



moulton niguel water district

**ENGINEERING & OPERATIONS
BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
June 12, 2017
8:30 AM
Approximate Meeting Time: 4 Hours**

THIS BOARD MEETING WILL INCLUDE TELECONFERENCING AT THE FOLLOWING LOCATION: 12025 CEDAR SHORE ROAD, ELLISON BAY, WISCONSIN

1. CALL MEETING TO ORDER
2. APPROVE THE MINUTES OF THE MAY 15, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING
3. PUBLIC COMMENTS
Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.

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

PRESENTATION

4. Audio-Visual Board Room Design Plan

ACTION ITEMS

5. Long-term Efficiency Framework Policy Principles and Legislative Positions

DISCUSSION ITEMS

6. Fiscal Year 2017-18 Proposed Budget
7. Reimbursement Agreement with Joint Regional Water Supply System for Vault Abandonments
8. Professional Services Agreement for Regional Lift Station Force Main Replacement
9. Construction Contract Award for Upper Salada Lift Station Electrical Switchgear Replacement

10. Del Avion Lift Station Auxiliary Generator Replacement Construction Contract Adjustment
11. On-Call Construction Management and Inspection Support Services
12. Pump Refurbishment Service Agreements

INFORMATION ITEMS

13. Cedarbrook Line Break Update
14. Future Agenda Items (Any items added under this section are for discussion at future meetings only)
15. 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

16. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6
Agency designated representative: Board President Donald Froelich
Unrepresented employee: General Manager

RETURN TO OPEN SESSION

17. CONSIDERATION AND POSSIBLE ACTION TO APPROVE AMENDMENT TO THE GENERAL MANAGER'S CONTRACT

It is recommended that the Board of Directors consider, and possibly take action to approve, Amendment No. 6 to the Employment Contract for Services as General Manager of the Moulton Niguel Water District.

CLOSED SESSION

18. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Government Code Section 54956.9)

Name of case: SOCWA, City of Laguna Beach, South Coast Water District and Emerald Bay Service District v. Moulton Niguel Water District

Case number 30-2017-00923143-CU-BC-CJC

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.



moulton niguel water district

DRAFT

MINUTES OF THE REGULAR MEETING OF THE ENGINEERING & OPERATIONS BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT

May 15, 2017

A Regular 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 May 15, 2017. There were present and participating:

DIRECTORS

Duane Cave	Director
Scott Colton	Vice President/Chair
Richard Fiore	Director
Donald Froelich	President
Gary Kurtz	Director
Larry Lizotte	Director
Brian Probolsky	Vice President (arrived at 11:31 a.m.)

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL, AND MEMBERS OF THE PUBLIC

Joone Lopez	General Manager
Matt Collings	Assistant General Manager
Gina Hillary	Director of Human Resources
Drew Atwater	Director of Planning
Jake Vollebregt	Director of Regional & Legal Affairs
Jeff Ferre	Best, Best, & Krieger (General Counsel)
Paige Gulck	Board Secretary
Tim Bonita	Recording Secretary
Trevor Agrelius	MNWD
Johnathan Cruz	MNWD
Karen Flores	MNWD
Todd Novacek	MNWD
Medha Patel	MNWD
Lindsey Stuvick	MNWD
Rod Woods	MNWD

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Doug Zytkevicz	MNWD
Patrick Atwater	California Data Collaborative
Jayson Schmidt	Chandler Asset Management
Mike Dunbar	General Manager, Emerald Bay Service District
Jerry Finnegan	Infosend
Terri Forbes	Paymentus
Tyler Old	Public Financial Management, Inc.

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 APRIL 17, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING

MOTION DULY MADE BY GARY KURTZ AND SECONDED BY DUANE CAVE, MINUTES OF THE APRIL 17, 2017 ENGINEERING AND OPERATIONS BOARD OF DIRECTORS' MEETING WERE APPROVED AS PRESENTED. THE VOTE WAS UNANIMOUS WITH DIRECTORS DUANE CAVE, SCOTT COLTON, RICHARD FIORE, DONALD FROELICH, GARY KURTZ, AND LARRY LIZOTTE ALL VOTING 'AYE'. DIRECTOR BRIAN PROBOLSKY WAS ABSENT.

3. PUBLIC COMMENTS

None.

PRESENTATION ITEMS

4. Quarterly Investment Report - Chandler Asset Management

Jayson Schmidt presented the Quarterly Investment Report. Key topics presented were the account profile and the economic update.

5. Water Efficiency Fund Fiscal Year 2017-18 Budget

Drew Atwater and Lindsey Stuvick presented the Water Efficiency Fund Fiscal Year 17-18 Proposed Budget. Key topics covered included fiscal year goals and objectives, program development, customer service and smart technology, education, incentives, market transformation, and the proposed long term framework.

DISCUSSION ITEMS

6. Bill Print, Mail and Payment Processing Services

Johnathan Cruz provided details on the item. Staff recommends that the Board of Directors authorize the General Manager or Assistant General Manager to execute the

following agreements:

1. Five-year Professional Services Agreement with Infosend, Inc. for the design, preparation, distribution, and archiving of its monthly customer bills and marketing material, subject to the attached rate schedule; with an option to extend the agreement for an additional five-year term; and

2. Five-year Professional Services Agreement with Paymentus for services related to the processing of electronic customer bills and payments; with an option to extend the agreement for an additional five-year term.

Discussion ensued regarding the agreements.

7. California Data Collaborative Fiscal Year 2017-18 Participation

Larry Lizotte left at 10:01 a.m.

Drew Atwater provided an introduction to the item. Patrick Atwater provided details of the District's participation in the California Data Collaborative for Fiscal Year 2017-18. Staff recommends that the Board of Directors authorize the General Manager or Assistant General Manager to execute an agreement for an additional \$35,000 with the National Center for Civic Innovation to support the analytics work with the California Data Collaborative. Discussion ensued regarding the details of the agreement.

INFORMATION ITEMS

8. Fiscal Year 2017-18 Budget Review

There was no discussion on this item.

9. Debt Management Policy

Drew Atwater provided details on the debt management policy. Discussion ensued and the Board provided comments on the policy.

10. Updated Investment Policy

Drew Atwater provided details on the Investment Policy. Discussion ensued and the Board provided comments on the proposed changes to the policy.

11. Updated Purchasing Policy

Jake Vollebregt provided details on the proposed changes to the Purchasing Policy. Discussion ensued regarding the proposed changes.

12. Monthly Financial Report

Trevor Agrelius presented the Monthly Financial Report and reported that the District received the Government Finance Officers Association (GFOA) award for 2016.

13. Water Usage Update

Lindsey Stuvick presented the Water Usage Update.

14. Future Agenda Items (Any items added under this section are for discussion at future meetings only)

None.

15. Late Items (Appropriate Findings to be Made)

None.

CLOSED SESSION

16. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation and initiation of litigation pursuant to paragraphs (2) and (4) of subdivision (d) of Government Code Section 54956.9

One potential case

The Board entered closed session at 11:18 a.m. and exited at 12:31 p.m.

Brian Probolsky arrived at 11:31 a.m.

Jeff Ferre stated that there was no reportable action.

ADJOURNMENT

Respectfully submitted,

Tim Bonita
Recording Secretary



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017
FROM: Drew Atwater, Director of Planning
Johnathan Cruz, Financial Planning Manager
SUBJECT: Fiscal Year 2017-18 Proposed Budget
DIVISION: District-Wide

SUMMARY:

Issue: The current Operating and Maintenance Budget and the annual Capital Improvement Program for Fiscal Year 2017-18 has been developed and proposed to reflect current resource needs.

Recommendation: It is recommended that the Board of Directors approve the resolution entitled, "Approving a Budget Appropriation and Adopting the Operating Budget and Capital Improvement Program Budget for Fiscal Year 2017-18".

Fiscal Impact: The proposed Budget, and staffing plan, along with the Cash Fund balances and projected 10-year cashflow, are included in the attached budget document.

Reviewed by Legal: Yes

BACKGROUND:

The District has a one-year Operating and Maintenance Budget and an annual 10-year Capital Improvement Program Budget. Additionally, staff updates the Long Range Financial Planning model to provide a comprehensive picture of the District's financial position as the Board considers the budget. The Operating and Maintenance Budget includes the necessary staffing, resources, and services to provide water, wastewater, and recycled water services to the District's customers. The Capital Improvement Program

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Fiscal Year 2017-18 Proposed Budget

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budget includes appropriate funding to perform infrastructure improvements and/or the addition of new infrastructure.

DISCUSSION:

On May 3, 2017 and May 17, 2017, the Board participated in a budget workshop to review the details of the proposed budget and provide input through the process. The draft budget document provides a summary of the Fiscal Year 2015-16 actuals in comparison to the Fiscal Year 2015-16 Budget, the current Fiscal Year 2016-17 adopted Budget, the forecast of the Fiscal Year 2017-18 expenses consistent with the 10-year cashflow model and the proposed Fiscal Year 2017-18 budget. The budget document also includes narrative and graphics to provide additional context to the proposed budget and incorporates changes generated during the budget workshop. The public meetings to discuss the FY 2017-18 budget and its development are listed below:

Finance Board Meeting	Date
Financial Planning Workshop	December 14, 2016
Finance Overview	February 15, 2017
Presentation of Proposed FY 2017-18 Ten Year Capital Improvement Program	April 19, 2017
Budget Workshop	May 3, 2017
Detailed Budget Tables Discussion	May 17, 2017
FY 2017-18 Budget Adoption	June 15, 2017

Attachment: Resolution Approving a Budget Appropriation and Adopting the Operating Budget and Capital Improvement Program Budget for Fiscal Year 2017-18.

RESOLUTION NO. 17-__

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT
APPROVING A BUDGET APPROPRIATION AND ADOPTING THE OPERATING
BUDGET AND CAPITAL IMPROVEMENT PROGRAM BUDGET
FOR FISCAL YEAR 2017-18**

WHEREAS, the Financial Policies of the District provide that the Board shall hold public meetings and adopt the District’s budget and may modify appropriations with a majority approval throughout the Fiscal Year. Said budget consists of the estimated and anticipated expenditures and revenues for the Fiscal Year for all funds; and

WHEREAS, the Capital Improvement Program (“CIP”) outlines the expenditure plan for future capital projects for the next decade and provides a CIP Budget for the upcoming Fiscal Year. CIP projects are funded from four sources: Water Efficiency (“WE”) Fund 6, Replenishment and Refurbishment (“R&R”) Fund 7, Water Supply Reliability (“WSR”) Fund 12, and Planning and Construction (“P&C”) Fund 14. All of the funds described herein and as further set forth in the budget adopted by this Resolution shall be referred to herein as “Funds;” and

WHEREAS, the Board held multiple public meetings to review and discuss the proposed Fiscal Year 2017-18 Operating Budget and Capital Improvement Budget. In addition, a public meeting of the Board was duly noticed and conducted under the Brown Act on June 15, 2017 during which this Resolution and the budget were considered; and

NOW, THEREFORE the Board of Directors of the Moulton Niguel Water District, does hereby **RESOLVE, DETERMINE** and **ORDER** as follows:

SECTION 1. A certain document now on file in the Finance Division of the Moulton Niguel Water District entitled, “Moulton Niguel Water District FY 2017-18 Budget,” is hereby made part of this Resolution.

SECTION 2. Said Operating and Maintenance Budget and Capital Improvement Budget is hereby adopted for the Fiscal Year beginning July 1, 2017, and ending June 30, 2018, and consists of the estimated and anticipated expenditures and revenues for the Fiscal Year for all Funds.

SECTION 3. The expenditure amounts designated to each Fund for which they are designated and such appropriations shall not be increased except as provided herein.

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SECTION 4. Except as provided for in SECTION 5, the appropriations for each Fund may only be increased or decreased by the Board during the Fiscal Year by passage of a resolution amending the Budget.

SECTION 5. The following controls are hereby placed on the use and transfers of budgeted Funds:

- A. No expenditure of Funds shall be authorized unless sufficient amounts have been appropriated by the Board or General Manager as described herein. The General Manager may authorize all transfers of amounts from category to category within the same Fund. The General Manager may delegate authority to Director level staff, the Assistant General Manager and/or Controller to transfer amounts between categories as necessary.
- B. The General Manager may authorize the transfer and expenditure of amounts between the Funds only to the extent of the specific Funds and maximum amounts set forth below. Said transfers may be made at one or more times during the Fiscal Year so long as the total amounts do not exceed the maximum amounts for the specific Funds set forth below. The General Manager may delegate authority to transfer amounts as necessary.
 - 1. The maximum amount which may be transferred by the General Manager from Fund 1 to Funds 7, 12, and/or 14 shall be \$44,497,108.
 - 2. The maximum amount which may be transferred by the General Manager between and among Funds 7, 12, and 14 shall be \$44,497,108.
 - 3. The maximum amount which may be transferred by the General Manager from the Capacity Fee Fund 15 to Fund 7 shall be \$267,368 to be spent on the identified projects in Table 1.

Table 1.

Project No.	Description	FY 2017-18 Budget
2016002	2016-17 VALVE REPLACEMENT	\$1,250,000
JRWSS	SCWD/JRWSS CAPITAL PROJECT	\$1,665,029
2015013	2016-17 RESERVOIR MANAGEMENT SYSTEM REPLACEMENT	\$1,700,000
SOCWA124	2016/2017 SOCWA CAPITAL PC 2(R)	\$1,029,280
2009115	SAN JUAN CREEK 30 EFFLUENT TM	\$2,211,063
SOCWA128	2016/2017 SOCWA CAPITAL PC 17(R)	\$3,376,803
Total		\$11,232,175

4. The maximum amount which may be transferred by the General Manager from Fund 1 to Funds 12, 68, 69, 70, 71 and 72 shall be \$10,293,690 to be spent on debt service payments.

C. The General Manager is authorized to employ during the fiscal year(s) covered by this Budget, the number and classifications of such full time employees as are shown in the Budget, all subject to the total number of authorized positions. The General Manager may also authorize the hiring of temporary or part time staff.

SECTION 6. All appropriations for the Capital Improvement Projects remaining unexpended on June 30, 2017, are hereby appropriated for such Capital Projects for the 2017-18 Fiscal Year.

SECTION 7. All appropriations and outstanding encumbrances for non-Capital Projects as of June 30, 2017, expire as of said date.

SECTION 8. The Board of Directors does hereby approve and adopt the General Manager, General Unit, Supervisory Unit and Exempt Employees' Job Classification Salary Schedules effective June 24, 2016, for Fiscal Year 2017-2018.

SECTION 9. If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

SECTION 10. The Recitals set forth above are incorporated herein and made an operative part of this Resolution.

ADOPTED, SIGNED and APPROVED this 15th day of June, 2017.

MOULTON NIGUEL WATER DISTRICT

President/Vice President
MOULTON NIGUEL WATER DISTRICT
and of the Board of Directors thereof

Secretary/Assistant Secretary
MOULTON NIGUEL WATER DISTRICT and of the
Board of Directors thereof



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Matt Collings, Assistant General Manager
Rod Woods, Assistant Director of Engineering

SUBJECT: Reimbursement Agreement with Joint Regional Water Supply System for Vault Abandonments

DIVISION: District-wide

SUMMARY:

Issue: The Moulton Niguel Water District (MNWD) and Joint Regional Water Supply System (JRWSS) have developed a reimbursement agreement for expenses incurred by JRWSS related to the abandonment of vaults on the Eastern Transmission Main (ETM).

Recommendation: It is recommended that the Board of Directors approve the Reimbursement Agreement with JRWSS and authorize the General Manager or Assistant General Manager to execute the Agreement.

Fiscal Impact: Per the terms of the Agreement, MNWD will reimburse JRWSS for work associated with abandonment of the vaults. The City of San Juan Capistrano (CSJC) will reimburse MNWD for its share of the costs pursuant to the terms of the Agreement for the ETM. Adequate funds are proposed for FY 2017-18 CIP Budget.

Reviewed by Legal: Yes

BACKGROUND:

The South Coast Water District (SCWD) is responsible for operation and maintenance of the former Tri-Cities Municipal Water District system, now identified as the Joint Regional Water Supply System (JRWSS). The Joint Transmission Main (JTM) was constructed in 1961/1962 by Tri-Cities and MNWD to convey potable water approximately 38 miles from a connection with the Metropolitan Water District in Irvine

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Reimbursement Agreement with Joint Regional Water Supply System for Vault Abandonments

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to various take-outs along the pipeline, and ultimately to Bradt and Schlegel Reservoirs in San Clemente.

In 2014, the JRWSS hired RCE Consultants, Inc. to prepare construction documents related to the Wye Vault Improvement Project of the JTM. This project will replace critical valves and improve three vault structures of the JTM. Immediately adjacent to these JTM vault structures is the Eastern Transmission Main (ETM). Although MNWD is responsible for the operation and maintenance of the ETM, the ETM provides water to both MNWD and the CSJC. In this location, the ETM has three vault structures that need to be permanently abandoned.

DISCUSSION:

MNWD and JRWSS have mutually determined the best course of action is to incorporate the ETM vault abandonments into the design and construction of the Wye Vault Improvement Project of the JTM. This will capitalize on the California Environmental Quality Act (CEQA) effort, permitting effort, design effort, and presence of a qualified contractor in the immediate vicinity.

MNWD has worked with JRWSS and legal counsel to develop a reimbursement agreement. The significant terms of the Agreement are as follows:

1. The JRWSS will act as Lead Agency for purposes of CEQA and MNWD will be a Responsible Agency.
2. The ETM vault abandonment work will be bid as optional bid items such that MNWD can elect to either proceed with the work or delete the work from the Wye Vault Improvement Project of the JTM.
3. MNWD will be responsible for providing all necessary data and reviews in a timely manner and reimburse JRWSS for costs associated with the ETM vault abandonment work.

Attachments:

1. Reimbursement Agreement between MNWD and JRWSS
2. Exhibit A Location Map

AGREEMENT BETWEEN JOINT REGIONAL WATER SUPPLY SYSTEM AND MOULTON NIGUEL WATER DISTRICT FOR ABANDONMENT OF VAULTS WITH THE WYE VAULT IMPROVEMENT PROJECT

This Agreement, hereinafter referred to as “AGREEMENT” and dated and effective the _____ day of _____, 2017 (“Effective Date”), is by and between the **JOINT REGIONAL WATER SUPPLY SYSTEM**, hereinafter referred to as “JRWSS”, and **MOULTON NIGUEL WATER DISTRICT**, hereinafter referred to as “MNWD”. JRWSS and MNWD are sometimes referred to in this AGREEMENT individually as “Party,” or jointly as “Parties.”

RECITALS

WHEREAS, JRWSS proposes to construct improvements to replace valves and improve the vault structures at the intersection of the Joint Transmission Main (JTM) and the Eastern Transmission Main (ETM), hereafter referred to as “PROJECT;”

WHEREAS, MNWD operates and maintains the ETM on behalf of the MNWD and the City of San Juan Capistrano by project agreement, dated September 11, 1961;

WHEREAS, MNWD desires to replace one existing valve, remove one existing valve and one existing meter, and abandon three associated existing vault structures within the extents of the PROJECT, hereafter referred to as “VAULT ABANDONMENT;”

WHEREAS, JRWSS and MNWD have mutually determined the best course of action to perform the VAULT ABANDONMENT is to incorporate the design and construction of the VAULT ABANDONMENT into the JRWSS contract for the PROJECT.

NOW THEREFORE, IT IS AGREED by and between the parties hereto as follows:

SECTION I

JRWSS, IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTION II HEREOF, SHALL:

1. Obtain a request for contract amendment from JRWSS Engineer for the scope and fee to prepare the design of the VAULT ABANDONMENT, and provide to MNWD for review and approval; MNWD's approval shall not be unreasonably withheld. Upon MNWD's approval, JRWSS shall direct JRWSS's Engineer to incorporate the design of the VAULT ABANDONMENT into the PROJECT plans and specifications. The VAULT ABANDONMENT design shall meet the requirements of the MNWD and shall be subject to the approval by the MNWD .

2. Act as Lead Agency for the purposes of the California Environmental Quality Act (CEQA) of 1970 as amended, and prepare appropriate CEQA document(s) to address VAULT ABANDONMENT, the cost of which shall be paid by MNWD, as included within the VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS as defined in Section II, Part 10.

3. Secure and comply with any and all governmental and/or regulatory approvals, permits, and/or clearances (Approvals) required to construct, operate, and/or maintain the VAULT ABANDONMENT, the cost of which shall be paid by MNWD as included within the VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS as defined in Section II, Part 10.

4. Include deletable bid items in PROJECT plans and specifications for the installation of the VAULT ABANDONMENT, relevant appurtenances, and appropriate testing as required

under the approved PROJECT plans and specifications for the VAULT ABANDONMENT; and provide to MNWD for review and approval, which shall not be unreasonably withheld.

5. Solicit competitive bids for the PROJECT, including the VAULT ABANDONMENT. JRWSS shall allow the MNWD thirty (30) days following the opening of competitive bids for the PROJECT to respond in writing with a final determination to proceed with the VAULT ABANDONMENT portion of the PROJECT or delete the VAULT ABANDONMENT work from the PROJECT. If the decision is made by the MNWD to delete the VAULT ABANDONMENT work, JRWSS shall prepare and issue a final invoice of VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS incurred, as defined in Section II, Part 10 below. Otherwise, JRWSS shall award a construction contract (Contract) to the lowest overall responsive and responsible bidder for the PROJECT, hereinafter referred to as "CONTRACTOR."

6. Prior to award of the contract for the PROJECT, provide a complete set of construction contract documents to MNWD which shall identify all sub-contractors, including those who will be suppliers, or accomplish work, with respect to the VAULT ABANDONMENT, as well as line item bid prices for all PROJECT work, including the VAULT ABANDONMENT.

7. Oversee and administer the Contract, including those elements of the PROJECT and the Contract related to the VAULT ABANDONMENT work.

8. Provide shop drawing submittals associated with the VAULT ABANDONMENT for review and approval by MNWD. MNWD shall review and comment on all shop drawing submittals within twenty (20) calendar days from the date received by MNWD.

9. Furnish a representative to perform the usual functions of a JRWSS inspector, hereinafter referred to as "INSPECTOR" who shall be responsible for monitoring and inspecting the CONTRACTOR's performance. JRWSS, through the INSPECTOR, shall provide written notice at least 72 hours in advance to MNWD (to the extent MNWD designates a "REPRESENTATIVE" as such term is defined below in Section II, Part 8. such advance notice

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shall be provided to such REPRESENTATIVE) of when VAULT ABANDONMENT work is scheduled.

10. Issue construction contract change orders (CCOs) as required for the VAULT ABANDONMENT, but only after review and written approval by MNWD. MNWD's approval shall not be unreasonably withheld and MNWD shall respond to requests for approval in a timely manner, as further set forth in Section II, Part 6.

11. Incorporate within the contract documents for the PROJECT a requirement for CONTRACTOR to obtain and keep in full force and effect throughout the duration of PROJECT, for the mutual benefit of MNWD and JRWSS, Commercial General Liability insurance with a limit of at least one million dollars (\$1,000,000) per occurrence with a minimum aggregate of at least two million dollars (\$2,000,000) and Commercial Automobile Liability insurance with a limit of at least one million dollars (\$1,000,000). Said policies shall name MNWD and JRWSS, and each of their elected and appointed officials officers, employees and agents ,as additional insureds by separate endorsements, and shall, additionally, contain language providing for waiver of subrogation, that the policies are primary and noncontributing with any insurance that may be carried by the parties, that said insurance may not be cancelled or materially changed except upon thirty (30) calendar days written notice to JRWSS, and any losses shall be payable notwithstanding any act or failure to act or negligence of MNWD and/or JRWSS. JRWSS shall also require that worker's compensation benefits are secured by CONTRACTOR as required by law, with a waiver of subrogation endorsement against MNWD and JRWSS. JRWSS shall also incorporate in the PROJECT contract documents terms for CONTRACTOR's indemnification of MNWD, and MNWD's elected and appointed officials, officers, employees and agents, which shall be consistent with the CONTRACTOR's indemnity applicable to JRWSS.

12. Require CONTRACTOR to perform the VAULT ABANDONMENT to the written approval of MNWD. JRWSS shall not accept PROJECT work from CONTRACTOR until MNWD concurs that the VAULT ABANDONMENT has been performed to MNWD's written approval and in accordance with JRWSS's plan and specifications.

13. Require CONTRACTOR to provide a one-year warranty and a warranty bond for the VAULT ABANDONMENT for the benefit of MNWD. This warranty and bonding requirement is to be stated in the plans and specifications for the PROJECT.

14. Upon completion and MNWD's written acceptance of VAULT ABANDONMENT, provide a final accounting report detailing the bid item costs for the VAULT ABANDONMENT work for review and approval by MNWD, which approval shall not be unreasonably withheld, and invoice MNWD for the balance of any additional costs incurred by JRWSS and approved by MNWD not otherwise paid for said VAULT ABANDONMENT work. MNWD shall pay JRWSS within sixty (60) calendar days of receipt of said invoice.

15. Upon MNWD's written acceptance of VAULT ABANDONMENT, file a Notice of Completion for the PROJECT.

16. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by MNWD, and indemnify and hold and save harmless MNWD and its elected and appointed officials, officers, agents and employees, from all liability from loss, damage or injury to persons or property, including any and all legal costs and attorneys' fees, in any manner arising out of the performance, by JRWSS, its elected and appointed officials, officers, agents and employees, of JRWSS's obligations under this AGREEMENT or the contract for the PROJECT.

SECTION II

MNWD, IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTION I, SHALL:

1. Be responsible for review and approval of the design of the VAULT ABANDONMENT based on JRWSS's Engineer's design request and the contract plans and specifications, and for all CCOs as described in paragraph 3 below for the PROJECT. MNWD shall not unreasonably

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delay the CONTRACTOR in the written approval of work related to the VAULT ABANDONMENT.

2. Be invoiced for the VAULT ABANDONMENT work as the JRWSS'S Engineer prepares and completes the design of the VAULT ABANDONMENT and the CONTRACTOR completes construction of the VAULT ABANDONMENT, in accordance with progress payment terms under the PROJECT contract provisions. Upon review and approval, MNWD shall pay all such invoices within thirty (30) days of receipt from JRWSS. Invoices shall include the VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS as defined in Section II, Part 10.

3. Be a responsible agency under the California Environmental Quality Act (CEQA) and rely on CEQA documents prepared by the JRWSS.

4. Upon completion and written acceptance of the VAULT ABANDONMENT, shall be responsible for compliance with the terms and conditions set forth in said Approvals obtained by JRWSS for execution of the PROJECT and VAULT ABANDONMENT.

5. Provide the JRWSS with written notice within thirty (30) days following the opening of competitive bids for the PROJECT of a final determination to either proceed with the VAULT ABANDONMENT portion of the PROJECT or delete the VAULT ABANDONMENT work from the PROJECT. If the decision is made by the MNWD to delete the VAULT ABANDONMENT work, JRWSS shall prepare and issue a final invoice of the VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS incurred, as defined in Section II, Part 10 below. MNWD shall pay JRWSS within sixty (60) calendar days of receipt of said invoice.

6. Review and approve CCOs issued by JRWSS specifically related to the VAULT ABANDONMENT and be solely responsible for all CCO costs pertaining to the VAULT ABANDONMENT. MNWD shall not unreasonably withhold consent to such CCO's and shall approve within five (5) working days from receipt of a CCO. MNWD shall pay to JRWSS its

share of the cost of such CCOs within thirty (30) days of receipt of a written request for such payment from JRWSS.

7. Coordinate shutdown of the ETM with CONTRACTOR to facilitate completion of the VAULT ABANDONMENT. CONTRACTOR will identify a schedule for the VAULT ABANDONMENT and include a proposed outage period to be submitted to JRWSS and approved in writing by MNWD.

8. At MNWD's option and sole discretion, furnish a representative to assist over-seeing the VAULT ABANDONMENT, hereinafter referred to as "REPRESENTATIVE." REPRESENTATIVE and INSPECTOR shall cooperate and consult with each other. Should INSPECTOR and REPRESENTATIVE be unable to reach agreement, the decision of INSPECTOR shall be final provided the VAULT ABANDONMENT is constructed to MNWD's standards and specifications. Specific inspection for all VAULT ABANDONMENT work by CONTRACTOR shall be performed to the full satisfaction of MNWD, or as applicable, REPRESENTATIVE.

9. Within 10 calendar days from JRWSS certifying, in writing, full completion of the work under the Contract Documents for the PROJECT and the date thereon, MNWD shall provide its written acceptance for the VAULT ABANDONMENT.

10. Upon completion and MNWD's written acceptance of the VAULT ABANDONMENT and within sixty (60) calendar days of receipt of an invoice and final accounting report from JRWSS, MNWD shall provide to JRWSS final payment for VAULT ABANDONMENT work not otherwise paid previously, determined as the sum of 10A, 10B, 10C, and 10D below:

- A. The costs for the design of the VAULT ABANDONMENT to incorporate into the PROJECT plans and specifications.
- B. The actual sum of the line item prices bid for the construction of VAULT ABANDONMENT as listed in the bid schedule, from CONTRACTOR.

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- C. CCO expenses previously approved by MNWD for the VAULT ABANDONMENT and not already paid by MNWD, if any, shall be added to the above.
- D. Fifteen percent (15%) of the actual sum amount determined by the addition of 10A, 10B, and 10C above as an agreed upon amount to reimburse JRWSS for costs incurred for surveying, geotechnical investigations, construction administration, inspection, CEQA, permitting, bonds, insurance, scheduling, and other mobilization costs related to VAULT ABANDONMENT.

The sum of 10A, 10B, 10C and 10D as defined above shall hereinafter be referred to as "VAULT ABANDONMENT DESIGN CONSTRUCTION ADMINISTRATIVE COSTS."

11. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by JRWSS, and indemnify and hold and save harmless JRWSS and its elected and appointed officials, officers, agents and employees, from all liability arising from loss, damage or injury to persons or property, including any and all legal costs and attorney's fees, in any manner arising out of the performance, by MNWD, its elected and appointed officials, officers, agents and employees, of MNWD's obligations under this AGREEMENT.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
2. This AGREEMENT constitutes the entire agreement between JRWSS and MNWD and supersedes all prior understandings and agreements, if any, between the parties with respect to the subjects hereof. This AGREEMENT may only be modified in a writing specifically referencing this AGREEMENT and signed by both parties hereto.

3. If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

4. The parties represent and warrant that this AGREEMENT has been duly authorized and executed and constitute the legally binding obligation of their respective entity enforceable in accordance with its terms. This AGREEMENT may be executed in three counterparts, and each counterpart shall be deemed to be an original.

5. All notices or other communications provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

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

Joint Regional Water Supply System
Chief Operations Officer
31592 West Street
Laguna Beach, CA 92651

Either party may, by notice to the other party, designate a different address for notices which shall be substituted for that specified above. Any notice given as provided in this paragraph shall be deemed to have been received, if personally served, as of the date and time of service, or it deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

6. This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under 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

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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, Section 394.

7. Termination

a. JRWSS and MNWD may terminate this AGREEMENT at any time with ten (10) days prior written notice to the other party, provided MNWD shall remain responsible for all costs incurred by JRWSS for the VAULT ABANDONMENT design, construction and other work incurred prior to the termination and not otherwise paid by MNWD as agreed herein, and MNWD shall further be and remain responsible for any future VAULT ABANDONMENT costs arising after such termination that cannot otherwise be mitigated under the terms of the contract with CONTRACTOR. Any notice of termination hereunder by either party shall be in writing and shall state the date upon which such termination is effective. Notice shall be served as provided in paragraph 5 above.

b. In the event PROJECT construction (as outlined above), is not initiated within two (2) years of the Effective Date of this AGREEMENT, this AGREEMENT will automatically terminate unless extended in writing by mutual agreement of the parties.

c. Notice of termination shall be in writing and shall state the date upon which such is effective. Notice shall be served as provided in paragraph 5 above.

8. This AGREEMENT is by and between MNWD and JRWSS and is not intended and shall not be construed so as to create, as between MNWD and JRWSS any agency, servant, employee, partnership, joint venture, association or other relationship between the MNWD and JRWSS.

9. The failure of MNWD or JRWSS to insist upon strict performance of any of the covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that MNWD or JRWSS may have, and shall not be deemed a waiver of any right to require strict performance of all the terms, covenants and conditions of this AGREEMENT

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thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

10. Should litigation be necessary to enforce any terms, covenants or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives on the date written above.

MOULTON NIGUEL WATER DISTRICT

Date: _____

By: _____

General Manager

APPROVED AS TO FORM:

Legal Counsel, Moulton Niguel Water District

By: _____

Date: _____

JOINT REGIONAL WATER SUPPLY SYSTEM

Date: _____

By: _____

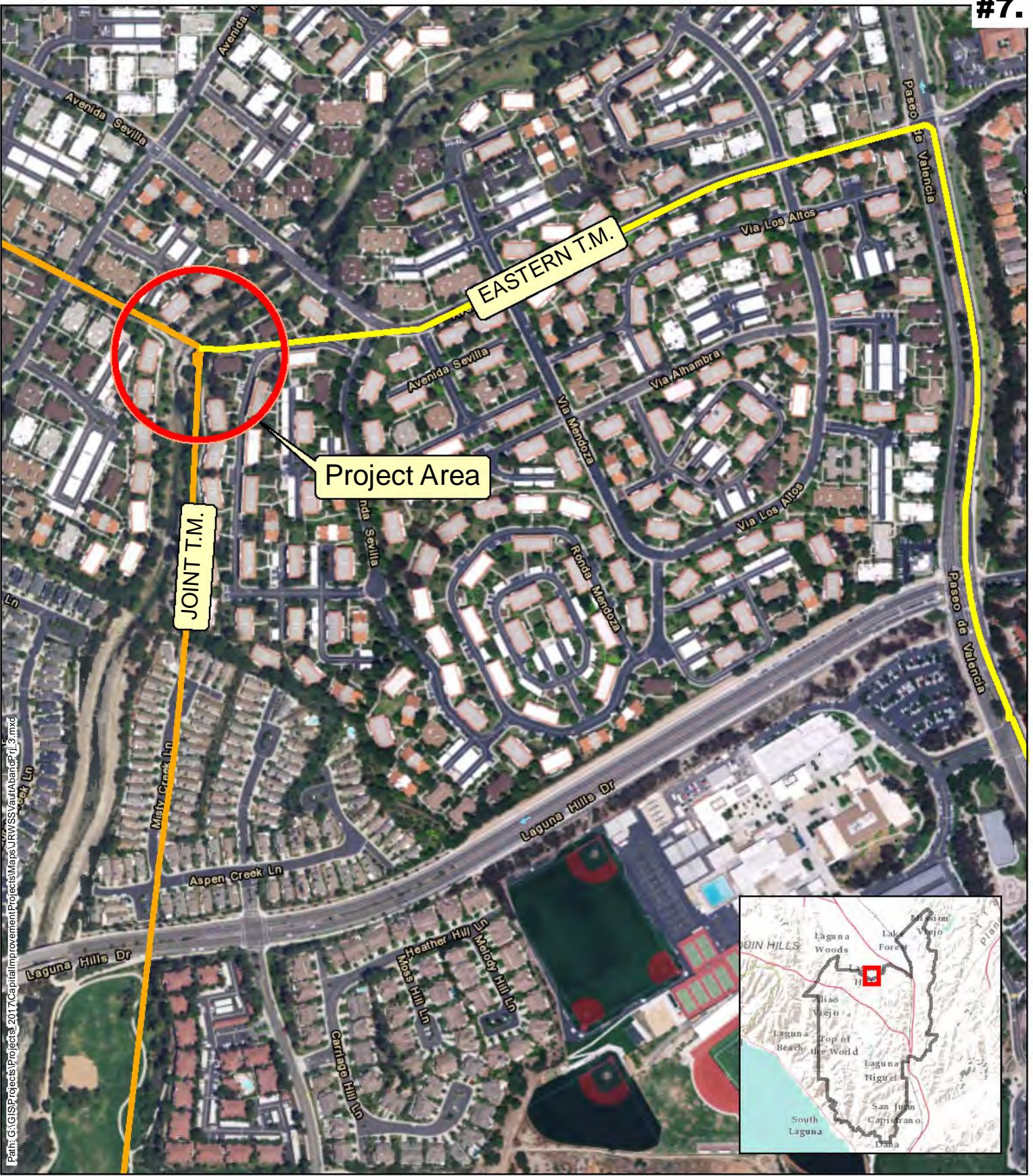
General Manager

APPROVED AS TO FORM:

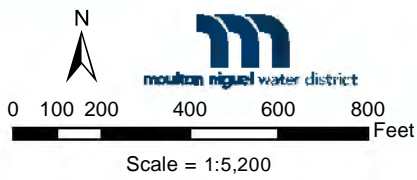
Legal Counsel, Joint Regional Water Supply System

By: 

Date: May 9, 2017



Path: G:\GIS\Projects\Projects\2017\CapitalImprovement\Projects\Maps\JRWS\VaultAband\Prj_3.mxd



**Exhibit "A" Location Map
JRWS Vault Abandonments Project**



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Rod Woods, Assistant Director of Engineering
David Larsen, Principal Engineer

SUBJECT: Professional Services Agreement for Regional Lift Station Force Main Replacement

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute a professional services agreement for the Regional Lift Station Force Main Replacement, Project No. 2013.004.

Recommendation: It is recommended that the Board of Directors approve the Professional Services Agreement with Tetra Tech, Inc. in an amount of \$655,000; authorize the General Manager or Assistant General Manager to execute the agreement; and to approve amendments up to 10% of the contract value.

Fiscal Impact: Project No. 2013.004 is budgeted in Fund 7, Rehabilitation and Replacement with a proposed FY 2017-18 project budget of \$10,000,000.

Reviewed by Legal: Yes

BACKGROUND:

The Regional Lift Station is located along Alicia Parkway in Laguna Niguel and pumps wastewater to the Regional Treatment Plant (RTP) through two parallel 20-inch and 24-inch force mains that are approximately 7,400 feet long. The existing force mains are located in service roads within the Laguna Niguel Regional Park. The force mains were constructed in 1980 using Techite pipe, which is a composite material made of glass and polyester resin. Because of the age and material, District staff is recommending that the existing force mains be replaced.

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Professional Services Agreement for Regional Lift Station Force Main Replacement

June 12, 2017

Page 2 of 3

In 2014, a preliminary design effort was completed wherein ten alignment alternatives were analyzed after determining that rehabilitation of the pipelines in place was not feasible. The engineering services for this professional services agreement will include a phased design for the force main replacement along the recommended alignment. The specific phases of work will include preliminary design refinement, preparation of CEQA documents, completion of final design and construction documents, and bid and construction phase engineering support services. The design will also include the preparation of sequencing and bypassing plans, as well as provisions to evaluate repurposing the existing force mains to provide additional RTP effluent capacity.

DISCUSSION:

On March 30, 2017, staff issued a Request for Proposals for engineering services to six qualified engineering consulting firms. Three proposals were received and the adjusted fees are summarized below:

Consultant / Firm	Proposed Fee
Dudek	\$790,620
Stantec	\$637,560
TetraTech	\$655,000

Staff performed a thorough review of the proposals received to determine the overall best value for the professional services required. Based on the consultants' specific project understanding and approach, overall proposal quality, project specific experience, proposed project team and cost, staff recommends that Tetra Tech, Inc. be awarded the professional services contract.

SUMMARY OF PROJECT BUDGET:

	Project Budget	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$720,000	\$655,000	\$65,000	\$720,000
CEQA Compliance	\$480,000	\$480,000	\$0	\$480,000
Construction	\$8,200,000	\$8,200,000	\$0	\$8,200,000
Inspection / Other	\$600,000	\$600,000	\$0	\$600,000
Totals	\$10,000,000	\$9,935,000	\$65,000	\$10,000,000



Currently Proposed Amount

Professional Services Agreement for Regional Lift Station Force Main Replacement

June 12, 2017

Page **3** of **3**

Attachments:

1. Exhibit A Location Map
2. Professional Services Agreement with Tetra Tech, Inc.



Scale = 1:8,020

EXHIBIT "A"
Regional Lift Station
and Sewer Force Main
Contract No. 2013.004

**AGREEMENT FOR ENGINEERING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND TETRA TECH, INC.
MNWD PROJECT: REGIONAL LIFT STATION FORCE MAIN REPLACEMENT
CONTRACT NO. 2013.004**

THIS AGREEMENT (the "Agreement") is dated as of _____, 2017, by and between Tetra Tech, Inc., hereinafter referred to as the "ENGINEER" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of engineering services to MNWD by ENGINEER. MNWD and ENGINEER may sometimes be referred to in this Agreement individually as "party" and together as "parties."

RECITALS

ENGINEER proposes to provide services to MNWD in connection with the evaluation, design and construction support services for the Regional Lift Station Force Main Replacement project (the "Project"). The scope of work to be performed by ENGINEER under this Agreement is described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Work").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I - ENGINEERING SERVICES, AUTHORIZATION

Section 1.1 ENGINEER proposes to perform those services which are described in the Scope of Work. MNWD may request or ENGINEER may recommend, that ENGINEER perform work in addition to or different from that delineated in the original Scope of Work, or delete services from the Scope of Work. Upon MNWD's request for additional or changed work, ENGINEER shall provide a cost estimate and written description of the additional or changed work. Prior to any such addition, changes, or deletion to the Scope of Work, MNWD and ENGINEER shall negotiate an adjustment of the compensation and time for completion and shall execute a written addendum to this Agreement. Upon execution of each addendum, (i) the Scope of Work shall thereafter be as described in **Exhibit A**, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the work shall be as set forth in the addendum. Following execution of any addendum, all terms and provisions of the Agreement, except as expressly modified by such addendum, shall remain in full force and effect. MNWD will not be required to pay for any additional or changed work rendered in advance of the execution of an addendum covering the additional or changed work.

Section 1.2 ENGINEER agrees to complete the design work described in the Scope of Work no later than May 11, 2019. ENGINEER further agrees to complete all other work within the time periods set forth in the Scope of Work. Time is of the essence in this Agreement.

ENGINEER agrees to coordinate the work to ensure its timely completion and shall promptly notify MNWD of any anticipated delays or causes or casualties beyond ENGINEER'S control which may affect the work schedule. In the event the time for completing the Scope of Work is projected to be exceeded due to circumstances beyond the control of ENGINEER, ENGINEER shall have an additional amount of time to be agreed upon in writing between the parties

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pursuant to Section 1.1 and an executed addendum, in which to complete the work. ENGINEER shall not begin work on any services pursuant to this Agreement until receipt of MNWD'S written direction to proceed. Upon receipt of such notice, ENGINEER shall immediately commence the work described in **Exhibit A**.

Section 1.3 ENGINEER'S civil engineer, duly licensed in the State of California, who shall be the Principal in Charge of work, is Tom Epperson.

As part of the Project, ENGINEER intends to subcontract certain services for the Project. Separate subcontracts may be entered into between ENGINEER and the subconsultants listed in **Exhibit B** hereto. Any additional subconsultants ENGINEER proposes to use are subject to prior written approval by MNWD.

Without prior written approval of MNWD, ENGINEER will not make any changes in ENGINEER'S Principal in Charge, in consultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Scope of Work. ENGINEER is responsible to MNWD for the acts and omissions of its subcontractors as it is for persons directly employed by ENGINEER. Nothing contained in this Agreement creates any contractual relationship between any subconsultant/subcontractor and MNWD. ENGINEER shall not allow any subconsultant/subcontractor to commence work or services under any subcontract until all insurance required of ENGINEER has been obtained for the subconsultant/subcontractor.

Section 1.4 MNWD shall make available to ENGINEER at no cost all technical data in MNWD's possession, including maps, past reports, prior studies, prior plan operating data, and other information reasonably required by ENGINEER and relating to the work to be performed under this Agreement.

Engineer will furnish to MNWD the agreed upon number of reports and supporting documents.

These instruments of service are furnished for MNWD's use in connection with the project or work provided for in this Agreement and shall become MNWD's property upon receipt. All documents and information generated by Engineer and any of Engineer's subcontractors pursuant to this Agreement shall remain confidential and shall not be copied, distributed, or otherwise provided or referenced by Engineer or Engineer's subcontractors to any third parties other than with MNWD's written consent, or as compelled by order of court.

All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the services described in this Agreement or as otherwise provided in SECTION V herein, be furnished to and become the property of MNWD.

Engineer may retain a copy of all reports and documents for their files.

SECTION II - ENGINEERING FEES

Section 2.1 In consideration for providing the engineering services referred to in SECTION I herein, MNWD agrees to compensate ENGINEER on an hourly rate basis, with a not-to-exceed maximum amount of six-hundred fifty-five thousand dollars (\$655,000) (which maximum amount is inclusive of 'labor costs' and 'direct costs', as further discussed below), including optional tasks. Optional tasks shall not be performed without prior written authorization by the District. The breakdown of the fee and costs for the Project is attached hereto as **Exhibit C** which is incorporated herein. Compensation shall be on an hourly rate basis for labor costs as defined

herein below in Section 2.2.

Section 2.2 Labor costs shall be the total number of hours worked on the job by each employee multiplied by the applicable hourly billing rate. The Fee Schedule set forth in **Exhibit C** attached hereto and incorporated herein sets forth the current billing rates of ENGINEER.

Section 2.3 Monthly progress payments will be made based on submittal of invoices by ENGINEER. Invoices will include the number of hours worked by various labor categories, the hourly billing rate per individual, and the total amount due. Only one bill per month shall be submitted by ENGINEER, showing invoices for ENGINEER and each subconsultant utilized during the monthly billing period.

SECTION III - WARRANTY

Section 3.1 ENGINEER is employed to render engineering services pursuant to this Agreement only, and any payments made to ENGINEER are compensation solely for such services as it may render and recommendations it may make in carrying out the work.

Section 3.2 In performing services under this Agreement, ENGINEER shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD.

Section 3.3 ENGINEER's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

Section 3.4 If the Project results in construction of any kind, the parties agree MNWD and ENGINEER shall be indemnified by the contractor for all claims, damages, losses and expenses arising out of or resulting from the contractor's performance of work including injury to any worker on the job site except for the negligence of MNWD or ENGINEER, such indemnity to be in accordance with MNWD's construction documents. MNWD and ENGINEER shall be named as additional primary insured(s) by contractor's General Liability Insurance policies without offset and all construction documents and insurance certificates shall include wording to such effect.

ENGINEER and MNWD shall not be responsible for the means, methods, techniques, sequences, or procedure of construction selected by contractors or the safety precautions and programs incident to the work of contractor and will not be responsible for a contractor's failure to carry out work in accordance with contract documents.

The services to be performed by ENGINEER are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of ENGINEER toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them. Any reuse of documents or data for other than the intended use shall be at the sole risk of MNWD.

SECTION IV - INSURANCE AND INDEMNIFICATION

Section 4.1 Professional Liability Insurance. ENGINEER and each of its sub-

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consultants/subcontractors shall maintain throughout the term of this Agreement a professional liability (errors and omissions) policy of insurance having coverage of not less than One Million Dollars (\$1,000,000) for each claim and in annual aggregate. The following provisions shall apply if the professional liability coverage is written on a claims-made basis:

- (a) The retroactive date of the policy must be shown and must be before the date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement or the services hereunder.
- (c) 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, ENGINEER must provide extended reporting coverage for a minimum of five (5) years after completion of the services. MNWD shall have the right to exercise at the ENGINEER's cost any extended reporting provisions of the policy should the ENGINEER cancel or not renew the coverage.
- (d) A copy of the claims reporting requirements must be submitted to MNWD prior to the commencement of any work under this Agreement.

Section 4.2 General/ Automobile Liability Insurance. ENGINEER and each of its sub-consultants/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 ENGINEER and its sub-consultants/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 from 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.

All insurance provided under this Section shall name MNWD and its' directors, officers, employees and representatives as additional insureds under each such policy ("additional insureds") and an additional insured endorsement shall be provided in form acceptable to MNWD.

Section 4.3 Worker's Compensation. By its signature hereunder, ENGINEER 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 ENGINEER will comply with such provisions before commencing the performance of work under this Agreement. ENGINEER and subconsultants/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.

Section 4.4 Requirements of All Policies. All policies of insurance required under this Section

IV 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 XIII, 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. ENGINEER 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.

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 ENGINEER's (and its subconsultant's/subcontractor's) insurance, and shall not contribute to such insurance.

Any deductibles or self-insured retentions must be declared in writing and approved by MNWD. At the option of MNWD, either: the insurance provider(s) shall reduce or eliminate such deductibles or self-insured retentions as respects the MNWD and its' directors, officers, employees and representatives; or the ENGINEER shall provide a financial guarantee satisfactory to MNWD guaranteeing payment of losses and related investigations, claim administration and defense expenses. 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.

Section 4.5 Indemnity.

(a) To the fullest extent permitted by law, ENGINEER shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD, City of Laguna Niguel, City of Mission Viejo, and their respective officials, officers, employees, agents and designated volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of ENGINEER, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the ENGINEER'S services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, including but not limited to legal costs and expenses incurred by the in connection with any Claim or in enforcing the indemnity herein provided. Notwithstanding the foregoing, to the extent ENGINEER'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER. ENGINEER'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MNWD, its officials, officers, employees, agents or City designated volunteers.

(b) In any and all claims against the indemnified parties by any employee of the ENGINEER, 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 ENGINEER, or any subcontractor, or other person under workers' compensation acts, disability benefit acts, or other employee acts.

(c) The ENGINEER'S obligations pursuant to this Section shall survive the expiration or termination of this Agreement and/or the performance or completion of any or all services and work provided under this Agreement. 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 ENGINEER hereunder.

SECTION V – CALIFORNIA LABOR CODE REQUIREMENTS

ENGINEER is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, ENGINEER agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. The Director of the Department of Industrial Relations has opined that certain geotechnical and related services are subject to the payment of prevailing wages and it shall be incumbent upon the ENGINEER to determine whether the Prevailing Wage Laws are applicable to the services and to comply with the Prevailing Wage Laws, if applicable. MNWD shall provide ENGINEER with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. ENGINEER shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the ENGINEER'S principal place of business and at the Project site. ENGINEER shall defend, indemnify and hold MNWD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the ENGINEER or its consultants to comply with the Prevailing Wage Laws.

SECTION VI - TERMINATION OR ABANDONMENT

This Agreement may be terminated in whole or in part in writing by either party provided that no such termination may be effected unless the other party is given not less than ten (10) calendar day's written notice (deliver by certified mail, return receipt requested) of intent to terminate. Additionally, MNWD may suspend performance by ENGINEER of any or all services listed in the Scope of Work under this Agreement by providing written notice to ENGINEER at least five (5) working days prior to the date on which MNWD wishes to suspend; provided, upon receipt of such notice, ENGINEER shall immediately suspend any work or services hereunder, unless otherwise instructed by MNWD in such notice.

ENGINEER 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 ENGINEER agree that in the event MNWD suspends or terminates performance by ENGINEER for any cause other than the intentional or negligent error or omission of ENGINEER, ENGINEER shall be entitled to payment of compensation incurred prior to the effective date of the suspension or termination, as determined under SECTION II of this Agreement.

In the event of any suspension or termination herein, MNWD shall have the right to take possession and shall immediately own all original drawings and other documents developed for that portion of the work completed and/or being suspended or abandoned.

SECTION VII - GENERAL

Section 7.1 ENGINEER represents that it is aware of no facts or circumstances which would impair its ability to provide fair and unbiased advice to MNWD in the course of performing the engineering services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 7.2 This Agreement represents the entire understanding of MNWD and ENGINEER as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be amended, modified or altered except in writing, signed by the parties. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it.

Section 7.3 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by ENGINEER and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by MNWD.

Section 7.4 Any notice required or permitted to be given hereunder if not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office, registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To MNWD - Attn: Rod Woods, Assistant Director of Engineering
 Moulton Niguel Water District
 27500 La Paz Road
 Laguna Niguel, CA 92677-3489

To ENGINEER - Attn: Tom Epperson, Vice President
 Tetra Tech, Inc.
 17885 Von Karman Avenue, Suite 500
 Irvine, CA 92614

Section 7.5 California law shall govern the interpretation of this Agreement. 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 hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

Section 7.6 In the event an action is commenced by either party to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all costs and expenses, including court costs, plus a reasonable amount for attorney's fees.

Section 7.7 If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or

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enforceability of this Agreement as a whole.

Section 7.8 It is expressly understood and agreed that ENGINEER is an independent contractor and not an employee of MNWD while engaged in carrying out this Agreement. ENGINEER warrants that it will not represent, at any time or in any manner, that ENGINEER is an employee or agent of MNWD. ENGINEER shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD.

The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, MNWD or ENGINEER.

Section 7.9 This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement or any interest herein shall be made by ENGINEER without prior written consent of MNWD.

Section 7.10 This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2017.

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

Tetra Tech, Inc.

By: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

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EXHIBIT B

LIST OF APPROVED SUBCONSULTANTS

Coast Surveying, Inc.
15031 Parkway Loop, Suite B
Tustin, CA 92780

Helix Environmental Planning, Inc.
16485 Laguna Canyon Road, Suite 200
Irvine, CA 92618

Leighton Consulting, Inc.
17781 Cowan
Irvine, CA 92614

RF Yeager Engineering
9562 Winter Gardens, Suite D-151
Lakeside, CA 92040

EXHIBIT C
FEE SCHEDULE



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Rod Woods, Assistant Director of Engineering
David Larsen, Principal Engineer

SUBJECT: Construction Contract Award for Upper Salada Lift Station
Electrical Switchgear Replacement

DIVISION: 4

SUMMARY:

Issue: Board action is required for the Notice Inviting Sealed Proposals (Bids) for the Upper Salada Lift Station Electrical Switchgear Replacement, Project No. 2016.006.

Recommendation: It is recommended that the Board of Directors award the construction services contract to Southern Contracting Company in the amount of \$476,000; authorize the General Manager or Assistant General Manager to execute the contract; and to approve change orders up to 10% of the contract value.

Fiscal Impact: Project No. 2016.006 is budgeted in Fund 7, Rehabilitation and Replacement with a proposed FY 2017-18 project budget of \$700,000.

Reviewed by Legal: Yes

BACKGROUND:

The Upper Salada Lift Station was originally constructed in 1979. The facility is located near the intersection of Niguel Road and Club House Drive in the City of Laguna Niguel. The Upper Salada Lift Station pumps wastewater from portions of Laguna Niguel to the Joint Regional Treatment Plant.

In 2016, an electrical system assessment was completed and it was determined that the electrical switchgear equipment is in need of replacement. This project includes

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Upper Salada Lift Station Electrical Switchgear Contract Award

June 12, 2017

Page 2 of 2

replacing the electrical switchgear and performance of other related electrical upgrades. Construction documents for the Upper Salada Lift Station Electrical Switchgear Replacement project were prepared by Lee & Ro, Inc. utilizing the On-Call Engineering Services agreement.

DISCUSSION:

A request for bids was issued to six qualified construction contractors. The District received two sealed bids for the subject contract on May 16, 2017. The table below summarizes the bids received:

Firm	Bid
Southern Contracting Company	\$476,000
Halcyon Electric, Incorporated	\$530,000
Engineer's Estimate	\$708,000

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

SUMMARY OF PROJECT BUDGET:

	Project Budget*	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering	\$75,000	\$75,000	\$0	\$75,000
Construction Contract	\$525,000	\$476,000	\$47,600	\$523,600
Construction Management and Inspection	\$75,000	\$75,000	\$0	\$75,000
Legal, Permits, District Labor	\$25,000	\$25,000	\$0	\$25,000
Totals	\$700,000	\$651,000	\$47,600	\$698,600

*\$64,819.15 has been expended to date.

 Currently Proposed Amount

Attachment: Exhibit A – Location Map



Path: G:\GIS\Projects\Projects_2017\Engineering Exhibits\Maps\UpperSalada\SI.mxd

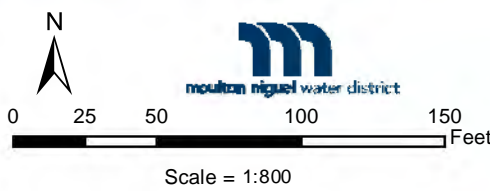


EXHIBIT "A"
Upper Salada Lift Station
Electrical Switchgear Replacement
Contract No. 2016.006



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Rodney S. Woods, Assistant Director of Engineering
Todd Dmytryshyn, Principal Engineer

SUBJECT: Del Avion Lift Station Auxiliary Generator Replacement
Construction Contract Adjustment

DIVISION: 4

SUMMARY:

Issue: Board action is required to increase the construction contract for the Del Avion Lift Station Auxiliary Generator Replacement project.

Recommendation: It is recommended that the Board of Directors increase the construction contract for Pacific Hydrotech Corporation by \$141,886 for a total contract amount of \$583,786; and authorize the General Manager or Assistant General Manager to execute the contract change order.

Fiscal Impact: Project Nos. 2014.002 and 2016.012 have a combined project budget of \$756,090. Adequate funds are proposed for FY 2017-18 CIP Budget.

Reviewed by Legal: Yes

BACKGROUND:

The Del Avion Lift Station was originally constructed in 1991. The facility is located near the intersection of Camino Del Avion and Niguel Road in the City of Laguna Niguel. The Del Avion Lift Station pumps wastewater from the southernmost part of the District to either the Upper Salada or Lower Salada Lift Stations and eventually to the Joint Regional Treatment Plant. The existing auxiliary generator at the station is currently undergoing replacement, as well as related electrical facilities improvements.

A construction contract was awarded to Pacific Hydrotech Corporation in July 2016 in the amount of \$441,900. The current contract award included a 10% contingency in the amount of \$44,190. Construction work began in October 2016. Two change orders have been approved to date resulting in a net credit of \$912. An additional change order for approximately \$25,000 is anticipated to replace the station’s main switchboard.

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Del Avion Lift Station Auxiliary Generator Replacement Construction Contract
Adjustment
June 12, 2017
Page 2 of 2

DISCUSSION:

At the time of design and bidding of the generator replacement project, staff had anticipated that internal resources would be able to install grinders upstream of the pumps at the station. The grinders will help to prevent the pumps from clogging. Funds for purchase of the grinders were budgeted in Fund 14 under Project No. 2016.012. It was later discovered that standard grinders would not fit in the space available at the station and detailed construction documents would be required. Utilizing the On-Call Engineering Services Agreement, LEE & RO performed the design and prepared construction documents for installation of the grinders.

Staff proposes to utilize Pacific Hydrotech Corporation to perform the grinder installation as they are already on-site performing construction work for the Del Avion Lift Station Auxiliary Generator Replacement. A construction contract change order is required to authorize the additional funds for the installation of the grinders. The contractor provided a quotation of \$141,886, most of which is the cost of the grinders. Staff performed a thorough review of this quotation and has determined that it is fair and reasonable.

Staff requests an increase in the construction contract to include the installation of the grinders. Staff anticipates that the current remaining contract contingency is adequate for completing the remaining construction work.

SUMMARY OF PROJECT BUDGETS:

	Project Budget	Proposed / Approved Contract	Proposed / Authorized Contingency	Total Proposed / Authorized Amount
Project Items				
Engineering*	\$100,000	\$100,000	\$0	\$100,000
Construction*	\$486,090	\$441,900	\$44,190	\$486,090
Grinder Installation Project No. 2016.012	\$150,000	\$141,886	\$0	\$141,886
Legal, Permits, District Labor*	\$20,000	\$20,000	\$0	\$20,000
Totals	\$756,090	\$703,786	\$44,190	\$747,976

*\$141,007 has been expended to date.

 Currently Proposed Amount



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Rod Woods, Assistant Director of Engineering
David Larsen, Principal Engineer

SUBJECT: On-Call Construction Management and Inspection Support Services

DIVISION: District-wide

SUMMARY:

Issue: Board action is required to execute agreements for Construction Management and Inspection Support Services on an as-needed basis.

Recommendation: It is recommended that the Board of Directors authorize the General Manager or Assistant General Manager to execute one-year Construction Management and Inspection Support Services Agreements with Krieger & Stewart, Inc. and Vali Cooper & Associates, Inc. for total not-to-exceed agreement amounts of \$350,000 each, with the option to renew for two additional one-year, \$200,000 extensions.

Fiscal Impact: The fiscal impact will depend on the amount of construction management and inspection support services required. The agreements will be funded with projects from the Capital Improvement Program (CIP) and the Operating Budget as needed for construction management and inspection support services.

Reviewed by Legal: Yes

BACKGROUND:

As part of the District's commitment to providing its customers with reliable, economical, and high-quality service, capital projects are identified to replace and rehabilitate many of the District's facilities. As part of this process, the District recently performed a condition assessment of the electrical systems at its facilities. As a result of this assessment, a variety of electrical system replacement projects are scheduled

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On-Call Construction Management and Inspection Support Services

June 12, 2017

Page 2 of 3

to be implemented over the next several years. These projects include service entrance upgrades, switchgear replacements, generator replacements, and other related reliability and code compliance upgrades. Each of these items require specialty electrical inspection services.

In addition to electrical inspections, other planned CIP projects will require: coating inspections, structural inspections, welding inspections, pipeline lining and rehabilitation inspections, and various types of start-up and commissioning. These items are typically performed by specialty contractors. As a result, construction management and inspection support assistance is needed during the construction phase of these projects to ensure quality work is completed by the specialty contractors in a timely manner.

Lastly, the construction schedules of the District's CIP projects often result in many simultaneous field activities. To ensure that each project is completed in a timely manner and in accordance with the District's standards, occasional construction management and inspection support services are necessary to assist staff during these peak periods of construction activity.

DISCUSSION:

The District issued a Request for Proposals for On-Call Construction Management and Inspection Support Services to six qualified firms. On May 4, 2017, the District received six proposals. The firms that submitted proposals were:

- Butier
- Dudek
- Harper & Associates Engineering, Inc.
- Krieger & Stewart, Inc.
- MWH Constructors
- Vali Cooper & Associates, Inc.

The proposals were evaluated based on related project experience, project team expertise, responsiveness, past performance, fees, and other unique qualifications. The proposals received were comprehensive, of high quality and extremely competitive. The firms that offered the overall best value to the District were Krieger & Stewart, Inc. and Vali Cooper & Associates, Inc. Both firms are well respected in the industry, have competitive rates, and have expertise in the types of projects anticipated to be part of these Agreements.

Each firm will be issued an agreement for on-call construction management and inspection support services to be performed on a time and material basis under the direction of District staff. Based on the CIP projects anticipated to be completed with the assistance of the On-call Construction Management and Inspection Support Services consultants, staff recommends a task order limit of \$100,000.

On-Call Construction Management and Inspection Support Services

June 12, 2017

Page 3 of 3

Attachments:

1. Agreement for On-Call Construction Management and Inspection Support Services – Krieger & Stewart, Inc.
2. Agreement for On-Call Construction Management and Inspection Support Services – Vali Cooper & Associates, Inc.
3. Preliminary List of Potential Construction Management and Inspection Support Services Projects (from RFP)

**AGREEMENT FOR ENGINEERING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND KREIGER & STEWART, INC.
MNWD PROJECT: ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION
SUPPORT SERVICES
CONTRACT NO. OM17-18.005a**

THIS AGREEMENT (the "Agreement") is executed and dated as of _____, 2017 ("Execution Date"), by and between Krieger & Stewart, Inc., hereinafter referred to as the "CONSULTANT" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of construction management and inspection support services to MNWD by CONSULTANT. MNWD and CONSULTANT may sometimes be referred to in this Agreement individually as "party" and together as "parties."

In consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I – PURPOSE

Section 1.1 CONSULTANT shall provide as-needed construction management and inspection support services to MNWD in connection with the implementation of MNWD projects (the "Services") on a "Task Order" basis, as such term is defined and applied under this Agreement. This Agreement, including all attached Exhibits as well as each Task Order issued pursuant to the terms of Section III, form the Agreement between the parties ("Agreement").

SECTION II – SCOPE OF SERVICES AND PERFORMANCE

Section 2.1 The elements of the Services for each project Task Order under this Agreement shall include applicable sections of the Scope of Services described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Services"). CONSULTANT shall perform the Services in accordance with the Scope of Services under each Task Order, any requirements set forth in a Task Order (as defined in Section III), the terms of this Agreement, and as directed by MNWD. MNWD reserves the right to develop additional Services and related requirements as it deems appropriate for each Task Order to meet the needs and objectives of MNWD and this Agreement, subject to terms for changes in scope under Section 5.2 if applicable. In the performance of the Services, CONSULTANT shall ensure that any contractor performing work on a MNWD project is in compliance with MNWD's **Standard Specifications and Standard Plans for Water, Sewer, and Recycled Water Facilities ("Standard Specifications")** and **General Provisions**. CONSULTANT agrees and acknowledges that it is familiar with the terms of the **General Provisions** and **Standard Specifications** and will be able to enforce compliance with the same.

Section 2.2 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.

Section 2.3 CONSULTANT shall provide all labor, materials, tools, equipment, supplies, utilities and transportation required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional manner in accordance with generally accepted professional practices and principles, and to the

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satisfaction of MNWD. CONSULTANT shall have the sole and absolute discretion in determining the methods, details and means of performing the Services, and MNWD shall not have any right to direct the methods, details and means of the Services, provided that CONSULTANT must receive prior written approval from MNWD before using any subconsultants in accordance with Section 2.5 herein. In performing the Services under this Agreement, CONSULTANT shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD.

Section 2.4 CONSULTANT'S representative, duly licensed in the State of California, who shall be the principal representative of CONSULTANT in charge of work, is Josh MacPeek ("Principal in Charge"). Without prior written approval of MNWD, CONSULTANT will not make any changes to CONSULTANT'S Principal in Charge, in subconsultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Services.

Section 2.5 If CONSULTANT intends to subcontract certain Services, separate subcontracts may be entered into between CONSULTANT and the subconsultants listed in **Exhibit B** hereto, which is incorporated herein, or as may be appended to any individual Task Order. Any additional subconsultants CONSULTANT proposes to use for any Task Order are subject to prior written approval by MNWD and set forth in the Task Order. CONSULTANT is as responsible to MNWD for the acts and omissions of its subconsultants as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subconsultant and MNWD. CONSULTANT shall not allow any subconsultant to commence Services under any subcontract until all insurance required of CONSULTANT has been obtained for the subconsultant. CONSULTANT shall require and ensure that its subconsultants maintain the same level of insurance coverage as required of CONSULTANT in Section X of this Agreement.

SECTION III – TASK ORDERS

Section 3.1 Each project and the related Services contemplated under this Agreement will be facilitated through written task orders (each a "Task Order"). The form of Task Order is attached hereto as **Exhibit C** and incorporated herein.

Section 3.2 Each Task Order shall be no greater than a maximum not-to-exceed amount of one-hundred thousand dollars (\$100,000), inclusive of any addenda thereto, with the sum of all Task Orders including addenda thereto not-to-exceed the total Agreement amount under Section IV.

Section 3.3 Each Task Order shall contain the Scope of Services specific to the project and related Services under consideration. In addition, each Task Order shall contain the fees, labor hours, and team proposed for the Task Order, and any approved subconsultants not otherwise listed in **Exhibit B**.

SECTION IV – FEES

Section 4.1 In consideration for providing the Services pursuant to this Agreement, MNWD agrees to compensate CONSULTANT for Services under any Task Order on a time and materials basis at the rates and amounts in the Fee Schedule attached hereto as **Exhibit D** and

incorporated herein. Total payments under this Agreement for all Task Orders collectively shall not exceed three-hundred fifty thousand dollars (\$350,000). This maximum amount is inclusive of 'labor costs' and 'reasonable direct costs' as defined herein below in Section 4.3 and 4.4.

Should MNWD exercise its option to renew this Agreement pursuant to Section VII, any funds remaining from the initial one year contract term may be added to supplement the funds designated for the two (2) additional one-year extensions. Total payments for each one-year (1) option extension exercised shall not exceed two hundred thousand (\$200,000), unless at the District's discretion, remaining funds from the initial one year contract term are applied. The total compensation paid for services under the Agreement during the entire three-year term of the Agreement shall not exceed Seven Hundred and Fifty Thousand Dollars (\$750,000).

Section 4.2 The Fee Schedule sets forth the current billing rates of CONSULTANT. The Fee Schedule shall be in effect upon execution of this Agreement for the duration of the first term, as defined in Section VII. The Fee Schedule is limited to maximum increases of 3% for each extended one year term of this Agreement as provided for under Section VII, which allows a maximum of two extended one year terms. Any increases shall be by mutual agreement upon execution of the amendment to extend each of the terms allowed.

Section 4.3 'Labor costs' shall be the total number of hours worked on the Services by each employee of the CONSULTANT multiplied by the applicable hourly billing rate based on the Fee Schedule set forth in Section 4.2, and as such Fee Schedule may be amended upon MNWD's exercise of the option for term extension(s) under Section VII.

Section 4.4 'Reasonable direct costs' shall include those costs as described in each Task Order.

Section 4.5 The mark-up percentage charged to MNWD for Services performed by CONSULTANT'S subconsultants under this Agreement pursuant to any Task Order shall not exceed 5% of the amount billed to CONSULTANT by its subconsultants.

Section 4.6 Monthly payments under a Task Order will be made based on submittal of invoices by CONSULTANT. Invoices will include the date or period of Services, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Services 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 CONSULTANT, showing amounts due for CONSULTANT and each subconsultant utilized during the monthly billing period. Incomplete invoices will be returned unpaid to CONSULTANT. Each Task Order shall be billed on a separate invoice.

SECTION V - TASK ORDER COMPLETION

Section 5.1 CONSULTANT shall not begin work on any Services pursuant to this Agreement until receipt of MNWD'S issuance and execution of a Task Order and notice to proceed, and CONSULTANT's execution of the Task Order. Upon receipt of such notice, CONSULTANT shall immediately commence the Services described in the Task Order. The Services pursuant to each Task Order shall be completed in an expeditious manner from the date the Task Order and written notice to proceed are issued to CONSULTANT, and in any event no later than the completion date listed on the Task Order. Time is of the essence in the performance and completion of the Services. In the event the time for completing the Services is projected to be exceeded due to circumstances beyond the control of CONSULTANT, CONSULTANT shall

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have an additional amount of time to be agreed upon in writing between the parties pursuant to Section 5.2, Task Order Amendment.

Section 5.2 Upon MNWD's request for additional or changed Services, CONSULTANT shall provide a cost estimate and written description of the additional or changed Services. Prior to any such addition, changes, or deletion to the Scope of Services, MNWD and CONSULTANT shall negotiate an adjustment of the compensation and completion date and shall execute a written addendum to the Task Order. Upon execution of each addendum, (i) the Scope of Services shall thereafter be as described in the Task Order, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the Services shall be as set forth in the addendum. Following execution of any amendment, all terms and provisions of the Agreement, except as expressly modified by such amendment, shall remain in full force and effect. MNWD will not be required to pay for any additional or changed work rendered in advance of the execution of an amendment covering the additional or changed work.

Section 5.3 MNWD may require CONSULTANT's assistance on an emergency basis. Emergency Services shall be performed only after written direction is received from MNWD. A Task Order will be issued to ratify the emergency Services

SECTION VI - DOCUMENTATION AND OWNERSHIP

Section 6.1 MNWD shall make available to CONSULTANT at no cost all technical data in MNWD's possession, including maps, past reports, prior studies, prior plan operating data, and other information reasonably required by CONSULTANT and relating to the Services to be performed under this Agreement.

Section 6.2 CONSULTANT will furnish to MNWD the agreed upon number of reports and supporting documents as specified in each Task Order. These instruments of service are furnished for MNWD's use in connection with the project Services provided for in this Agreement and shall become MNWD's property upon receipt.

Section 6.3 All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the Services under each Task Order or as otherwise provided in Section IV herein, be furnished to and become the property of MNWD. CONSULTANT may retain a copy of all reports and documents for their files, subject to all other terms and provisions of this Agreement related to confidentiality.

SECTION VII – TERM

Section 7.1 The term of this Agreement shall commence upon the Execution Date and shall remain in effect for a period of one (1) year thereafter, unless otherwise terminated by either party pursuant to Section VIII herein; provided, this Agreement will be deemed to automatically extend and apply to any Task Orders executed under this Agreement that are outstanding at the end of a term. MNWD shall have the unilateral option, at its sole discretion, to renew this Agreement for two (2) additional one-year extensions. CONSULTANT shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

SECTION VIII - TERMINATION OR ABANDONMENT

Section 8.1 This Agreement may be terminated in whole or in part in writing by either party provided that no such termination may be effected unless the other party is given not less than ten (10) calendar day's written notice (deliver by certified mail, return receipt requested) of intent to terminate. Additionally, MNWD may suspend performance by CONSULTANT of any or all Services listed in the Scope of Services and/or any Task Order 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.

Section 8.2 CONSULTANT shall not perform further work or Services 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 IV of this Agreement.

Section 8.3 In the event of any suspension or termination herein, MNWD shall have the right to take possession and shall immediately own all original drawings and other documents developed for that portion of the work or Services completed and/or being suspended or abandoned.

SECTION IX - CONFIDENTIALITY

Section 9.1

A. CONSULTANT understands that all documents, records, reports, data or other materials (collectively "Materials") provided by MNWD to CONSULTANT pursuant to this Agreement, including but not limited to draft reports, final reports and all data, information, documents, graphic displays and other items that are not proprietary to CONSULTANT and that are utilized or produced by CONSULTANT pursuant to this Agreement are to be considered confidential for all purposes.

B. CONSULTANT shall be responsible for protecting the confidentiality and maintaining the security of Materials and records in its possession. All Materials shall be deemed confidential and shall remain the property of MNWD. CONSULTANT understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or subconsultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, or other materials except as provided herein or as authorized, in writing, by MNWD. CONSULTANT agrees not to make use of such Materials for any purpose not related to the performance of the Services under this Agreement. CONSULTANT shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of MNWD. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as provided by law.

C. All confidential Materials saved or stored by CONSULTANT in an electronic form shall

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be protected by adequate security measures to ensure that such confidential Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

The provisions of this Section IX survive the termination or completion of the Agreement.

SECTION X - INSURANCE AND INDEMNIFICATION

Section 10.1 Professional Liability Insurance. CONSULTANT and each of its subconsultants shall maintain throughout the term of this Agreement a professional liability (errors and omissions) policy of insurance having coverage of not less than One Million Dollars (\$1,000,000) for each claim and in annual aggregate. The following provisions shall apply if the professional liability coverage is written on a claims-made basis:

- (a) The retroactive date of the policy must be shown and must be before the dated date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of this Agreement or the Services.
- (c) 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 three (3) years years after completion of the Services. MNWD shall have the right to exercise at the CONSULTANT's cost any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
- (d) A copy of the claims reporting requirements must be submitted to MNWD prior to the commencement of any work or Services under this Agreement.

Section 10.2 Commercial General Liability & Automobile Liability Insurance. CONSULTANT and each of its subconsultants shall maintain throughout the term of this Agreement a (i) commercial general liability policy of insurance at least as broad as the latest version of the Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 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 subconsultants, and each of their agents, representatives, or employees; and (ii) a business automobile liability policy at least as broad as the latest version of the Insurance Services Office Business Auto Coverage Form CA 00 01 (code 1 – any auto). Such commercial general liability policy shall be comprehensive in form and shall be on a “per occurrence” basis with limits 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. Such business automobile liability policy shall have limits in a minimum amount of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

All insurance provided under this Section 10.2 shall (i) name MNWD and its' directors, officers, employees and agents as additional insureds under each such policy (“additional insureds”) pursuant to an additional insured endorsement in a form acceptable to MNWD; (ii) be primary and non-contributory as respects MNWD and its' directors, officers, employees and agents; and (iii) provide a waiver of subrogation in favor of MNWD and its' directors, officers, employees and

agents.

Section 10.3 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 subconsultants 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 agents.

Section 10.4 Requirements of All Policies. All policies of insurance required under this Section X 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 XIII, 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.

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 subconsultants') insurance, and shall not contribute to such insurance.

Any deductibles or self-insured retentions must be declared in writing and approved by MNWD. At the option of MNWD, either: the insurance provider(s) shall reduce or eliminate such deductibles or self-insured retentions as respects the MNWD and its' directors, officers, employees and agents; or the CONSULTANT shall provide a financial guarantee satisfactory to MNWD guaranteeing payment of losses and related investigations, claim administration and defense expenses. 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.

Section 10.5 Indemnity. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD and its officials, officers, employees, agents and designated volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the CONSULTANT'S services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, including but not limited to legal costs and expenses incurred by the in connection with any Claim or in enforcing the

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indemnity herein provided. Notwithstanding the foregoing, to the extent CONSULTANT'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. The CONSULTANT'S obligations pursuant to this Section shall survive the expiration or termination of this Agreement and/or the performance or completion of any or all Services and work provided under this Agreement. 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 hereunder.

SECTION XI - WARRANTY

Section 11.1 CONSULTANT is employed to render construction management and inspection support services pursuant to this Agreement only, and any payments made to CONSULTANT are compensation solely for such services as it may render and recommendations it may make in carrying out the work or Services. CONSULTANT'S services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

Section 11.2 In performing services under this Agreement, CONSULTANT shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD. CONSULTANT shall procure and maintain all permits, licenses and other governmental required certifications necessary for the performance of the Services, at the sole cost of CONSULTANT.

Section 11.3 If the Project results in construction of any kind, the parties agree MNWD and CONSULTANT shall be indemnified by the contractor for all claims, damages, losses and expenses arising out of or resulting from the contractor's performance of work including injury to any worker on the job site except for the negligence of MNWD or CONSULTANT, such indemnity to be in accordance with MNWD's construction documents. MNWD and CONSULTANT shall be named as additional primary insured(s) by contractor's General Liability Insurance policies without offset and all construction documents and insurance certificates shall include wording to such effect.

CONSULTANT and MNWD shall not be responsible for the means, methods, techniques, sequences, or procedure of construction selected by contractors or the safety precautions and programs incident to the work of contractor and will not be responsible for a contractor's failure to carry out work in accordance with contract documents.

The Services to be performed by CONSULTANT are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of CONSULTANT toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.

SECTION XII – CALIFORNIA LABOR CODE REQUIREMENTS

Section 12.1 CONSULTANT is aware of the requirements of California Labor Code Sections

1720 et seq and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws, if applicable. CONSULTANT shall defend, indemnify and hold MNWD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONSULTANT and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors. It shall be mandatory upon the CONSULTANT and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

Section 12.2 If the Services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, the CONSULTANT and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). CONSULTANT shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be CONSULTANT’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

SECTION XIII - GENERAL

Section 13.1 CONSULTANT represents that it is aware of no facts or circumstances which would impair its ability to provide fair and unbiased advice to MNWD in the course of performing the construction management and inspection support services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 13.2 This Agreement represents the entire understanding of MNWD and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be amended, modified or altered except in writing, signed by the parties. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it. In the event of any inconsistency between this Agreement and any other agreement or document between the parties, either written or verbal, including any CONSULTANT proposal document, this Agreement shall control.

Section 13.3 This is a non-exclusive Agreement for the services contemplated herein.

Section 13.4 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by CONSULTANT and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by MNWD.

Section 13.5 Any notice required or permitted to be given hereunder if not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office,

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registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To MNWD Attn: Rodney S. Woods
Assistant Director of Engineering
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677-3489

To CONSULTANT - Attn: Josh P. MacPeek
Krieger & Stewart, Inc.
3602 University Avenue
Riverside, CA 92501
(951) 694-6900

Section 13.6 California law shall govern the interpretation of this Agreement. 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 hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

Section 13.7 In the event an action is commenced by either party to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all costs and expenses, including court costs, plus a reasonable amount for attorney's fees.

Section 13.8 If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

Section 13.9 It is expressly understood and agreed that CONSULTANT is retained as an independent contractor for the sole purpose of rendering the professional and/or special Services, and is not an employee or agent of MNWD. CONSULTANT warrants that it will not represent, at any time or in any manner, that CONSULTANT is an employee or agent of MNWD. CONSULTANT shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD. CONSULTANT 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 CONSULTANT, as an independent contractor, is responsible for paying under federal, state or local law. CONSULTANT is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

Section 13.10 This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement or any interest herein shall be made by CONSULTANT without prior written consent of MNWD.

Section 13.11 The person signing this Agreement on behalf of each party hereto represents

he/she has authority to sign on behalf of, respectively, MNWD or CONSULTANT. This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2017 ("Execution Date").

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

Krieger & Stewart, Inc.

By: _____

Title: _____

EXHIBIT A**SCOPE OF SERVICES**

This agreement covers a range of projects and services which consist of, but are not limited to the following activities:

1. ***Electrical System Replacement Inspections*** – For electrical system replacement projects, provide inspection of all sequencing, materials, installations, third-party testing and commissioning to verify compliance with the Contract Documents. Due to the specialized nature of these project, the CM/IS Consultant may fulfill a construction management role to coordinate and assist in the timely completion of these projects. Specific tasks may include, but not be limited to, the following:
 - A. Verify all electrical conduit and wire size, materials, locations, terminations, labeling, and testing. Verify grounding system installation and testing. Verify installation, testing, and calibration of instrumentation.
 - B. Verify all electrical equipment complies with Contract Documents, approved submittals and manufacturer’s requirements. Witness “pre-startup” by Contractor and manufacturers’ representatives to verify all equipment has been installed and is operating in accordance with the Contract Documents and manufacturer’s recommendations. Witness complete equipment and system performance testing by the Contractor to verify compliance with the design intent and Contract Documents.
2. ***Startup and Commissioning Inspections*** – For generator, pump and mechanical equipment replacement projects, provide inspection and expertise on all startup and commissioning to verify compliance with the Contract Documents, manufacturer recommendations, and industry best practices. Coordinate with the Contractor and District personnel for any sequencing required during the commissioning process.
3. ***Reservoir Rehabilitation Inspection*** – For reservoir rehabilitation projects, provide inspection of all coating, rehabilitation, and painting operations to verify compliance with the Contract Documents. Due to the specialized nature of these project, the CM/IS Consultant may fulfill a construction management role. Specific tasks may include, but not be limited to, the following:
 - A. **SURFACE PREPARATION INSPECTION** - Physically inspect blast-cleaned surfaces to verify compliance to specification, removal of dust, etc.
 - B. **STRUCTURAL AND TANK IMPROVEMENTS INSPECTION** – With a licensed and qualified structural engineer competent in the structural assessment of steel tanks, physically inspect blast-cleaned surfaces to provide recommendations with respect to the use of optional structural bid items (i.e. rafter and lateral bracing replacements). Observe the Contractor’s work during construction of the structural and tank improvements to verify compliance with the Contract Documents. Typical structural and tank improvements may include stairways, guardrails, vents, manways, hatches, ladders, and cathodic protection systems.

- C. COATING INSPECTION - After approval of the surface preparation, Consultant shall monitor ongoing weather conditions, Contractor's application equipment and its operation, and proper mixing of materials. Consultant shall physically inspect the application of coatings, including coating material used, spray techniques, cleanliness of surface, thickness, etc.
 - D. FINAL INSPECTION – Provide input at the conclusion of finished coating to ensure that the coating material used, application, film continuity (holiday detection), and dry film thickness comply with the plans and specifications.
 - E. WARRANTY INSPECTION – Provide warranty inspections prior to the expiration of the warranty period to test for any problems that may arise from defective materials or faulty workmanship. Specific tasks may include but not be limited to: visual inspections, holiday testing, punch list preparation and management, and summary reporting.
4. ***Condition Assessment Inspections of Reservoirs*** – Condition assessment inspections are performed on the District's steel potable water and recycled water reservoirs to determine if and when re-coating is needed, and to identify the necessary structural, operational, safety, and regulatory improvements. Condition assessment inspections typically consist of, but are not limited to, the following activities:
- A. Review of District's existing record documentation and file data
 - B. On-site field investigation of all interior and exterior surfaces and appurtenances including structural elements, noting corrosion and defects
 - C. Title 22 heavy metal analysis to determine whether existing coating and paint contains hazardous materials
 - D. Documentation of observations, including narrative description and photo survey
 - E. Identification of operational, safety, and regulatory issues (e.g. fall protection, ingress/egress, cross-connection, etc.)
 - F. Conclusions, including a qualitative condition rating and possible reasons for observed corrosion and defects
 - G. Recommendations, including specific details for how to address: observed corrosion and defects; structural issues; operational, safety, and regulatory issues; and cathodic protection
 - H. Planning level cost estimates for addressing each of the recommendations
 - I. Timing for when District should plan to implement the recommendations
 - J. Documentation of the above activities shall be assembled into a summary report for each

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reservoir, as requested by the District

5. ***Specialty Pipeline Inspections*** – For specialty pipeline projects, such as CIPP liner, jack & bore, pipe bursting and other trenchless methodologies, provide inspection and expertise on all sequencing, materials, and installation to verify compliance with the Contract Documents.
6. ***General Inspection*** – For general inspection of Capital Improvement Program projects, provide inspection support and expertise on civil, structural, mechanical, and electrical portions of the project to verify compliance with the Contract Documents as requested by the District.
 - A. Observe the jobsite for compliance with safety requirements. Inform the District of any concerns or problems observed concerning site or job safety.
 - B. Verify that all deliveries and installation of equipment and materials conform to the Contract Documents and approved shop drawings.
 - C. During welding operations, verify certifications, joint preparation, electrode types, and finished product comply with the Contract Documents.
 - D. During mechanical anchorages, verify materials and installation procedures comply with the Contract Documents, approved submittals, and manufacturer’s recommendations.
 - E. Take digital photographs during key points in the construction to document the progress and submit photo files on a CD with the final report.
7. ***Project Management / Construction Management Support***
 - A. Assist the District in administering the pre-construction activities for the project, including a Pre-Construction Conference and pre-construction site condition documentation.
 - B. Prepare Daily Inspection Activity Reports to document daily start and stop times, size of Contractor’s crew, equipment used, visitors to jobsite, climatic conditions throughout the day, quantities of materials used, work accomplished, periods of Contractor downtime and cause, inspection procedures used and results, and verification of compliance with the Contract Documents. All entries shall be dated and timed.
 - C. Prepare, distribute, and maintain logs of RFIs, submittals, and other project related correspondence. Coordinate construction activities with project team members and approved construction documents.
 - D. Assist the District in coordination, startup, and testing of projects throughout the commissioning phase of the project, as applicable. Provide oversight of Contractor’s third party testing as applicable.
 - E. Assist the District in processing the monthly progress payments, change orders, and claims if needed (change order work should be fully documented with drawings, sketches, and/or

written descriptions of the work required).

- F. Assist the District in final acceptance of Project upon completion of all work by Contractor. Prepare a punch list of items during the final project walk-through. Verify Contactor's satisfactory completion of punch list work.
- G. Prepare a final project report documenting information from all inspection tasks, test results, and other pertinent information (including photographs). Submit three (3) paper copies and one (1) PDF copy of the draft report to the District for review and approval. Revise the draft report to incorporate the District's comments. Submit three (3) paper copies and one (1) PDF copy of the final report to the District.

The On-Call CM/IS Consultant will be expected to provide services on a part-time basis whenever feasible. The proposed rate structure shall include details specific to part-time services, including any and all provisions for mobilization, travel time, hourly minimums, equipment rates, etc.

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EXHIBIT B

LIST OF APPROVED SUBCONSULTANTS

None

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EXHIBIT C

TASK ORDER FORM

[To be executed by DISTRICT and CONSULTANT prior to commencement of Services;]

This Task Order is executed pursuant to the "AGREEMENT FOR ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION SUPPORT SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____ (Contract No. _____)" dated _____, 2017 (the "Agreement"). The Agreement terms are fully incorporated in this Task Order. Terms used in this Task Order have the same meanings given in the Agreement.

Task Order No.: _____

Task Order Scope of Services:

Authorized Not-to Exceed Task Order Amount*: \$ _____

*CONSULTANT to attach Fee Schedule, description of reasonable direct costs; list of Subconsultants; list of deliverables and number copies.

Task Order Completion Date: _____

Notice to Proceed Given: [Date] _____

EXECUTED, ACKNOWLEDGE AND AGREED:

_____ DATE: _____

MNWD's Representative: Title

CONSULTANT's Authorized Representative - (print name/title here)

Signature DATE: _____

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EXHIBIT D
FEE SCHEDULE

**AGREEMENT FOR ENGINEERING SERVICES BETWEEN
MOULTON NIGUEL WATER DISTRICT AND VALI COOPER & ASSOCIATES, INC.
MNWD PROJECT: ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION
SUPPORT SERVICES
CONTRACT NO. OM17-18.005b**

THIS AGREEMENT (the "Agreement") is executed and dated as of _____, 2017 ("Execution Date"), by and between Vali Cooper & Associates, Inc., hereinafter referred to as the "CONSULTANT" and Moulton Niguel Water District hereinafter referred to as "MNWD," and provides for the furnishing of construction management and inspection support services to MNWD by CONSULTANT. MNWD and CONSULTANT may sometimes be referred to in this Agreement individually as "party" and together as "parties."

In consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

SECTION I – PURPOSE

Section 1.1 CONSULTANT shall provide as-needed construction management and inspection support services to MNWD in connection with the implementation of MNWD projects (the "Services") on a "Task Order" basis, as such term is defined and applied under this Agreement. This Agreement, including all attached Exhibits as well as each Task Order issued pursuant to the terms of Section III, form the Agreement between the parties ("Agreement").

SECTION II – SCOPE OF SERVICES AND PERFORMANCE

Section 2.1 The elements of the Services for each project Task Order under this Agreement shall include applicable sections of the Scope of Services described in **Exhibit A** hereto, which is incorporated herein (the "Scope of Services"). CONSULTANT shall perform the Services in accordance with the Scope of Services under each Task Order, any requirements set forth in a Task Order (as defined in Section III), the terms of this Agreement, and as directed by MNWD. MNWD reserves the right to develop additional Services and related requirements as it deems appropriate for each Task Order to meet the needs and objectives of MNWD and this Agreement, subject to terms for changes in scope under Section 5.2 if applicable. In the performance of the Services, CONSULTANT shall ensure that any contractor performing work on a MNWD project is in compliance with MNWD's **Standard Specifications and Standard Plans for Water, Sewer, and Recycled Water Facilities ("Standard Specifications")** and **General Provisions**. CONSULTANT agrees and acknowledges that it is familiar with the terms of the **General Provisions** and **Standard Specifications** and will be able to enforce compliance with the same.

Section 2.2 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.

Section 2.3 CONSULTANT shall provide all labor, materials, tools, equipment, supplies, utilities and transportation required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional manner in accordance with generally accepted professional practices and principles, and to the satisfaction of MNWD. CONSULTANT shall have the sole and absolute discretion in

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determining the methods, details and means of performing the Services, and MNWD shall not have any right to direct the methods, details and means of the Services, provided that CONSULTANT must receive prior written approval from MNWD before using any subconsultants in accordance with Section 2.5 herein. In performing the Services under this Agreement, CONSULTANT shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD.

Section 2.4 CONSULTANT'S representative, duly licensed in the State of California, who shall be the principal representative of CONSULTANT in charge of work, is Josh MacPeek ("Principal in Charge"). Without prior written approval of MNWD, CONSULTANT will not make any changes to CONSULTANT'S Principal in Charge, in subconsultants, in outside labor arrangements, or associations or joint ventures which are required to accomplish any part of the Services.

Section 2.5 If CONSULTANT intends to subcontract certain Services, separate subcontracts may be entered into between CONSULTANT and the subconsultants listed in **Exhibit B** hereto, which is incorporated herein, or as may be appended to any individual Task Order. Any additional subconsultants CONSULTANT proposes to use for any Task Order are subject to prior written approval by MNWD and set forth in the Task Order. CONSULTANT is as responsible to MNWD for the acts and omissions of its subconsultants as it is for persons directly employed by CONSULTANT. Nothing contained in this Agreement creates any contractual relationship between any subconsultant and MNWD. CONSULTANT shall not allow any subconsultant to commence Services under any subcontract until all insurance required of CONSULTANT has been obtained for the subconsultant. CONSULTANT shall require and ensure that its subconsultants maintain the same level of insurance coverage as required of CONSULTANT in Section X of this Agreement.

SECTION III – TASK ORDERS

Section 3.1 Each project and the related Services contemplated under this Agreement will be facilitated through written task orders (each a "Task Order"). The form of Task Order is attached hereto as **Exhibit C** and incorporated herein.

Section 3.2 Each Task Order shall be no greater than a maximum not-to-exceed amount of one-hundred thousand dollars (\$100,000), inclusive of any addenda thereto, with the sum of all Task Orders including addenda thereto not-to-exceed the total Agreement amount under Section IV.

Section 3.3 Each Task Order shall contain the Scope of Services specific to the project and related Services under consideration. In addition, each Task Order shall contain the fees, labor hours, and team proposed for the Task Order, and any approved subconsultants not otherwise listed in **Exhibit B**.

SECTION IV – FEES

Section 4.1 In consideration for providing the Services pursuant to this Agreement, MNWD agrees to compensate CONSULTANT for Services under any Task Order on a time and materials basis at the rates and amounts in the Fee Schedule attached hereto as **Exhibit D** and incorporated herein. Total payments under this Agreement for all Task Orders collectively shall not exceed three-hundred fifty thousand dollars (\$ 350,000). This maximum amount is inclusive

of 'labor costs' and 'reasonable direct costs' as defined herein below in Section 4.3 and 4.4.

Should MNWD exercise its option to renew this Agreement pursuant to Section VII, any funds remaining from the initial one year contract term may be added to supplement the funds designated for the two (2) additional one-year extensions. Total payments for each one-year (1) option extension exercised shall not exceed two hundred thousand (\$200,000), unless at the District's discretion, remaining funds from the initial one year contract term are applied. The total compensation paid for services under the Agreement during the entire three-year term of the Agreement shall not exceed Seven Hundred and Fifty Thousand Dollars (\$750,000).

Section 4.2 The Fee Schedule sets forth the current billing rates of CONSULTANT. The Fee Schedule shall be in effect upon execution of this Agreement for the duration of the first term, as defined in Section VII. The Fee Schedule is limited to maximum increases of 3% for each extended one year term of this Agreement as provided for under Section VII, which allows a maximum of two extended one year terms. Any increases shall be by mutual agreement upon execution of the amendment to extend each of the terms allowed.

Section 4.3 'Labor costs' shall be the total number of hours worked on the Services by each employee of the CONSULTANT multiplied by the applicable hourly billing rate based on the Fee Schedule set forth in Section 4.2, and as such Fee Schedule may be amended upon MNWD's exercise of the option for term extension(s) under Section VII.

Section 4.4 'Reasonable direct costs' shall include those costs as described in each Task Order.

Section 4.5 The mark-up percentage charged to MNWD for Services performed by CONSULTANT'S subconsultants under this Agreement pursuant to any Task Order shall not exceed 5% of the amount billed to CONSULTANT by its subconsultants.

Section 4.6 Monthly payments under a Task Order will be made based on submittal of invoices by CONSULTANT. Invoices will include the date or period of Services, the number of hours worked by various labor categories, the hourly billing rate per individual, a complete description of the Services 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 CONSULTANT, showing amounts due for CONSULTANT and each subconsultant utilized during the monthly billing period. Incomplete invoices will be returned unpaid to CONSULTANT. Each Task Order shall be billed on a separate invoice.

SECTION V - TASK ORDER COMPLETION

Section 5.1 CONSULTANT shall not begin work on any Services pursuant to this Agreement until receipt of MNWD'S issuance and execution of a Task Order and notice to proceed, and CONSULTANT's execution of the Task Order. Upon receipt of such notice, CONSULTANT shall immediately commence the Services described in the Task Order. The Services pursuant to each Task Order shall be completed in an expeditious manner from the date the Task Order and written notice to proceed are issued to CONSULTANT, and in any event no later than the completion date listed on the Task Order. Time is of the essence in the performance and completion of the Services. In the event the time for completing the Services is projected to be exceeded due to circumstances beyond the control of CONSULTANT, CONSULTANT shall have an additional amount of time to be agreed upon in writing between the parties pursuant to Section 5.2, Task Order Amendment.

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Section 5.2 Upon MNWD's request for additional or changed Services, CONSULTANT shall provide a cost estimate and written description of the additional or changed Services. Prior to any such addition, changes, or deletion to the Scope of Services, MNWD and CONSULTANT shall negotiate an adjustment of the compensation and completion date and shall execute a written addendum to the Task Order. Upon execution of each addendum, (i) the Scope of Services shall thereafter be as described in the Task Order, respectively, as modified by the addendum and any previously executed addendum; and (ii) the time for completing the Services shall be as set forth in the addendum. Following execution of any amendment, all terms and provisions of the Agreement, except as expressly modified by such amendment, shall remain in full force and effect. MNWD will not be required to pay for any additional or changed work rendered in advance of the execution of an amendment covering the additional or changed work.

Section 5.3 MNWD may require CONSULTANT's assistance on an emergency basis. Emergency Services shall be performed only after written direction is received from MNWD. A Task Order will be issued to ratify the emergency Services

SECTION VI - DOCUMENTATION AND OWNERSHIP

Section 6.1 MNWD shall make available to CONSULTANT at no cost all technical data in MNWD's possession, including maps, past reports, prior studies, prior plan operating data, and other information reasonably required by CONSULTANT and relating to the Services to be performed under this Agreement.

Section 6.2 CONSULTANT will furnish to MNWD the agreed upon number of reports and supporting documents as specified in each Task Order. These instruments of service are furnished for MNWD's use in connection with the project Services provided for in this Agreement and shall become MNWD's property upon receipt.

Section 6.3 All original drawings and other documents, including detailed calculations developed for the Project shall, upon payment in full for the Services under each Task Order or as otherwise provided in Section IV herein, be furnished to and become the property of MNWD. CONSULTANT may retain a copy of all reports and documents for their files, subject to all other terms and provisions of this Agreement related to confidentiality.

SECTION VII – TERM

Section 7.1 The term of this Agreement shall commence upon the Execution Date and shall remain in effect for a period of one (1) year thereafter, unless otherwise terminated by either party pursuant to Section VIII herein; provided, this Agreement will be deemed to automatically extend and apply to any Task Orders executed under this Agreement that are outstanding at the end of a term. MNWD shall have the unilateral option, at its sole discretion, to renew this Agreement for two (2) additional one-year extensions. CONSULTANT shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

SECTION VIII - TERMINATION OR ABANDONMENT

Section 8.1 This Agreement may be terminated in whole or in part in writing by either party provided that no such termination may be effected unless the other party is given not less than ten (10) calendar day's written notice (deliver by certified mail, return receipt requested) of intent to terminate. Additionally, MNWD may suspend performance by CONSULTANT of any or all Services listed in the Scope of Services and/or any Task Order 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.

Section 8.2 CONSULTANT shall not perform further work or Services 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 IV of this Agreement.

Section 8.3 In the event of any suspension or termination herein, MNWD shall have the right to take possession and shall immediately own all original drawings and other documents developed for that portion of the work or Services completed and/or being suspended or abandoned.

SECTION IX - CONFIDENTIALITY

Section 9.1

A. CONSULTANT understands that all documents, records, reports, data or other materials (collectively "Materials") provided by MNWD to CONSULTANT pursuant to this Agreement, including but not limited to draft reports, final reports and all data, information, documents, graphic displays and other items that are not proprietary to CONSULTANT and that are utilized or produced by CONSULTANT pursuant to this Agreement are to be considered confidential for all purposes.

B. CONSULTANT shall be responsible for protecting the confidentiality and maintaining the security of Materials and records in its possession. All Materials shall be deemed confidential and shall remain the property of MNWD. CONSULTANT understands the sensitive nature of the above and agrees that neither its officers, partners, employees, agents or subconsultants will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, or other materials except as provided herein or as authorized, in writing, by MNWD. CONSULTANT agrees not to make use of such Materials for any purpose not related to the performance of the Services under this Agreement. CONSULTANT shall not make written or oral disclosures thereof, other than as necessary for its performance of the Services hereunder, without the prior written approval of MNWD. Disclosure of confidential Materials shall not be made to any individual, agency, or organization except as provided for in the Agreement or as provided by law.

C. All confidential Materials saved or stored by CONSULTANT in an electronic form shall be protected by adequate security measures to ensure that such confidential Materials are safe from theft, loss, destruction, erasure, alteration, and any unauthorized viewing, duplication, or use. Such security measures shall include, but not be limited to, the use of current virus protection software, firewalls, data backup, passwords, and internet controls.

The provisions of this Section IX survive the termination or completion of the Agreement.

SECTION X - INSURANCE AND INDEMNIFICATION

Section 10.1 Professional Liability Insurance. CONSULTANT and each of its subconsultants shall maintain throughout the term of this Agreement a professional liability (errors and omissions) policy of insurance having coverage of not less than One Million Dollars (\$1,000,000) for each claim and in annual aggregate. The following provisions shall apply if the professional liability coverage is written on a claims-made basis:

- (a) The retroactive date of the policy must be shown and must be before the dated date of this Agreement.
- (b) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of this Agreement or the Services.
- (c) 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 three (3) years years after completion of the Services. MNWD shall have the right to exercise at the CONSULTANT's cost any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.
- (d) A copy of the claims reporting requirements must be submitted to MNWD prior to the commencement of any work or Services under this Agreement.

Section 10.2 Commercial General Liability & Automobile Liability Insurance. CONSULTANT and each of its subconsultants shall maintain throughout the term of this Agreement a (i) commercial general liability policy of insurance at least as broad as the latest version of the Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 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 subconsultants, and each of their agents, representatives, or employees; and (ii) a business automobile liability policy at least as broad as the latest version of the Insurance Services Office Business Auto Coverage Form CA 00 01 (code 1 – any auto). Such commercial general liability policy shall be comprehensive in form and shall be on a “per occurrence” basis with limits 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. Such business automobile liability policy shall have limits in a minimum amount of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

All insurance provided under this Section 10.2 shall (i) name MNWD and its’ directors, officers, employees and agents as additional insureds under each such policy (“additional insureds”) pursuant to an additional insured endorsement in a form acceptable to MNWD; (ii) be primary and non-contributory as respects MNWD and its’ directors, officers, employees and agents; and (iii) provide a waiver of subrogation in favor of MNWD and its’ directors, officers, employees and agents.

Section 10.3 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 subconsultants 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 agents.

Section 10.4 Requirements of All Policies. All policies of insurance required under this Section X 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 XIII, 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.

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 subconsultants') insurance, and shall not contribute to such insurance.

Any deductibles or self-insured retentions must be declared in writing and approved by MNWD. At the option of MNWD, either: the insurance provider(s) shall reduce or eliminate such deductibles or self-insured retentions as respects the MNWD and its' directors, officers, employees and agents; or the CONSULTANT shall provide a financial guarantee satisfactory to MNWD guaranteeing payment of losses and related investigations, claim administration and defense expenses. 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.

Section 10.5 Indemnity. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by the City), indemnify and hold MNWD and its officials, officers, employees, agents and designated volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the CONSULTANT'S services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, including but not limited to legal costs and expenses incurred by the in connection with any Claim or in enforcing the indemnity herein provided. Notwithstanding the foregoing, to the extent CONSULTANT'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. The CONSULTANT'S obligations pursuant to this Section shall survive the expiration or termination of this Agreement and/or the performance or completion of any or all Services and work provided under this

#11.

Agreement. 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 hereunder.

SECTION XI - WARRANTY

Section 11.1 CONSULTANT is employed to render construction management and inspection support services pursuant to this Agreement only, and any payments made to CONSULTANT are compensation solely for such services as it may render and recommendations it may make in carrying out the work or Services. CONSULTANT's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

Section 11.2 In performing services under this Agreement, CONSULTANT shall observe and abide by the terms and conditions of all applicable laws, regulations, ordinances, or other rules of the United States, of the State of California, or any political subdivisions thereof, or of any other duly constituted public authority or agency including but not limited to MNWD. CONSULTANT shall procure and maintain all permits, licenses and other governmental required certifications necessary for the performance of the Services, at the sole cost of CONSULTANT.

Section 11.3 If the Project results in construction of any kind, the parties agree MNWD and CONSULTANT shall be indemnified by the contractor for all claims, damages, losses and expenses arising out of or resulting from the contractor's performance of work including injury to any worker on the job site except for the negligence of MNWD or CONSULTANT, such indemnity to be in accordance with MNWD's construction documents. MNWD and CONSULTANT shall be named as additional primary insured(s) by contractor's General Liability Insurance policies without offset and all construction documents and insurance certificates shall include wording to such effect.

CONSULTANT and MNWD shall not be responsible for the means, methods, techniques, sequences, or procedure of construction selected by contractors or the safety precautions and programs incident to the work of contractor and will not be responsible for a contractor's failure to carry out work in accordance with contract documents.

The Services to be performed by CONSULTANT are intended solely for the benefit of MNWD. Nothing contained herein shall confer any rights upon or create any duties on the part of CONSULTANT toward any person or persons not a party to this Agreement including, but not limited to any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.

SECTION XII – CALIFORNIA LABOR CODE REQUIREMENTS

Section 12.1 CONSULTANT is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONSULTANT agrees to fully comply with such Prevailing Wage Laws, if applicable. CONSULTANT shall defend, indemnify and hold MNWD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest

arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONSULTANT and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors. It shall be mandatory upon the CONSULTANT and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1).

Section 12.2 If the Services are being performed as part of an applicable “public works” or “maintenance” project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, the CONSULTANT and all subconsultants must be registered with the Department of Industrial Relations (“DIR”). CONSULTANT shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be CONSULTANT’s sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

SECTION XIII - GENERAL

Section 13.1 CONSULTANT represents that it is aware of no facts or circumstances which would impair its ability to provide fair and unbiased advice to MNWD in the course of performing the construction management and inspection support services hereunder, or which would impact its objectivity in performing such services hereunder.

Section 13.2 This Agreement represents the entire understanding of MNWD and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be amended, modified or altered except in writing, signed by the parties. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it. In the event of any inconsistency between this Agreement and any other agreement or document between the parties, either written or verbal, including any CONSULTANT proposal document, this Agreement shall control.

Section 13.3 This is a non-exclusive Agreement for the services contemplated herein.

Section 13.4 Books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement shall be maintained by CONSULTANT and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by MNWD.

Section 13.5 Any notice required or permitted to be given hereunder if not otherwise specified herein may be given or delivered by depositing the same in the United States Post Office, registered or certified, postage prepaid, or by personal service a hand delivery, and addressed to:

To MNWD
Attn: Rodney S. Woods
Assistant Director of Engineering
Moulton Niguel Water District
27500 La Paz Road
Laguna Niguel, CA 92677-3489

To CONSULTANT - Attn: Edward Durazo
Vali Cooper & Associates, Inc.
1935 Chicago Avenue, Suite A
Riverside, CA 92507
(951) 788-6028

Section 13.6 California law shall govern the interpretation of this Agreement. 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 hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure 394.

Section 13.7 In the event an action is commenced by either party to enforce its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all costs and expenses, including court costs, plus a reasonable amount for attorney's fees.

Section 13.8 If any section of this Agreement or provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

Section 13.9 It is expressly understood and agreed that CONSULTANT is retained as an independent contractor for the sole purpose of rendering the professional and/or special Services, and is not an employee or agent of MNWD. CONSULTANT warrants that it will not represent, at any time or in any manner, that CONSULTANT is an employee or agent of MNWD. CONSULTANT shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of MNWD. CONSULTANT 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 CONSULTANT, as an independent contractor, is responsible for paying under federal, state or local law. CONSULTANT is thus not eligible to receive workers' compensation, medical, indemnity or retirement benefits, including but not limited to enrollment in CalPERS.

Section 13.10 This Agreement and all of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement or any interest herein shall be made by CONSULTANT without prior written consent of MNWD.

Section 13.11 The person signing this Agreement on behalf of each party hereto represents he/she has authority to sign on behalf of, respectively, MNWD or CONSULTANT. This Agreement may be executed in counterparts, each of which shall be deemed an original.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this _____ day of _____, 2017 (“Execution Date”).

Moulton Niguel Water District

By: _____
Joone Lopez
General Manager

Vali Cooper & Associates, Inc.

By: _____

Title: _____

EXHIBIT A**SCOPE OF SERVICES**

This agreement covers a range of projects and services which consist of, but are not limited to the following activities:

1. ***Electrical System Replacement Inspections*** – For electrical system replacement projects, provide inspection of all sequencing, materials, installations, third-party testing and commissioning to verify compliance with the Contract Documents. Due to the specialized nature of these project, the CM/IS Consultant may fulfill a construction management role to coordinate and assist in the timely completion of these projects. Specific tasks may include, but not be limited to, the following:
 - A. Verify all electrical conduit and wire size, materials, locations, terminations, labeling, and testing. Verify grounding system installation and testing. Verify installation, testing, and calibration of instrumentation.
 - B. Verify all electrical equipment complies with Contract Documents, approved submittals and manufacturer’s requirements. Witness “pre-startup” by Contractor and manufacturers’ representatives to verify all equipment has been installed and is operating in accordance with the Contract Documents and manufacturer’s recommendations. Witness complete equipment and system performance testing by the Contractor to verify compliance with the design intent and Contract Documents.
2. ***Startup and Commissioning Inspections*** – For generator, pump and mechanical equipment replacement projects, provide inspection and expertise on all startup and commissioning to verify compliance with the Contract Documents, manufacturer recommendations, and industry best practices. Coordinate with the Contractor and District personnel for any sequencing required during the commissioning process.
3. ***Reservoir Rehabilitation Inspection*** – For reservoir rehabilitation projects, provide inspection of all coating, rehabilitation, and painting operations to verify compliance with the Contract Documents. Due to the specialized nature of these project, the CM/IS Consultant may fulfill a construction management role. Specific tasks may include, but not be limited to, the following:
 - A. **SURFACE PREPARATION INSPECTION** - Physically inspect blast-cleaned surfaces to verify compliance to specification, removal of dust, etc.
 - B. **STRUCTURAL AND TANK IMPROVEMENTS INSPECTION** – With a licensed and qualified structural engineer competent in the structural assessment of steel tanks, physically inspect blast-cleaned surfaces to provide recommendations with respect to the use of optional structural bid items (i.e. rafter and lateral bracing replacements). Observe the Contractor’s work during construction of the structural and tank improvements to verify compliance with the Contract Documents. Typical structural and tank improvements may include stairways, guardrails, vents, manways, hatches, ladders, and cathodic protection systems.

Exhibit A

OM17-18.005a - ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION - VALI COOPER & ASSOCIATES, INC.

- C. COATING INSPECTION - After approval of the surface preparation, Consultant shall monitor ongoing weather conditions, Contractor's application equipment and its operation, and proper mixing of materials. Consultant shall physically inspect the application of coatings, including coating material used, spray techniques, cleanliness of surface, thickness, etc.
 - D. FINAL INSPECTION – Provide input at the conclusion of finished coating to ensure that the coating material used, application, film continuity (holiday detection), and dry film thickness comply with the plans and specifications.
 - E. WARRANTY INSPECTION – Provide warranty inspections prior to the expiration of the warranty period to test for any problems that may arise from defective materials or faulty workmanship. Specific tasks may include but not be limited to: visual inspections, holiday testing, punch list preparation and management, and summary reporting.
4. ***Condition Assessment Inspections of Reservoirs*** – Condition assessment inspections are performed on the District's steel potable water and recycled water reservoirs to determine if and when re-coating is needed, and to identify the necessary structural, operational, safety, and regulatory improvements. Condition assessment inspections typically consist of, but are not limited to, the following activities:
- A. Review of District's existing record documentation and file data
 - B. On-site field investigation of all interior and exterior surfaces and appurtenances including structural elements, noting corrosion and defects
 - C. Title 22 heavy metal analysis to determine whether existing coating and paint contains hazardous materials
 - D. Documentation of observations, including narrative description and photo survey
 - E. Identification of operational, safety, and regulatory issues (e.g. fall protection, ingress/egress, cross-connection, etc.)
 - F. Conclusions, including a qualitative condition rating and possible reasons for observed corrosion and defects
 - G. Recommendations, including specific details for how to address: observed corrosion and defects; structural issues; operational, safety, and regulatory issues; and cathodic protection
 - H. Planning level cost estimates for addressing each of the recommendations
 - I. Timing for when District should plan to implement the recommendations
 - J. Documentation of the above activities shall be assembled into a summary report for each

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reservoir, as requested by the District

5. ***Specialty Pipeline Inspections*** – For specialty pipeline projects, such as CIPP liner, jack & bore, pipe bursting and other trenchless methodologies, provide inspection and expertise on all sequencing, materials, and installation to verify compliance with the Contract Documents.
6. ***General Inspection*** – For general inspection of Capital Improvement Program projects, provide inspection support and expertise on civil, structural, mechanical, and electrical portions of the project to verify compliance with the Contract Documents as requested by the District.
 - A. Observe the jobsite for compliance with safety requirements. Inform the District of any concerns or problems observed concerning site or job safety.
 - B. Verify that all deliveries and installation of equipment and materials conform to the Contract Documents and approved shop drawings.
 - C. During welding operations, verify certifications, joint preparation, electrode types, and finished product comply with the Contract Documents.
 - D. During mechanical anchorages, verify materials and installation procedures comply with the Contract Documents, approved submittals, and manufacturer’s recommendations.
 - E. Take digital photographs during key points in the construction to document the progress and submit photo files on a CD with the final report.
7. ***Project Management / Construction Management Support***
 - A. Assist the District in administering the pre-construction activities for the project, including a Pre-Construction Conference and pre-construction site condition documentation.
 - B. Prepare Daily Inspection Activity Reports to document daily start and stop times, size of Contractor’s crew, equipment used, visitors to jobsite, climatic conditions throughout the day, quantities of materials used, work accomplished, periods of Contractor downtime and cause, inspection procedures used and results, and verification of compliance with the Contract Documents. All entries shall be dated and timed.
 - C. Prepare, distribute, and maintain logs of RFIs, submittals, and other project related correspondence. Coordinate construction activities with project team members and approved construction documents.
 - D. Assist the District in coordination, startup, and testing of projects throughout the commissioning phase of the project, as applicable. Provide oversight of Contractor’s third party testing as applicable.
 - E. Assist the District in processing the monthly progress payments, change orders, and claims if needed (change order work should be fully documented with drawings, sketches, and/or

Exhibit A

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written descriptions of the work required).

- F. Assist the District in final acceptance of Project upon completion of all work by Contractor. Prepare a punch list of items during the final project walk-through. Verify Contactor's satisfactory completion of punch list work.
- G. Prepare a final project report documenting information from all inspection tasks, test results, and other pertinent information (including photographs). Submit three (3) paper copies and one (1) PDF copy of the draft report to the District for review and approval. Revise the draft report to incorporate the District's comments. Submit three (3) paper copies and one (1) PDF copy of the final report to the District.

The On-Call CM/IS Consultant will be expected to provide services on a part-time basis whenever feasible. The proposed rate structure shall include details specific to part-time services, including any and all provisions for mobilization, travel time, hourly minimums, equipment rates, etc.

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Exhibit A

OM17-18.005a - ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION - **VALI COOPER & ASSOCIATES, INC.**

EXHIBIT B

LIST OF APPROVED SUBCONSULTANTS

Ed Diggs Consulting
1551 Stockport Drive
Riverside, CA 92507

Harper & Associates Engineering, Inc.
1240 E. Ontario Avenue, Suite 102-312
Corona, CA 92881

Ninyo & Moore
475 Goddard #200
Irvine, CA 92618

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Exhibit B

OM17-18.005a - ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION - **VALI COOPER & ASSOCIATES, INC.**

EXHIBIT C

TASK ORDER FORM

[To be executed by DISTRICT and CONSULTANT prior to commencement of Services;]

This Task Order is executed pursuant to the "AGREEMENT FOR ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION SUPPORT SERVICES BETWEEN MOULTON NIGUEL WATER DISTRICT AND _____ (Contract No. _____)" dated _____, 2017 (the "Agreement"). The Agreement terms are fully incorporated in this Task Order. Terms used in this Task Order have the same meanings given in the Agreement.

Task Order No.: _____

Task Order Scope of Services:

Authorized Not-to Exceed Task Order Amount*: \$ _____

*CONSULTANT to attach Fee Schedule, description of reasonable direct costs; list of Subconsultants; list of deliverables and number copies.

Task Order Completion Date: _____

Notice to Proceed Given: [Date] _____

EXECUTED, ACKNOWLEDGE AND AGREED:

_____ DATE: _____

MNWD's Representative: Title

CONSULTANT's Authorized Representative - (print name/title here)

Signature DATE: _____

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Exhibit C

OM17-18.005a - ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION - **VALI COOPER & ASSOCIATES, INC.**

EXHIBIT D
FEE SCHEDULE

Exhibit D

OM17-18.005a - ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION - **VALI COOPER & ASSOCIATES, INC.**

On-call Construction Management and Inspection Support Services

PROJECT NO.	FUND	PROJECT NAME	PROJECT STATUS/ PRIORITY	TOTAL PROJECT BUDGET	Spec Insp Budget
2015015	7	SADDLEBACK PS AUX PUMP & ENGINE REPLACEMENT	DESIGN	\$ 2,450,000.00	\$ 20,000.00
	7	ELECTRICAL SYSTEM IMPROVEMENTS - PW	PROGRAM	\$ 2,200,000.00	\$ 100,000.00
	7	RESERVOIR RECOATING PROGRAM - PW	PROGRAM	\$ 11,250,000.00	\$ 225,000.00
	7	STEEL TANKS SEISMIC & STRUCTURAL RETROFITS PROGRAM - PW	PROGRAM	\$ 5,000,000.00	\$ 25,000.00
	7	BEAR BRAND PS PUMP REPLACEMENT		\$ 410,000.00	\$ 10,000.00
	7	LITTLE NIGUEL PS PUMP REPLACEMENT		\$ 275,000.00	\$ 10,000.00
	7	PACIFIC PARK PS PUMP & ENGINE REPLACEMENT		\$ 600,000.00	\$ 10,000.00
	7	ROLLING HILLS PS PUMP & ENGINE REPLACEMENT		\$ 675,000.00	\$ 10,000.00
	7	SHEEP HILLS PS PUMP & ENGINE REPLACEMENT		\$ 1,040,000.00	\$ 10,000.00
2016020	7	ELECTRICAL SERVICE ENTRANCE REPLACEMENTS AT THREE SITES	NEW	\$ 1,050,000.00	\$ 75,000.00
	7	2017-18 ELECTRICAL SYSTEM IMPROVEMENTS - PW	NEW	\$ 900,000.00	\$ 90,000.00
	7	2017-18 UTILITY SERVICE ENTRANCE REPLACEMENTS - PW	NEW	\$ 750,000.00	\$ 75,000.00
	7	CASA DEL OSO PUMP STATION - PUMP NO. 1 REPLACEMENT	NEW	\$ 375,000.00	\$ 10,000.00
	7	REHABILITATION OF THE ALISO HILLS RESERVOIR	NEW	\$ 700,000.00	\$ 75,000.00
	7	REHABILITATION OF THE MARGUERITE RESERVOIR	NEW	\$ 800,000.00	\$ 75,000.00
	7	ELECTRICAL SYSTEM IMPROVEMENTS - RW	PROGRAM	\$ 1,350,000.00	\$ 54,000.00
	7	RESERVOIR RECOATING PROGRAM - RW	PROGRAM	\$ 2,970,000.00	\$ 70,000.00
	7	STEEL TANKS SEISMIC & STRUCTURAL RETROFITS PROGRAM - RW	PROGRAM	\$ 200,000.00	\$ 2,500.00
-06- 2014002	7	DEL AVION LS AUX GENERATOR REPLACEMENT	CONSTRUCTION	\$ 576,090.00	\$ 10,000.00
2012024	7	UPPER SALADA LS AUX GENERATOR REPLACEMENT	DESIGN	\$ 950,000.00	\$ 10,000.00
2016006	7	UPPER SALADA ELECTRICAL SWITCHGEAR REPLACEMENT	DESIGN	\$ 925,000.00	\$ 150,000.00
	7	ELECTRICAL SYSTEM IMPROVEMENTS - WW	PROGRAM	\$ 1,075,000.00	\$ 43,000.00
	7	SEWER LINING PROGRAM	PROGRAM	\$ 2,400,000.00	\$ 50,000.00
	7	ALISO CREEK LS AUXILIARY GENERATOR REPLACEMENT		\$ 530,000.00	\$ 10,000.00
	7	SOUTHWING LS AUXILIARY GENERATOR REPLACEMENT		\$ 580,000.00	\$ 10,000.00



moulton niguel water district

STAFF REPORT

TO: Board of Directors **MEETING DATE:** June 12, 2017

FROM: Todd Novacek, Assistant Director of Operations
Ronin Goodall, Superintendent of Operations

SUBJECT: Pump Refurbishment Service Agreements

DIVISION: District-wide

SUMMARY:

Issue: The current pump refurbishment service agreements will expire on June 30, 2017. Staff requires authorization to enter into new multi-year service agreements for pump refurbishment to be performed on an as-needed basis for Fiscal Year (FY) 2017-18, 2018-19 and 2019-20.

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

- 1) Pump Refurbishment Services Agreement with Evans Hydro, Inc. for a not-to-exceed amount of \$125,000 for FY 2017-18, a not-to-exceed amount of \$125,000 for FY 2018-19, and a not-to-exceed amount of \$125,000 for FY 2019-20 for a total three-year agreement amount of \$375,000.
- 2) Pump Refurbishment Services Agreement with Weber Water Resources for a not-to-exceed amount of \$65,000 for FY 2017-18, a not-to-exceed amount of \$65,000 for FY 2018-19, and a not-to-exceed amount of \$65,000 for FY 2019-20 for a total three-year agreement amount of \$195,000.

Fiscal Impact: Sufficient funds are included in the FY 2017-18 budget and will be included in the FY 2018-19 and 2019-20 Budget.

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Pump Refurbishment Service Agreements

June 12, 2017

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BACKGROUND:

The Moulton Niguel Water District (District) operates 158 pumps within various pump and lift stations for potable water, recycled water, and wastewater operations. Staff performs routine maintenance of the pumps on an on-going basis. During the maintenance process, staff inspects and evaluates the condition of the pumps for wear on the bearings, shafts, rings and other signs of potential pump failure. Pumps determined to be in need of repair are removed from the facilities and sent out for refurbishment services that cannot be performed while the pumps are operating or on-site. Services provided during this type of refurbishment include fabricating new shaft sleeves, wear rings, pressed bearings, and impeller balancing.

Regular maintenance and refurbishment of the pumps allows the District to maximize the useful service life of each pump unit. Further, the pumps operate at a higher level of efficiency when maintained appropriately, which reduces the energy cost required to operate the pump units. The annual costs for the pump refurbishment services vary based on the type and quantity of services required. This current fiscal year, the District expended approximately \$128,000 on pump refurbishment activities. Based on refurbishment schedules, staff estimates the pump refurbishment costs will be \$190,000 annually for the next three years.

DISCUSSION:

Due to the time sensitivity of taking the District's pumps offline for service, staff has determined it is in the best interest of the District to contract with multiple service providers for pump refurbishment in order to account for provider availability and to enable multiple pump refurbishment, when needed.

Staff has evaluated the limited number of qualified, local contractors capable of providing this service based on response time, warranty, available equipment, capabilities, references from other Districts, and price. Four vendors were contacted for pricing and there was no response from John Lisee Pumps, and Tri County Pump Company will only work on potable equipment. Based on their qualifications, staff is recommending the Board authorize the General Manager to enter into agreements with Evans Hydro, Inc. for a total agreement amount of \$375,000 and Weber Water Resources for the total agreement amount of \$195,000 for pump refurbishment services. Evans Hydro has provided high-quality and reliable service to the District and will be the primary service provider. Weber Water Resources will be a secondary level provider to the District and staff anticipates using their services as required based on their availability and performance.

The Pump Refurbishment Services Agreement has been reviewed and approved by District counsel. A copy of the agreement is attached for reference. The District's standard ten day termination clause is included as a provision in the agreement.

Attachments:

- 1) Pump Refurbishment Services Agreement with Evans Hydro, Inc.
- 2) Pump Refurbishment Services Agreement with Weber Water Resources

**PUMP REFURBISHMENT SERVICES AGREEMENT
BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
EVANS-HYDRO, INC.
Agreement No. OM17-18O.003a**

THIS AGREEMENT (“Agreement”) is approved and entered into as of July 1, 2017 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “DISTRICT”, and EVANS-HYDRO, INC, hereinafter called “CONTRACTOR”. DISTRICT and CONTRACTOR are sometimes referred to in this Agreement individually as a “party” or jointly as the “parties.”

RECITALS

- A. DISTRICT requires pump refurbishment services, as further described in this Agreement and in **Exhibit 1, Scope of Work** and its attachments attached hereto and incorporated in this Agreement (the “Services”).
- B. CONTRACTOR represents that it has the necessary licenses, equipment, permits, and skills required to perform the Services pursuant to the terms and standards set forth in this Agreement.

NOW, THEREFORE, DISTRICT and CONTRACTOR, for the consideration stated herein, agree as follows:

1. **SCOPE OF WORK, PERFORMANCE STANDARDS.**

(a) CONTRACTOR shall perform the Services in accordance with the Scope of Work and specifications set forth in attached **Exhibit 1** and the other terms of this Agreement in consultation with DISTRICT representatives, including the provision of labor, and materials (not otherwise provided by DISTRICT itself), for various facilities throughout DISTRICT, from time to time during the term of this Agreement. The quantity of work to be performed and materials provided outlined in **Exhibit 1** is only an estimate. The expected scope and amount of Services to be performed is on an as-needed basis. CONTRACTOR acknowledges and agrees DISTRICT does not guarantee any minimum or maximum amount of Services to be provided under this Agreement and DISTRICT may use other contractors for the Services throughout the term of this Agreement, in its sole discretion. Except as otherwise specified under **Exhibit 1**, CONTRACTOR shall provide all labor, materials, tools, equipment, supplies, utilities and transportation services required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional and workmanlike manner, and in accordance with generally accepted industry standards, to the satisfaction of DISTRICT.

(b) The Services shall be performed in accordance with the terms of this Agreement including all attached Exhibits, the Services specifications, and the permitting, licensing or other

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requirements of any governmental or municipal entity within whose jurisdiction the Services are performed, including municipal storm water ordinances, 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 Services performed under this Agreement, including acquisition of necessary permits and licenses by municipalities related to Services in public right of way and payment of the fees or costs thereof.

(c) CONTRACTOR is an independent CONTRACTOR and not an employee of DISTRICT. No permitted or required approval of DISTRICT 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 Services. Such approvals and investigations are intended only to give DISTRICT the right to satisfy itself with the quality of work performed by CONTRACTOR.

2. PUBLIC SAFETY; SAFETY REQUIREMENTS. CONTRACTOR shall be solely and completely responsible for the safety of all persons and property during performance of the Services and work. CONTRACTOR's operations for the Services shall be conducted so as to provide maximum safety to CONTRACTOR's employees, to the general public and to 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 Services under this Agreement. It is CONTRACTOR's responsibility to have a current Safety Manual that meets SB 198 requirement for injury and illness prevention and have that Safety Manual on file with DISTRICT.

3. COMPLIANCE WITH LAW, LICENSE.

(a) CONTRACTOR at all times during the performance of the Services shall comply with, cause its agents, employees and representatives to observe and comply with and shall remain fully informed of all local, State, and federal laws, ordinances, rules, regulations or other requirements, including any permits issued for the Services, that may in any manner affect those employed to perform any of the Services or that may in any way affect the performance of the Services. In performing the Services, CONTRACTOR shall comply with, and give all notices required pursuant to all laws, ordinances, rules, regulations and other requirements applicable to the Services. CONTRACTOR shall be liable for any violation of law, ordinance, rule, regulation or other requirement in connection with performance of the Services. CONTRACTOR shall bear all liability and costs, including fines, arising from performance of the Services that are contrary to any applicable law, ordinance, rule, regulation, or other requirement.

(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.

4. DISTRICT OBSERVATION. CONTRACTOR's performance of Services is subject to observation and inspection by DISTRICT's representatives. The observation, if any, by

the DISTRICT's representative of the Services shall not relieve CONTRACTOR of any of obligations under the Agreement as prescribed, or CONTRACTOR's obligations to perform the Services in accordance with all terms and provisions required by municipal permits.

5. AGREEMENT PRICE; TERM.

(a) CONTRACTOR shall perform all Services pursuant to this Agreement at the "unit prices" in the schedule of work items attached as Exhibit 2, Fee Schedule, which establishes unit prices for components of the Services, including materials, listed in the schedule. There shall be no increase to the unit prices if an adjustment to the number of CONTRACTOR's staff or service hours is needed to meet the Agreement requirements for the Services. The total compensation paid to CONTRACTOR shall not exceed One Hundred Twenty Five Thousand Dollars (\$125,000) per year for each of the three years with a not to exceed total Agreement Amount of Three Hundred Seventy Five Thousand Dollars (\$375,000) (the "Agreement Maximum Amount") for the three year term. CONTRACTOR is responsible for and shall pay all sales, consumer, use, and other taxes in connection with materials for the Services.

(b) Work will be billed by CONTRACTOR in accordance with DISTRICT's invoicing requirements, including sufficient detail on work items under the Agreement pricing. CONTRACTOR's invoice will account for the location of the Services performed in addition to sufficient cost details as required by DISTRICT. DISTRICT will make payment to the CONTRACTOR within thirty (30) calendar days of receipt and approval of an 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; amounts claimed by DISTRICT as forfeiture due to offsets, and as otherwise provided for under Section 9. No certificate given or payment made under the Agreement shall be conclusive evidence of performance of the Agreement and no payment shall be an acceptance of any defective work or improper materials.

(c) Acceptance and payment by DISTRICT for the Services will not in any way relieve CONTRACTOR of its responsibility to perform the Services and the Agreement in strict accordance with State, federal, and local law. Neither DISTRICT's acceptance of, nor payment for, any Services 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.

(d) The term of the Agreement is three (3) years from the Effective Date through and including June 30, 2020 ("expiration"), unless otherwise terminated earlier by either party pursuant to Section 12.

6. PUBLIC LAW REQUIREMENTS; PREVAILING WAGE.

(a) DISTRICT is a public agency in the State and is subject to the provisions of law relating to public contracts. It is agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein. CONTRACTOR represents and warrants that it is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq.,

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("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects, and will be comply with the Prevailing Wage Laws, including but not limited to the payment of prevailing wages. 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 CONTRACTOR to pay not less than the specified rates to all workers employed by them in the execution of the Services.

(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. 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. CONTRACTOR acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. 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).

(c) CONTRACTOR is 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. CONTRACTOR's DIR Registration No. is _____.

(d) CONTRACTOR acknowledges that it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(e) The CONTRACTOR 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.

7. AGREEMENT DOCUMENTS. The Agreement includes all of the Agreement documents as follows: this Agreement and all exhibits and attachments to the foregoing documents.

8. NO SUBCONTRACTORS. CONTRACTOR agrees and represents that none of the Services will be subcontracted, and that CONTRACTOR will perform all Services. 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.

9. REMEDIES FOR DEFAULT. Without limiting any other right or remedy of DISTRICT, should DISTRICT not receive proper Services, cooperation, and response to its requests from CONTRACTOR in compliance with this Agreement and the Scope of Work,

DISTRICT reserves the right to withhold payments due to CONTRACTOR under this Agreement until said items are completed or corrected by CONTRACTOR or, at DISTRICT's election, completed or corrected by others. The entire cost of any such work performed by others shall be deducted from the payments due to CONTRACTOR hereunder. Without limiting any other right or remedy of DISTRICT, DISTRICT shall have the right to offset against any amount payable to CONTRACTOR under this Agreement, any back charges provided for in the Exhibits in this Agreement, and any loss or damage caused by CONTRACTOR's lack of performance or breach of this Agreement.

10. INSURANCE

(a) In addition to the requirements set forth below, during the entire term of the Agreement, CONTRACTOR will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the Services provided under the Agreement.

(b) 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. CONTRACTOR shall not commence Services 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 shall be provided by CONTRACTOR with the CONTRACTOR's executed copy of this Agreement, and prior to commencement of any Services.

(c) The commercial general liability and business automobile insurance will be comprehensive in form, and be for the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to 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 and each of its directors, elected officials, officers, employees and agents as additional insureds thereunder ("Additional Insureds"). All of the policies of insurance provided hereunder shall be primary insurance and not additional to or contribute with any other insurance carried or maintained by, or for the benefit of, 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 10 to DISTRICT.

(d) In the event DISTRICT consents, and CONTRACTOR subcontracts any portion of the Services under the Agreement, the Agreement between CONTRACTOR and such subcontractor shall require the subcontractor to maintain the same policies, limits and terms of

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insurance that CONTRACTOR is required to maintain pursuant to this Section 10, in accordance with all of the requirements of this Section 10.

(e) 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 as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employs, **which will include the subrogation and Additional Insureds 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. CONTRACTOR shall execute the Certificate required by Section 1861 of the Labor Code on **Exhibit 3** attached to this Agreement prior to commencement of any Services.
- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate with such aggregate to apply separately to the Services. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 11 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 20 37 forms if later revisions are used.
- (iii) Business Automobile Insurance. Business automobile insurance with a liability limits of not less than \$1,000,000 each accident for bodily injury and property damage. The policy shall include coverage for any auto, 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.**

(f) 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 10 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. INDEMNIFICATION

(a) To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend DISTRICT, and each its directors, elected officials, officers, employees, members and agents from and against all claims, damages, losses and expenses, and costs including costs of defense and 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 Services or work hereunder, provided that any such claim, damage, loss or expense is: (a) attributable to bodily injury, personal injury, sickness, disease, or 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 in whole or in part by any 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, to the extent of the sole negligence, active negligence or willful misconduct of such indemnified party, in which case CONTRACTOR's indemnification obligation shall be reduced in proportion to the indemnified party's share of liability for its sole or active negligence or willful misconduct, if any); **or** (c) due to failure, neglect or refusal of the CONTRACTOR to faithfully perform the Services or 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 11. It is expressly acknowledged by the CONTRACTOR that the foregoing obligations of CONTRACTOR include the duty to defend the indemnified parties against any claims, proceedings and demands within the scope of the foregoing indemnity terms.

(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 Services and work hereunder.

12. **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 Services 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 Services 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 5. In no event, will CONTRACTOR be entitled to receive

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compensation in excess of the compensation specified under Section 5 of this Agreement. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT.

13. RECORDS. CONTRACTOR shall preserve and retain any and all records of or related to the Services, including all records of or related to this Agreement and the Services 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 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.

14. 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.

15. 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.

16. THIRD-PARTY CLAIMS/DISTRICT NOTICE. CONTRACTOR agrees that it will process and administer any and all claims from third parties received in connection with CONTRACTOR's performance of the Services, consistent with the terms of Sections 10 and 11 of this Agreement. In accordance with Public Contract Code Section 9201, DISTRICT shall timely notify CONTRACTOR if DISTRICT receives any third-party claim relating to the Services or the Agreement. DISTRICT shall be entitled to recover from CONTRACTOR DISTRICT's reasonable costs incurred in providing such notification.

17. 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: Evans Hydro, Inc.
 18128 S. Santa Fe Ave.
 Rancho Dominguez, CA 90221

If to DISTRICT: Notices:
 Moulton Niguel Water DISTRICT
 27500 La Paz Road

Laguna Niguel, CA 92677
Attn: Assistant Director of Operations

If to DISTRICT:

Billing:
Moulton Niguel Water DISTRICT
P.O. Box 30203
Laguna Niguel, CA 92607-0203
Attn: Purchasing
(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.

18. INTEGRATION; ATTACHMENTS. This Agreement supersedes any and all agreements between the parties hereto which are prior in time to this Agreement. Neither DISTRICT nor CONTRACTOR shall be bound by any understanding, agreement, promise, representation or stipulation expressed or implied not specified herein. The Exhibits attached hereto are incorporated herein as part of this Agreement.

19. 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.

20. 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.

21. 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.

22. 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.

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23. NO THIRD PARTY RIGHTS. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

24. INTERPRETATION. The provisions contained herein shall not be construed in favor of or against either party but shall be construed as if both parties prepared this Agreement.

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

“DISTRICT”:

MOULTON NIGUEL WATER DISTRICT

By: _____

Title: General Manager

DATE: _____

“CONTRACTOR”:

EVANS HYDRO, INC.

By: _____

Title: Authorized Officer/Representative*

DATE: _____

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

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

Purpose:

CONTRACTOR shall provide pump refurbishment services to MNWD for the repair of its pumps on an as-needed basis.

Services Detail:

Services to include fabricating new shaft sleeves, wear rings, pressed bearings, impeller balancing, and modifications. CONTRACTOR shall provide, at its expense, the facility, equipment and labor necessary to complete the Services. Services shall take place during regular business hours only.

Services may include but are not limited to the following, based on specific repair needs for each pump to be determined at the time of service:

- Disassemble and inspection of pump
- Sandblast all applicable parts
- Shaft polish and straight
- Replace thrust and radial bearings, and lip seals
- Manufacture (2) new sleeves packing bronze
- Center sleeve manufacture new bronze
- Impeller wear ring journal machine to install new ring
- Impeller ring manufacture new bronze
- Center bushing skim cut to clean 100% ID.
- Case wear ring skim cut to clean 100% ID
- Balance the impeller 4w/n
- Replace gasket, packing, and lantern ring
- Reassemble rotating element
- Paint and prep for shipment

EXHIBIT 2

FEE SCHEDULE

Fairbank Morse dry pit – K4C1-073967, HP: 60
WORK SCOPE

- Pick up unit from your facility
- Disassemble and inspect
- Record all as found dimensions
- Verify all fits and clearances
- Sandblast all applicable parts
- Replace thrust and radial bearings
- Replace mechanical seals(lower and upper)
- Send the stator out to have surge test performed
- Triple dip and bake the stator
- Motor rotor shaft: polish and rework impeller journal
- Manufacture new "L" shape impeller ring (410ss)
- Suction cover skim cut case ring
- Volute clean up and coat with two part epoxy
- Coat the impeller with two part epoxy
- Balance the impeller and rotating assembly to 4 W/N
- Record all as built dimensions
- Reassemble the unit complete and paint
- Hydro air test to ensure no leaks
- Provide all required gaskets
- Deliver to your facility

PRICING
 Based on the above **\$ 11,395.00**
 Completion: 4-5 weeks ARO

Peerless Pump Repair – 6AE 16G
WORK SCOPE

- Pick up unit from your facility
- Disassemble and inspect
- Sandblast all applicable parts
- Replace the radial and thrust bearings
- Replace lip seals and packings
- Provide new lantern rings
- Bearing housing inspect and clean up
- Manufacture two new sleeves of bronze
- Upper cover sandblast and clean and recondition packing journal with Belzona
- Impeller wear rings skim cut to clean 100%
- Manufacture new case rings bronze
- Balance as unit 4W/N
- Reassemble rotating element
- Paint
- Deliver to your facility

PRICING
 Per above **\$ 5,960.00**
 Completion: 3-4 weeks ARO

New packing glands for Peerless 6AE 16G
WORK SCOPE

- Manufacture two new customer glands of bronze

PRICING
 Per above **\$ 960.00**
 Completion: 1-2 weeks ARO

EXHIBIT 3

**MOULTON NIGUEL WATER DISTRICT
PUMP REFURBISHMENT SERVICES
(Fiscal Year 2017-18)**

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.

**PUMP REFURBISHMENT SERVICES AGREEMENT
BETWEEN
MOULTON NIGUEL WATER DISTRICT AND
WEBER WATER RESOURCES
Agreement No. OM17-180.003b**

THIS AGREEMENT (“Agreement”) is approved and entered into as of July 1, 2017 (the “Effective Date”), by and between the MOULTON NIGUEL WATER DISTRICT, hereinafter called “DISTRICT”, and WEBER WATER RESOURCES, 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 pump refurbishment services, as further described in this Agreement and in **Exhibit 1, Scope of Work** and its attachments attached hereto and incorporated in this Agreement (the “Services”).
- B. CONTRACTOR represents that it has the necessary licenses, equipment, permits, and skills required to perform the Services pursuant to the terms and standards set forth in this Agreement.

NOW, THEREFORE, DISTRICT and CONTRACTOR for the consideration stated herein agree as follows:

1. **SCOPE OF WORK, PERFORMANCE STANDARDS.**

(a) CONTRACTOR shall perform the Services in accordance with the Scope of Work and specifications set forth in attached **Exhibit 1** and the other terms of this Agreement in consultation with DISTRICT representatives, including the provision of labor, and materials (not otherwise provided by DISTRICT itself), for various facilities throughout DISTRICT, from time to time during the term of this Agreement. The quantity of work to be performed and materials provided outlined in **Exhibit 1** is only an estimate. The expected scope and amount of Services to be performed is on an as-needed basis. CONTRACTOR acknowledges and agrees DISTRICT does not guarantee any minimum or maximum amount of Services to be provided under this Agreement and DISTRICT may use other contractors for the Services throughout the term of this Agreement, in its sole discretion. Except as otherwise specified under **Exhibit 1**, CONTRACTOR shall provide all labor, materials, tools, equipment, supplies, utilities and transportation services required to perform the Services, subject to compliance with the Agreement requirements, and complete all Services in a thorough, professional and workmanlike manner, and in accordance with generally accepted industry standards, to the satisfaction of DISTRICT.

(b) The Services shall be performed in accordance with the terms of this Agreement including all attached Exhibits, the Services specifications, and the permitting, licensing or other

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requirements of any governmental or municipal entity within whose jurisdiction the Services are performed, including municipal storm water ordinances, 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 Services performed under this Agreement, including acquisition of necessary permits and licenses by municipalities related to Services in public right of way and payment of the fees or costs thereof.

(c) CONTRACTOR is an independent CONTRACTOR and not an employee of DISTRICT. No permitted or required approval of DISTRICT 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 Services. Such approvals and investigations are intended only to give DISTRICT the right to satisfy itself with the quality of work performed by CONTRACTOR.

2. PUBLIC SAFETY; SAFETY REQUIREMENTS. CONTRACTOR shall be solely and completely responsible for the safety of all persons and property during performance of the Services and work. CONTRACTOR's operations for the Services shall be conducted so as to provide maximum safety to CONTRACTOR's employees, to the general public and to 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 Services under this Agreement. It is CONTRACTOR's responsibility to have a current Safety Manual that meets SB 198 requirement for injury and illness prevention and have that Safety Manual on file with DISTRICT.

3. COMPLIANCE WITH LAW, LICENSE.

(a) CONTRACTOR at all times during the performance of the Services shall comply with, cause its agents, employees and representatives to observe and comply with and shall remain fully informed of all local, State, and federal laws, ordinances, rules, regulations or other requirements, including any permits issued for the Services, that may in any manner affect those employed to perform any of the Services or that may in any way affect the performance of the Services. In performing the Services, CONTRACTOR shall comply with, and give all notices required pursuant to all laws, ordinances, rules, regulations and other requirements applicable to the Services. CONTRACTOR shall be liable for any violation of law, ordinance, rule, regulation or other requirement in connection with performance of the Services. CONTRACTOR shall bear all liability and costs, including fines, arising from performance of the Services that are contrary to any applicable law, ordinance, rule, regulation, or other requirement.

(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.

4. DISTRICT OBSERVATION. CONTRACTOR's performance of Services is subject to observation and inspection by DISTRICT's representatives. The observation, if any, by

the DISTRICT's representative of the Services shall not relieve CONTRACTOR of any of obligations under the Agreement as prescribed, or CONTRACTOR's obligations to perform the Services in accordance with all terms and provisions required by municipal permits.

5. AGREEMENT PRICE; TERM.

(a) CONTRACTOR shall perform all Services pursuant to this Agreement on a time and materials basis, based on the pricing listed in **Exhibit 2, Cost Estimate** which is attached hereto and incorporated herein. The total compensation paid to CONTRACTOR during the term of this Agreement shall not exceed Sixty-Five Thousand Dollars (\$65,000) per year for each of the three years of the term of this Agreement, for a not-to-exceed total Agreement Amount of **One Hundred and Ninety Five Thousand Dollars (\$195,000)** (the "Agreement Maximum Amount") for the three year term. CONTRACTOR is responsible for and shall pay all sales, consumer, use, and other taxes in connection with materials for the Services.

(b) Work will be billed by CONTRACTOR in accordance with DISTRICT's invoicing requirements, including sufficient detail on work items under the Agreement pricing. CONTRACTOR's invoice will account for the location of the Services performed in addition to sufficient cost details as required by DISTRICT. DISTRICT will make payment to the CONTRACTOR within thirty (30) calendar days of receipt and approval of an 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; amounts claimed by DISTRICT as forfeiture due to offsets, and as otherwise provided for under Section 9. No certificate given or payment made under the Agreement shall be conclusive evidence of performance of the Agreement and no payment shall be an acceptance of any defective work or improper materials.

(c) Acceptance and payment by DISTRICT for the Services will not in any way relieve CONTRACTOR of its responsibility to perform the Services and the Agreement in strict accordance with State, federal, and local law. Neither DISTRICT's acceptance of, nor payment for, any Services 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.

(d) The term of the Agreement is three (3) years from the Effective Date through and including **June 30, 2020** ("expiration"), unless otherwise terminated earlier by either party pursuant to Section 12.

6. PUBLIC LAW REQUIREMENTS; PREVAILING WAGE.

(a) DISTRICT is a public agency in the State and is subject to the provisions of law relating to public contracts. It is agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein. CONTRACTOR represents and warrants that it is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects, and will be

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comply with the Prevailing Wage Laws, including but not limited to the payment of prevailing 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 CONTRACTOR to pay not less than the specified rates to all workers employed by them in the execution of the Services.

(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. 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. CONTRACTOR acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. 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).

(c) CONTRACTOR is 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. CONTRACTOR's DIR Registration No. is _____.

(d) CONTRACTOR acknowledges that it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(e) The CONTRACTOR 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.

7. AGREEMENT DOCUMENTS. The Agreement includes all of the Agreement documents as follows: this Agreement and all exhibits and attachments to the foregoing documents.

8. NO SUBCONTRACTORS. CONTRACTOR agrees and represents that none of the Services will be subcontracted, and that CONTRACTOR will perform all Services. 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.

9. REMEDIES FOR DEFAULT. Without limiting any other right or remedy of DISTRICT, should DISTRICT not receive proper Services, cooperation, and response to its requests from CONTRACTOR in compliance with this Agreement and the Scope of Work, DISTRICT reserves the right to withhold payments due to CONTRACTOR under this Agreement until said items are completed or corrected by CONTRACTOR or, at DISTRICT's election,

completed or corrected by others. The entire cost of any such work performed by others shall be deducted from the payments due to CONTRACTOR hereunder. Without limiting any other right or remedy of DISTRICT, DISTRICT shall have the right to offset against any amount payable to CONTRACTOR under this Agreement, any back charges provided for in the Exhibits in this Agreement, and any loss or damage caused by CONTRACTOR's lack of performance or breach of this Agreement.

10. INSURANCE

(a) In addition to the requirements set forth below, during the entire term of the Agreement, CONTRACTOR will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the Services provided under the Agreement.

(b) 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. CONTRACTOR shall not commence Services 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 shall be provided by CONTRACTOR with the CONTRACTOR's executed copy of this Agreement, and prior to commencement of any Services.

(c) The commercial general liability and business automobile insurance will be comprehensive in form, and be for the term of this Agreement and on a 'per occurrence' basis. All policies will have a clause providing that thirty (30) calendar days written notice will be given to 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 and each of its directors, elected officials, officers, employees and agents as additional insureds thereunder ("Additional Insureds"). All of the policies of insurance provided hereunder shall be primary insurance and not additional to or contribute with any other insurance carried or maintained by, or for the benefit of, 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 10 to DISTRICT.

(d) In the event DISTRICT consents, and CONTRACTOR subcontracts any portion of the Services 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 10, in accordance with all of the requirements of this Section 10.

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(e) 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 as well as the following:

- (i) Workers Compensation Insurance and Employers Liability Insurance. Worker's compensation insurance as required by State laws, and employer's liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 for disease per employ, **which will include the subrogation and Additional Insureds 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. CONTRACTOR shall execute the *Certificate* required by Section 1861 of the Labor Code on **Exhibit 3** attached to this Agreement prior to commencement of any Services.
- (ii) Commercial General Liability Insurance. Commercial general liability in a combined limit of not less than \$2,000,000 per occurrence, \$4,000,000 aggregate with such aggregate to apply separately to the Services. Commercial General Liability insurance coverage shall be equivalent to Insurance Services Office Form CG 00 01. Included in such insurance shall be contractual coverage sufficiently broad to insure the matters set forth in Section 11 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 20 37 forms if later revisions are used.
- (iii) Business Automobile Insurance. Business automobile insurance with a liability limits of not less than \$1,000,000 each accident for bodily injury and property damage. The policy shall include coverage for any auto, 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.**

(f) 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 10 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. INDEMNIFICATION

- (a) To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold

harmless and defend DISTRICT, and each its directors, elected officials, officers, employees, members and agents from and against all claims, damages, losses and expenses, and costs including costs of defense and 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 Services or work hereunder, provided that any such claim, damage, loss or expense is: (a) attributable to bodily injury, personal injury, sickness, disease, or 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 in whole or in part by any 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, to the extent of the sole negligence, active negligence or willful misconduct of such indemnified party, in which case CONTRACTOR's indemnification obligation shall be reduced in proportion to the indemnified party's share of liability for its sole or active negligence or willful misconduct, if any); **or** (c) due to failure, neglect or refusal of the CONTRACTOR to faithfully perform the Services or 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 11. It is expressly acknowledged by the CONTRACTOR that the foregoing obligations of CONTRACTOR include the duty to defend the indemnified parties against any claims, proceedings and demands within the scope of the foregoing indemnity terms.

(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 Services and work hereunder.

12. 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 Services 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 Services 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 5. In no event, will CONTRACTOR be entitled to receive compensation in excess of the compensation specified under Section 5 of this Agreement. The

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foregoing provisions are in addition to and not in limitation of any other rights or remedies available to DISTRICT.

13. RECORDS. CONTRACTOR shall preserve and retain any and all records of or related to the Services, including all records of or related to this Agreement and the Services 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 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.

14. 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.

15. 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.

16. THIRD-PARTY CLAIMS/DISTRICT NOTICE. CONTRACTOR agrees that it will process and administer any and all claims from third parties received in connection with CONTRACTOR's performance of the Services, consistent with the terms of Sections 10 and 11 of this Agreement. In accordance with Public Contract Code Section 9201, DISTRICT shall timely notify CONTRACTOR if DISTRICT receives any third-party claim relating to the Services or the Agreement. DISTRICT shall be entitled to recover from CONTRACTOR DISTRICT's reasonable costs incurred in providing such notification.

17. 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:

Weber Water Resources
237 West Orange Show Lane
San Bernardino, CA 92408
Attn: Don Rice

2073 Railroad Street
Corona, CA 92880

If to DISTRICT: Notices:
Moulton Niguel Water DISTRICT
27500 La Paz Road
Laguna Niguel, CA 92677
Attn: Assistant Director of Operations

If to DISTRICT: Billing:
Moulton Niguel Water DISTRICT
P.O. Box 30203
Laguna Niguel, CA 92607-0203
Attn: Purchasing
(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.

19. INTEGRATION; ATTACHMENTS. This Agreement supersedes any and all agreements between the parties hereto which are prior in time to this Agreement. Neither DISTRICT nor CONTRACTOR shall be bound by any understanding, agreement, promise, representation or stipulation expressed or implied not specified herein. The Exhibits attached hereto are incorporated herein as part of this Agreement.

20. 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.

21. 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.

22. 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.

23. 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

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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.

24. NO THIRD PARTY RIGHTS. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

25. INTERPRETATION. The provisions contained herein shall not be construed in favor of or against either party but shall be construed as if both parties prepared this Agreement.

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

“DISTRICT”:

MOULTON NIGUEL WATER DISTRICT

By: _____
Title: General Manager

DATE: _____

“CONTRACTOR”:

WEBER WATER RESOURCES

By: _____
Title: Authorized Officer/Representative*

DATE: _____

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

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

Purpose:

CONTRACTOR shall provide pump refurbishment services to DISTRICT for the repair of its pumps on an as-needed basis.

Services Detail:

Services to include fabricating new shaft sleeves, wear rings, pressed bearings, impeller balancing, and modifications. CONTRACTOR shall provide, at its expense, the facility, equipment and labor necessary to complete the Services. Services shall take place during regular business hours only.

Services may include but are not limited to the following, based on specific repair needs for each pump to be determined at the time of service:

- Disassemble and inspection of pump
- Sandblast all applicable parts
- Shaft polish and straight
- Replace thrust and radial bearings, and lip seals
- Manufacture (2) new sleeves packing bronze
- Center sleeve manufacture new bronze
- Impeller wear ring journal machine to install new ring
- Impeller ring manufacture new bronze
- Center bushing skim cut to clean 100% ID.
- Case wear ring skim cut to clean 100% ID
- Balance the impeller 4w/n
- Replace gasket, packing, and lantern ring
- Reassemble rotating element
- Paint and prep for shipment

EXHIBIT 2**Cost Estimate**

Qty	Description	Unity Price	Total
Project Fairbanks Repair Estimate			
5.00	Machinist to perform complete Tear Down	\$90.00	\$450.00
1.00	Labor to sandblast all applicable parts	\$1500.00	\$1,500.00
5.00	Machinist to replace thrust and radial bearings	\$90.00	\$450.00
5.00	Machinist to replace upper/lower mechanical seals	\$90.00	\$450.00
1.00	Brithinee Electric to provide quote and perform stator surge test, dip and bake.	\$0.00	\$0.00
1.00	Brithinee Electric to provide quote and perform motor rotor shaft polish and rework impeller journal	0.00	\$0.00
3.00	Machinist to fabricate new "L" shape impeller ring out of 410SS	\$90.00	\$270.00
2.50	Machinist to skim cut suction cover case ring	\$420.00	\$0.00
1.00	Machinist to clean and coat volute	\$450.00	\$450.00
1.00	Machinist to reassemble and paint volute	\$650.00	\$650.00
1.00	Fairbanks to quote and perform hydro test. Transportation of pump additional.	\$0.00	\$0.00
1.00	Driver to pick up and return pump to/from Weber's Corona facility to Moulton Niguel Yard	\$165.00	\$165.00
1.00	Materials for above noted machine/shop work	\$5,500.00	\$5,500
1.00	Tax on materials @ 8%	\$440.00	\$440.00
		TOTAL	\$10,325
Peerless Pump Repair Estimate			
5.00	Machinist to perform complete tear down and QC report	\$90.00	\$450.00
1.00	Machinist to replace case gasket.	\$90.00	\$90.00
1.00	Machinist to replace inboard bearing.	\$90.00	\$90.00
1.00	Machinist to replace outboard bearing	\$90.00	\$90.00
1.00	Machinist to replace bronze sleeves.	\$90.00	\$90.00
.50	Machinist to replace bronze case rings	\$90.00	\$45.00
.50	Machinist to replace swing bolts	\$90.00	\$45.00
1.00	Machinist to epoxy coat ID only	\$420.00	\$420.00
1.00	Materials: Shaft sleeves, Bearing-inboard, bearing-outboard with retainer washer and lock ring, inboard bearing housing cover, stuffing box bushings, Packing Set-NSF, Repair Pack.	\$3162.00	\$3162.00
1.00	Tax on materials @ 8%	\$252.96	\$252.96
		TOTAL	\$4734.96

EXHIBIT 3

**MOULTON NIGUEL WATER DISTRICT
PUMP REFURBISHMENT SERVICES
(Fiscal Year 2015-16, 2016-17)**

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.