance Authority (ACWA/JPIA).

Recommendation: As directed by the Board of Directors.

Fiscal Impact: None.

BACKGROUND:

As a member of ACWA/JPIA, the District periodically receives requests to support nominations to the ACWA/JPIA Board and various committees.

DISCUSSION:

The District has received two requests to support nominations of candidates from South Coast Water District and Vista Irrigation District. The Board may choose to support none, one, or both of the candidates. The attached letter provides further detail regarding the elections and the resolutions needed for the nominations. Nominations are due to ACWA/JPIA by March 20, 2015.

Attachment: 2015 Executive Committee Election Notice



JOINT POWERS
INSURANCE AUTHORITY

P. O. Box 619082
Roseville, CA 95661-9082

phone
916.786.5742
800.231.5742

direct line
916.774.7050
800.535.7899

fax
916.774.7040

www.acwajpia.com

President

E.G. "Jerry" Gladbach

Vice President

Tom Cuquet

Chief Executive Officer

Walter "Andy" Sells

Executive Committee

Tom Cuquet

Joseph Dion

E.G. "Jerry" Gladbach

David T. Hodgin

W.D. "Bill" Knutson

Melody A. McDonald

Charles W. Muse

Kathleen J. Tiegs

To: JPIA Directors, Alternates, and Others
From: Sylvia Robinson, Publications & Web Editor
Date: January 7, 2015
Subject: 2015 Executive Committee Election Notice

Notice is hereby given that there will be an Executive Committee election during the JPIA's Board of Directors' meeting to be held on May 4, 2015, at the spring conference in Sacramento, California.

This election will fill five Executive Committee member positions. Four are for a four-year term each and one position is for two years, the remainder of its current term.

The current incumbents are E.G. "Jerry" Gladbach, Castaic Lake WA; David Hodgin, Scotts Valley WD; and W.D. "Bill" Knutson, Yuima Municipal WD.

Candidates for the election must be elected or appointed directors of the JPIA member that they represent and must have been appointed by that member to be on the JPIA's Board of Directors. Further, candidates for the election must also be representatives of JPIA members that participate in all four of the JPIA's Programs: Liability, Property, Workers' Compensation, and Employee Benefits.

The candidates must also each receive concurring in nomination resolutions from **three** other JPIA members. However, JPIA members may **concur** in the nomination of as many candidates as they wish. When asking other JPIA members to concur in a nomination, it would be helpful to them to include some information about the Director and his/her background.

The submission of the nominating resolution, the three concurring in nomination resolutions, and the candidate's statement of qualifications is the sole responsibility of the nominating member. These nominations must reach the JPIA by the close of business (4:30 pm) on **Friday, March 20, 2015**. Nominations may be mailed to the attention of Sylvia Robinson at the JPIA: P. O. Box 619082, Roseville, CA 95661-9082.

Final notice of the qualified candidates will be included as part of the Board of Directors' meeting packet, which will be mailed on or before April 20, 2015, to those who request a meeting packet.

The nominating procedures and copies of the nominating and concurring in nomination resolutions are attached.

