

AGREEMENT

2019 Castroville Seawater Intrusion Project (CSIP) Well Destruction Project

THIS AGREEMENT (hereinafter, the "AGREEMENT"), is made and entered into by and between the MONTEREY COUNTY WATER RESOURCES AGENCY (hereinafter, the "AGENCY"), and Maggiora Bros. Drilling, Inc., (hereinafter the "CONTRACTOR").

RECITALS:

1. The AGENCY solicited bid proposals for the 2019 Castroville Seawater Intrusion Project (CSIP) Well Destruction Project; and
2. CONTRACTOR submitted the lowest responsive and responsible bid and proposal to complete the 2019 CSIP Well Destruction Project.

ARTICLE 1: SCOPE OF WORK

1.1 The CONTRACTOR shall, within the time stipulated, perform the contract as herein defined and shall furnish all work, labor, equipment, transportation, material, and services to construct and complete in a good, expeditious, workmanlike, and substantial manner, the project: 2019 Castroville Seawater Intrusion Project Well Destruction Project (hereinafter the "Project").

1.2 All work shall be completed in strict conformance with this AGREEMENT, the plans, specifications, and working details set forth in contract documents listed below, incorporated herein by this reference and attached hereto as Exhibits, and to the satisfaction of Agency:

Exhibit A: Contract Documents Part 1 - Notice Inviting Sealed Bids, Bid Bond Forms and Proposal.

Exhibit B: Contract Documents Part 2 - Technical Specifications and Attachments.

Exhibit C: Completed CONTRACTOR's Payment and Performance Bonds.

Exhibit D: CONTRACTOR's Certificate(s) of Insurance.

1.3 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order:

Permits from other agencies as may be required by law govern over Change Orders;
Change Orders govern over this AGREEMENT;
AGREEMENT govern over Bid Addenda;
Bid Addenda govern over CONTRACTOR's proposal;
CONTRACTOR's proposal governs over Bid Form;

Bid Form govern over Technical Specifications;
Technical Specifications govern over Drawings;
Drawings govern over Referenced Standard Specifications.

With respect to the Drawings, the order of precedence is as follows:

Figures govern over scaled dimensions;
Detail drawings govern over general drawings;
Addenda/change order drawings govern over Contract drawings;
Contract drawings govern over standard drawings.

ARTICLE 2: TIME FOR START AND COMPLETION

2.1 This Agreement commences on the date mentioned on the Notice to Proceed.

2.2 Substantial Completion:

2.2.1 Substantial Completion Defined:

Substantial Completion is defined as completion of all work except demobilization and final clean-up, described in Technical Specification Section 12010, Paragraph 1.2.

2.2.2 Substantial Completion Date:

CONTRACTOR shall commence the work on the starting date established in the Notice to Proceed and shall achieve Substantial Completion within sixty (60) calendar days after said starting date.

2.3 Final Completion:

2.3.1 Final Completion Defined:

Final Completion is defined as completion of all required work under this AGREEMENT.

2.3.2 Final Completion Date:

CONTRACTOR shall achieve Final Completion within fifteen (15) calendar days after the date of Substantial Completion.

2.4 Weekly Progress Meetings:

CONTRACTOR's project representative shall meet weekly with AGENCY, or AGENCY's designated representative, to report on progress of the work, schedule for upcoming work and coordinate activities between the parties as needed.

2.5 Notices of Completion:

CONTRACTOR shall give reasonable notice to AGENCY as to when Substantial Completion and Final Completion are anticipated, and CONTRACTOR and AGENCY shall inspect the work.

AGENCY shall notify CONTRACTOR in writing of any incomplete or deficient work and CONTRACTOR shall complete such work or remedy such deficiencies. AGENCY shall not unreasonably withhold inspection of or certification of Substantial Completion or Final Completion. Upon final Completion, the AGENCY shall file a Notice of Completion with the Monterey County Recorder.

ARTICLE 3: CONTRACT PRICE

- 3.1** CONTRACTOR shall be compensated as full consideration under this AGREEMENT on a lump sum basis per completed bid item in accordance with the terms contained in the Bid Form, attached hereto, up to a total amount of **\$298,892.00**.
- 3.2** Compensation shall remain firm for term of this AGREEMENT, unless agreed otherwise by written Change Order as provided in Article 4 below.
- 3.3** Retention of five percent (5%) of each approved progress payment will be withheld by the AGENCY. At Substantial Completion the AGENCY, at its option, may release any portion of the retained amount to the CONTRACTOR.
- 3.4** Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than thirty (30) days.
- 3.5** CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from AGENCY via written Change Order.

ARTICLE 4: CHANGE ORDERS

- 4.1** **Change Order:** “Change Order” means a written modification of the Contract between the AGENCY and the CONTRACTOR, signed by the AGENCY and the CONTRACTOR.
- 4.2** **Change Order Proposal:** “Change Order Proposal” means a CONTRACTOR-generated document in response to a Change Order Request (COR).
- 4.3** **Change Order Request:** “Change Order Request” (COR) means a document which informs the CONTRACTOR of a proposed change in the Work, and appropriately describes or otherwise documents such change.
- 4.4** **Change Orders:** The AGENCY, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions, or other revisions. The contract shall be adjusted accordingly. All such changes in the work shall be authorized by change order and shall be executed under the applicable conditions of the contract documents. The contract sum may be changed only by change order. The amount to be paid to the CONTRACTOR pursuant to the Contract Documents shall, where applicable, be increased or decreased in the manner hereinafter set forth; provided however, that if the CONTRACTOR should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the CONTRACTOR of any claim for an increase in the Contract Sum on account thereof. Upon receipt of a written Change Order, the CONTRACTOR shall promptly proceed with the Change in the Work, even though the amount of any resultant increase or decrease in the contract sum has not yet been determined. All Changes in the Work shall be performed in accordance with the Contract Documents.
- 4.5** **Method to Calculate Adjustments in Contract Price:**
Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of the AGENCY. The use by the CONTRACTOR of the Total Cost Method

(calculating the total sum of expenses incurred on the project, less amounts paid, marked up by overhead and profit) of pricing changes and claims is expressly prohibited (provided however, the AGENCY may use a "make whole" analysis to determine the reasonableness of the CONTRACTOR's claim). One of the following methods shall be used:

- A. Unit Price Method;
- B. Firm Fixed Price Method (also known as Lump Sum); or
- C. Time and Materials Method.

4.5.1 Unit Price Method:

1. Whenever AGENCY or its representative authorizes CONTRACTOR to perform on a Unit Price basis, AGENCY's authorization shall clearly state the:
 - a. Scope of Work to be performed;
 - b. Applicable Unit Price; and
 - c. Not to exceed amount of reimbursement as established by the AGENCY.
2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including overhead and profit.
3. CONTRACTOR shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by AGENCY.

4.5.2 Firm Fixed Price Method:

1. The CONTRACTOR and AGENCY may mutually agree on a fixed amount as the total compensation for the performance of changed work.
2. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate, all reasonable costs for labor, equipment, material, overhead and profit.
3. Whenever the AGENCY authorizes CONTRACTOR to perform changed work on a Firm Fixed Price Method, the AGENCY's authorization shall clearly state:
 - a. Scope of Work to be performed; and
 - b. Total Fixed Price payment for performing such work.

4.5.3 Time and Materials Method:

1. Whenever the AGENCY authorizes the CONTRACTOR to perform Work on a Time and Materials basis, AGENCY's authorization shall clearly state:
 - a. Scope of Work to be performed; and
 - b. Not to exceed amount of reimbursement as established by the AGENCY.
2. CONTRACTOR shall:
 - a. Cooperate with AGENCY and assist in monitoring the Work being performed;
 - b. The CONTRACTOR's and subcontractors' labor hours, materials, and equipment charged to work under the Time and Materials Method shall be substantiated by detailed timecards or

logs completed on a daily basis before the close of business each working day. The CONTRACTOR shall initial each timecard and/or log at the close of each working day. Records of the CONTRACTOR and subcontractors pertaining to work paid for on a Time and Material method shall be maintained and available for inspection as requested by the AGENCY or its representatives;

- c. Perform all work in accordance with this provision as efficiently as possible; and
- d. Not exceed any cost limit(s) without AGENCY's prior written approval.

3. CONTRACTOR shall submit costs and any additional information requested by the AGENCY to support CONTRACTOR's requested price adjustment.

4.6 Unallowable Costs:

No change in the Contract Price shall be allowed to the extent: (1) CONTRACTOR's changed cost of performance is due to the fault, acts, or omissions of CONTRACTOR, or anyone for whose acts or omissions CONTRACTOR is responsible; (2) the change is concurrently caused by CONTRACTOR and AGENCY; or, (3) the change is caused by an act of *Force Majeure*.

The AGENCY shall not be responsible for, and the CONTRACTOR shall not be entitled to, unallowable costs. Unallowable costs include, but are not limited to: (1) interest or attorney fees of any type other than those mandated by California statutes; (2) claim preparation or filing costs; (3) the cost of preparing or reviewing Change Proposals or Requests for Change Orders; (4) lost profits, lost income or earnings; (5) rescheduling costs; (6) costs for idle equipment when such equipment is not at the Site, has not been employed in the Work and is not scheduled to be used at the Site; (7) lost earnings or interest on unpaid retention; (8) claims consulting costs; (9) the costs of corporate officers or staff visiting the Site or participating in meetings with the AGENCY; (10) any compensation due to the fluctuation of foreign currency conversions or exchange rates; (11) loss of other business; and (12) any other special, consequential, or incidental damages incurred by the CONTRACTOR or subcontractors.

4.7 Signatures on Change Orders:

A change order shall be in writing and shall be signed by the AGENCY's General Manager, or his designee. Except as otherwise provided herein, the change order shall also be signed by the CONTRACTOR in order to be effective, indicating the CONTRACTOR's consent to the changes made.

4.8 Changes Requiring an Increase in Contract Sum:

- 4.8.1 If the AGENCY elects to have the Change in the Work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the CONTRACTOR to the AGENCY within five (5) workdays of the AGENCY's request, but the AGENCY's request for a lump sum proposal shall not be deemed an election by the AGENCY to have the Change in the Work performed on a lump sum basis.
- 4.8.2 If the AGENCY elects to have the Change in the work performed on a unit-cost basis, its election shall be based on a unit price proposal which shall be submitted by the CONTRACTOR to the AGENCY within five (5) workdays of the AGENCY's request, but the AGENCY's request for a unit price proposal shall not be deemed an election by the

AGENCY to have the Change in the work performed on a unit price basis.

- 4.8.3 If the AGENCY elects to have the Change in the work performed on a time and material basis, the same shall be performed, its election shall be based on a time and materials price proposal which shall be submitted by the CONTRACTOR within five (5) workdays of the AGENCY's request, but the AGENCY's request for a time and materials price proposal shall not be deemed an election by the AGENCY to have the Change in the work performed on a time and materials basis.
- 4.8.4 Nothing herein contained shall preclude the AGENCY from requesting a lump sum proposal, a unit price proposal, and a time and materials price proposal, or any two of those, with respect to the same Change in the Work, in which event, the CONTRACTOR shall submit all proposals requested.
- 4.8.5 Until such time as the AGENCY makes its election under this paragraph, the CONTRACTOR shall submit daily time and material tickets to the AGENCY as required under subparagraph 4.8.3, which shall be subject to authentication as therein provided. At such time as the AGENCY makes its election under this paragraph, an appropriate Change Order will be issued; provided however, that until such time, the AGENCY shall pay to the CONTRACTOR up to the AGENCY's reasonable estimated value of the Change in the Work.

4.9 Changes Requiring a Decrease in Contract Sum:

If the Change in the Work will result in a decrease in the contract sum, the AGENCY may request a quotation by the CONTRACTOR of the amount of such decrease for use in preparing a Change Order. The CONTRACTOR's quotation shall be forwarded to the AGENCY within five (5) days of the AGENCY's request and, if acceptable to the AGENCY, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the work, as determined by the AGENCY in its reasonable judgment, plus ten percent (10%) thereof as overhead and profit.

4.10 Disputes Regarding Changes:

If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum or an expansion or contraction in the contract time as a result of a Change in the Work, the CONTRACTOR shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the AGENCY in writing. The AGENCY shall, however, pay to the CONTRACTOR up to the AGENCY's reasonable estimate of the value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Sum; and the AGENCY shall have the right to decrease the Contract Sum to the AGENCY's reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the contract sum.

4.11 Limitations:

Except as expressly provided by this Section, there shall be no change whatsoever in the plans and specifications and in the work. CONTRACTOR shall not vary the work, the contract documents, or change, add to or omit any element, component part, or portion of the work without the express written consent of AGENCY's Project Manager contained in an executed change order or field order as herein provided. AGENCY shall not be liable for the cost for any extra work or any substitutions, changes, additions, omissions, or deviations from the plans and specifications unless the same have been authorized by and the cost thereof approved in writing by change order. No extension of time for performance of the work shall be allowed hereunder unless claim for such extension shall be made at the time changes in the work are ordered and such duly adjusted in writing by AGENCY. CONTRACTOR recognizes and acknowledges that timely completion of the work is paramount and that its duty is to proceed with the work in accordance with the contract documents, notwithstanding any request for change in the work, to the extent that proceeding is reasonable and feasible under the circumstances.

ARTICLE 5: WARRANTIES

- 5.1** CONTRACTOR shall warrant the work performed under this AGREEMENT against faulty or defective materials, equipment, or workmanship for a period of one (1) year from the date of Substantial Completion.
- 5.2** CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the AGENCY, or immediate family of an employee of the AGENCY.
- 5.3** CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.4** CONTRACTOR shall at all times enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him. Any person in the employ of the CONTRACTOR whom the County may deem incompetent or unfit shall be dismissed from the work and shall not again be employed on it except with the written consent of the AGENCY.

ARTICLE 6: INDEMNIFICATION

- 6.1** CONTRACTOR shall indemnify, defend, and hold harmless AGENCY, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such

claims, liabilities, or losses arise out of the sole negligence or willful misconduct of AGENCY. “CONTRACTOR’s performance” includes CONTRACTOR’s action or inaction and the action or inaction of CONTRACTOR’s officers, employees, agents and subcontractors.

ARTICLE 7: INVOICES AND PURCHASE ORDERS

7.1 Invoice amounts shall be billed directly to the AGENCY, and delivered to:

ATTN: Manuel Saavedra
Monterey County Water Resources Agency
Address: 1441 Schilling Place, North Building, Salinas, CA 93901

7.2 CONTRACTOR shall reference the Project Name and contract number on all invoices submitted to AGENCY. CONTRACTOR shall submit such invoices monthly or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed as called for in the Bid Form and such other information pertinent to the invoice. AGENCY shall certify the invoice, either in the requested amount or in such other amount as AGENCY approves in conformity with this AGREEMENT and shall promptly submit such invoice to AGENCY Auditor-Controller for payment. AGENCY Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

7.3 Unauthorized Surcharges or Fees:

Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by AGENCY. Surcharges and additional fees not included in the AGREEMENT must be approved by AGENCY in writing via Change Order.

ARTICLE 8: BOND REQUIREMENTS

The CONTRACTOR shall furnish Performance and Payment Bonds, each in the amount 100 percent of the contract total price as security for the faithful performance and payment of all CONTRACTOR’s obligations under the AGREEMENT. These Bonds shall remain in effect until the bonded obligations are satisfied in full, provided that if any lawsuit is filed to enforce such obligations the bonds shall remain in effect until said lawsuit is finally resolved and any judgment satisfied, except as otherwise provided by law or regulation.

ARTICLE 9: INSURANCE

9.1 Evidence of Coverage:

9.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR upon request shall provide a certified copy of the policy or policies.

- 9.1.2 This verification of coverage shall be sent to the AGENCY's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by AGENCY. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.
- 9.1.3 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by AGENCY's Purchasing Officer.

9.2 Insurance Coverage Requirements:

- 9.2.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:
 - 9.2.2 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent CONTRACTORS, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$3,000,000 per occurrence and \$5,000,000 aggregate.
 - 9.2.3 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 - 9.2.4 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

9.3 Other Insurance Requirements:

- 9.3.1 All insurance required by this AGREEMENT shall be with a company acceptable to AGENCY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 9.3.2 Each liability policy shall provide that AGENCY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any,

performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

9.3.3 *Commercial general liability and automobile liability policies shall provide an endorsement naming the AGENCY of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the AGENCY and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.*

9.3.4 Prior to the execution of this AGREEMENT by AGENCY, CONTRACTOR shall file certificates of insurance with AGENCY's contract administrator and AGENCY's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

9.3.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by AGENCY, annual certificates to AGENCY's Contract Administrator and AGENCY's Contracts/Purchasing Division. If the certificate is not received by the expiration date, AGENCY shall notify CONTRACTOR and CONTRACTOR shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles AGENCY, at its sole discretion, to terminate this AGREEMENT immediately.

ARTICLE 10: OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

10.1 Independent CONTRACTOR:

CONTRACTOR shall be an independent CONTRACTOR and shall not be an employee of Monterey County, the AGENCY, nor immediate family of an employee of Monterey County or the AGENCY. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.

10.2 Minimum Work Performance Percentage:

CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent (50%) of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty

Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.

ARTICLE 11: SAFETY

11.1 CONTRACTOR's Responsibility for Safety:

The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- (a) All employees on the work and all other persons who may be affected thereby;
- (b) All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of the CONTRACTOR or any subcontractor; and
- (c) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

11.2 Compliance with Safety Requirements:

The CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. The CONTRACTOR shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent utilities.

11.3 Trench Safety:

For all trenches to be made in connection with the work, the CONTRACTOR shall submit a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trenches. If such plan varies from the shoring system standards, a registered civil or structural engineer shall prepare the plan. The plan shall be reviewed and must receive approval as adequate to protect worker safety, by the AGENCY or by a registered civil or structural engineer employed by the AGENCY, in advance of excavation. The shoring, sloping, or protective system must be at least as effective as that required by the Construction Safety Orders. See California Labor Code section 6705.

11.4 Hazardous Substances:

The term "hazardous substance" means any substance on the list of hazardous substances established by the Director of Industrial Relations pursuant to the California Labor Code section 6382, which includes asbestos, lead, toxic chemicals, contaminants, any substance designated by the Environmental Protection Agency as a hazardous substance, and other pollutants and contaminants.

11.4.1 If CONTRACTOR encounters on the property any substance reasonably believed to be a Hazardous Substance that has not been rendered harmless, i.e., not potentially hazardous to human health, CONTRACTOR shall immediately stop work in the area affected and report the condition to the AGENCY's Project Manager in writing.

11.4.2 Neither the CONTRACTOR nor any subcontractor shall cause or permit any Hazardous Substance to be brought upon the property or used in the work without the prior written consent of the AGENCY. CONTRACTOR and each subcontractor shall comply with all laws regarding the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation, or disposal of Hazardous Substances brought onto the property by CONTRACTOR, its subcontractors, and/or their personnel.

11.4.3 Any handling, treatment, removal, decontamination, cleanup, transportation, disposal, or disturbance in any of Hazardous Substances shall only be performed by the CONTRACTOR or any subcontractor licensed and certified to perform the work. Any hazardous substance abatement or remediation work will be performed in such a way that is legally consistent with the recommendations of the certified County agent, appropriate governmental agencies, and all applicable laws.

11.4.4 If there is a Hazardous Substance on the property, CONTRACTOR shall protect adjoining property and shall provide barricades, temporary fences, and covered walkways required to protect the health and safety of passersby as required by this Agreement, prudent construction practices, and all applicable laws.

11.5 CONTRACTOR's Safety Monitoring:

The CONTRACTOR shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the AGENCY.

11.6 Unsafe Loading:

The CONTRACTOR shall not load or permit any part of the work to be loaded so as to endanger its safety.

11.7 Emergencies:

In any emergency affecting the safety of persons or property, the CONTRACTOR shall act, at his discretion, to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by the CONTRACTOR on account of emergency work shall be determined as provided in Article 4 for changes in the work.

11.8 Accidents:

CONTRACTOR shall promptly report in writing to the AGENCY all accidents whatsoever arising out of, or in connection with the performance of the work, whether on or off the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, CONTRACTOR shall report the accident immediately to the Project Manager by telephone or messenger.

CONTRACTOR shall thereafter promptly report the facts in writing to the AGENCY giving full details of the accident.

ARTICLE 12: SUBCONTRACTORS

12.1 No Contractual Relationship between AGENCY and Subcontractors:

Nothing contained in the contract documents shall create any contractual relation between the AGENCY and any subcontractor.

12.2 Work Performed by Subcontractors; Substitutions:

Subcontracted work shall be performed only by the subcontractors identified in CONTRACTOR's bid documents, as provided by Public Contract Code sections 4100, *et seq.* Substitution of subcontractors may be made only in conformity with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, *et seq.* Subcontractors are to be registered with the California Division of Industrial Relations.

12.3 Contracts with Subcontractors:

All work performed for the CONTRACTOR by a subcontractor shall be pursuant to a written agreement between the CONTRACTOR and the subcontractor (and where appropriate, between subcontractors and sub-subcontractors). All such agreements shall require performance by the subcontractors in conformity with the terms of this contract, and shall include all the terms of this contract, which are applicable to subcontractors.

12.4 Payments to Subcontractors:

12.4.1 The CONTRACTOR shall pay each subcontractor, upon receipt of payment from the AGENCY, any amount equal to the percentage of completion allowed to the CONTRACTOR on account of such subcontractor's work, less the percentage retained from payments to the CONTRACTOR. The CONTRACTOR shall also require each subcontractor to make similar payments to his subcontractors. The AGENCY shall have the right, but not the obligation, to issue payment by joint checks payable to the order of CONTRACTOR and any of its subcontractors.

12.4.2 If the AGENCY fails to issue a certificate for payment for any cause which is the fault of the CONTRACTOR and not the fault of a particular subcontractor, the CONTRACTOR shall pay the subcontractor on demand, made at any time after the certificate for payment should otherwise have been issued, for his work to the extent completed, less the retained percentage.

12.4.3 The AGENCY shall not have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law. All monies paid to CONTRACTOR hereunder shall immediately become and constitute a trust fund and shall be applied by CONTRACTOR for the benefit of all persons supplying labor, materials or equipment in connection with the work and shall not be diverted to any other purpose until the claims of such persons have been discharged.

12.5 Information Provided to Subcontractors:

The AGENCY'S Project Manager may, on request and at his discretion, furnish to any subcontractor, if practicable, information regarding percentages of completion certified to the CONTRACTOR on account of work done by such subcontractors.

12.6 CONTRACTOR's Responsibility for Work of Subcontractors:

CONTRACTOR shall be as fully responsible to AGENCY for the acts and omissions of any subcontractor and of persons either directly or indirectly employed by the subcontractors, as he is for acts and omissions of persons directly employed by him.

ARTICLE 13: NOTIFICATION OF THIRD-PARTY CLAIMS

AGENCY shall notify CONTRACTOR of the receipt of any third-party claim relating to the contract and is entitled to recover its reasonable costs incurred in providing the notification as provided in Public Contract Code section 9201.

ARTICLE 14: LIQUIDATED DAMAGES

THE PARTIES AGREE THAT IN CASE ALL THE WORK CALLED FOR UNDER THE CONTRACT IN ALL PARTS AND REQUIREMENTS IS NOT COMPLETED WITHIN THE TIME SPECIFIED IN THE CONTRACT DOCUMENTS, DAMAGE WILL BE SUSTAINED BY THE AGENCY, AND THAT IT IS AND WILL BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE WHICH THE AGENCY WILL THEREBY SUSTAIN. THE PARTIES THEREFORE AGREE THAT THE CONTRACTOR WILL PAY TO THE AGENCY THE SUM OF **TWO HUNDRED NINETY-FOUR DOLLARS (\$294.00) PER DAY** FOR EACH CALENDAR DAY OF DELAY UNTIL THE WORK IS COMPLETED AND ACCEPTED. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE TOTAL AMOUNT THEREOF. THE CONTRACTOR AGREES TO PAY SAID LIQUIDATED DAMAGES ESTABLISHED HEREIN, AND FURTHER AGREES THAT THE AGENCY MAY DEDUCT THE AMOUNT THEREOF FROM ANY MONIES DUE OR THAT MAY BECOME DUE THE CONTRACTOR UNDER THE CONTRACT.

ARTICLE 15: RECORDS AND CONFIDENTIALITY

15.1 Confidentiality:

CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the AGENCY or prepared in connection with the performance of this AGREEMENT, unless AGENCY specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to AGENCY any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

15.2 AGENCY Records:

When this AGREEMENT expires or terminates, CONTRACTOR shall return to AGENCY any AGENCY records which CONTRACTOR used or received from AGENCY to perform services under this AGREEMENT.

15.3 Maintenance of Records:

CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and AGENCY rules and regulations related to services performed under this AGREEMENT.

15.4 Access to and Audit of Records:

AGENCY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of AGENCY or as part of any audit of AGENCY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

ARTICLE 16: CONFLICT OF INTEREST PROHIBITION

CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

ARTICLE 17: COMPLIANCE WITH APPLICABLE LAWS AND PERMIT REQUIREMENTS

- 17.1** CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of Services under this AGREEMENT.
- 17.2** CONTRACTOR shall report immediately to AGENCY's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 17.3** All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

ARTICLE 18: EMPLOYMENT PRACTICES

18.1 Non-Discrimination in Employment Practices:

CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

18.1.1. "Discrimination" Defined:

As used in this contract, the term "discrimination" includes but is not limited to the illegal denial of equal employment opportunity, harassment (including sexual harassment and violent harassment), disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or any other prohibited discriminatory practice. The term also includes any act or retaliation.

18.1.2. Application of Monterey County Code, Chapter 2.80:

The provisions of Monterey County Code, Title 2, Chapter 2.80, apply to activities conducted pursuant to this contract. CONTRACTOR and its officers and employees, in their actions under this contract, are agents of the Owner within the meaning of Chapter 2.80 and are responsible for ensuring that their workplace and the services that they provide are free from discrimination, as required by Chapter 2.80. Complaints of discrimination made by CONTRACTOR, subcontractor(s), or any of their employees or agents against the Owner may be investigated and resolved using the procedures established by Chapter 2.80. CONTRACTOR shall establish and follow its own written procedures for the prompt and fair resolution of discrimination complaints made against CONTRACTOR by its own employees, agents and third parties, and shall provide a copy of such procedures to the AGENCY upon demand by the AGENCY.

18.1.3 Compliance with Laws:

During the performance of this agreement, CONTRACTOR shall comply with all applicable federal, state, and local laws and regulations, which prohibit discrimination, including but not limited to the following:

- (a) California Labor Code section 1735;
- (b) California Fair Employment and Housing Act, Government Code sections 12900, *et seq.*, and the administrative regulations issued thereunder, Title 2 California Code of Regulations, sections 7285.0, *et seq.* (Division 4 - Fair Employment and Housing Commission);
- (c) California Government Code sections 11135 - 11139.5 (Title 2, Div. 3, Part 1, Chap.1, Art. 9.5) and any applicable administrative regulations issued thereunder;
- (d) Federal Civil Rights Acts of 1964 and 1991 (see especially Title VII, 42 USC sections 2000d, *et seq.*), as amended, and all administrative rules and regulations issued thereunder (see especially 45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;
- (e) The Rehabilitation Act of 1973, sections 503 and 504 (29 USC sections 793 and 794), as amended; all requirements imposed by the applicable HHS regulations (45 CFR Part 84); and all guidelines and interpretations issued pursuant thereto;
- (f) Americans With Disabilities Act of 1990 (P.L. 101- 336), as amended, 42 USC sections 12101, *et seq.*, and 47 USC sections 225 and 611, and any federal regulations issued pursuant thereto (see 24 CFR Chapter 1; 28 CFR Parts 35 and 36; 29 CFR Parts 1602, 1627 and 1630; and 36 CFR Part 1191;

- (g) Unruh Civil Rights Act, California Civil Code sections 51, *et seq.*; and
- (h) Monterey County Code, Title 2, Chapter 2.80, as amended and procedures issued pursuant thereto.

18.1.4 Written Assurances:

Upon request by the AGENCY, CONTRACTOR will give any written assurances of compliance with the Civil Rights Acts of 1964 and 1991, as amended, the Rehabilitation Act of 1973, as amended, the Americans With Disabilities Act of 1990, as amended, and/or Executive Order 11246, as may be required by the federal government in connection with this contract, pursuant to 45 CFR Sec. 80.4 or 45 CFR Sec. 84.5 or other applicable state or federal regulations.

18.1.5 Written Non-Discrimination Policy:

CONTRACTOR shall maintain a written statement of its non-discrimination policies, which shall be consistent with the terms of this agreement. Such statement shall be available to CONTRACTOR's employees, the Owner, Owner's officers and employees, and members of the public, upon request.

18.1.6 Access to Records by Government Agencies:

CONTRACTOR shall permit access by Owner and by representatives of the California Department of Fair Employment and Housing and the U.S. Equal Employment Opportunity Commission, and any federal and/or state AGENCY providing funds for this contract upon reasonable notice at any time during normal business hours, but in no case on less than 24-hour notice, to such of its books, records, accounts, facilities, and other sources of information as the inspecting party may deem appropriate to ascertain compliance with these non-discrimination provisions.

18.1.7 Binding on Subcontractors:

The provisions of Article 18.1 above shall also apply to all of CONTRACTOR's subcontractors. CONTRACTOR shall include the non-discrimination and compliance provisions of these paragraphs in all subcontracts to perform work or provide services under this agreement.

18.2 Eight-hour Day, 40-Hour Week:

No work shall be performed by employees of CONTRACTORs in excess of eight (8) hours per day or forty (40) hours during any one week, unless such employees are compensated for all such excess hours at not less than one-and-one/half times the basic rate of pay, as provided in Labor Code Sec. 1815. Holiday work when permitted by law shall also be compensated at not less than one-and-one-half times the basic rate of pay.

18.2.1 Penalties:

Pursuant to California Labor Code section 1813, the CONTRACTOR shall forfeit, as a penalty to the AGENCY, \$25 for each worker employed in the execution of the contract by the CONTRACTOR or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty

(40) hours in any one calendar week in violation of the provisions of the California Labor Code sections 1810-1815.

18.2.2 Approvals:

CONTRACTOR will not be entitled to additional compensation for work performed outside of regular working hours, except to the extent such compensation is approved in writing by AGENCY Project Manager in advance. If so approved, such compensation shall in such event cover only the direct cost of the premium portion of the time involved, when permitted, and be without any overhead or profit, unless agreed otherwise by AGENCY.

18.3 Prevailing Wages:

18.3.1 Prevailing Wage Rates Determined:

The Director of the California Department of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which said public work is to be performed for each craft, classification or type of worker needed to execute the contract in accordance with California Labor Code (sections 1720, *et seq.*). Copies of the prevailing rate of per diem wages are on file and shall be made available to any interested party on request in the Monterey County Water Resources Agency offices located at 1441 Schilling Place, North Building, Salinas, California. Current prevailing wage rate schedules can also be found at the California Department of Industrial Relations website located at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

18.3.2 Payment of Prevailing Wage Rates Required:

CONTRACTOR and all subcontractors performing work under this contract shall pay wages to their workers employed on such work at not less than the general prevailing rate of per diem wages for such work, as required by California Labor Code section 1771.

18.3.3 Penalties:

Failure to pay such prevailing wages shall subject the employer to the penalties set forth in California Labor Code section 1775.

18.4 Payroll Records:

18.4.1 Compliance with California Labor Code section 1776:

CONTRACTOR and all subcontractors shall comply with California Labor Code section 1776, the requirements of which are set forth in this article. The CONTRACTOR shall be responsible for compliance with these provisions by his subcontractors.

18.4.2. Accurate Payroll Records Required:

CONTRACTOR and each subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice worker, or other employee employed by him or her in connection with the public work.

18.4.3 Certification and Inspection of Payroll Records:

The payroll records enumerated under paragraph 26.02 shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR or

subcontractor on the following basis:

- (a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- (b) A certified copy of all payroll records enumerated in paragraph 26.02 shall be made available for inspection or furnished upon request to a representative of the AGENCY, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (c) A certified copy of all payroll records enumerated in paragraph 26.02 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the AGENCY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of the CONTRACTOR.

18.4.4 Filing of Records:

The CONTRACTOR and each subcontractor shall file a certified copy of the records enumerated in paragraph 18.4.2 with the entity that requested such records within ten (10) days after receipt of a written request.

18.4.5 Elimination of Personal Identification:

Any copy of records made available for inspection as copies and furnished upon request to the public or any public AGENCY by the AGENCY, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR or subcontractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29USC 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number.

18.4.6 Notice to AGENCY Concerning Location of Records:

The CONTRACTOR and each subcontractor shall inform the AGENCY as to the location of the records enumerated under paragraph 26.02, including the street address, city, and county, and shall, within five (5) workdays, provide a notice of any change of location and address.

18.4.7 Notice of Non-Compliance; Penalties:

In the event of non-compliance with the requirements of this section, the CONTRACTOR or subcontractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such CONTRACTOR or subcontractor must comply with this section. Should non-compliance still be evident after such ten (10) day period, the CONTRACTOR or subcontractor shall, as a penalty to the AGENCY, forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is affected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

18.5 Local Hiring Per County of Monterey Code 5.08.120:

All provisions included in County of Monterey Code section 5.08.120 are applicable to this AGREEMENT, including but not limited to:

County of Monterey Code section 5.08.120 General Provisions; Unless such a provision would conflict with a State or Federal law or regulation applicable to a particular contract for public works of improvement, all County contracts for public works of improvement shall contain provisions pursuant to which the CONTRACTOR promises to make a good-faith effort to hire qualified individuals who are, and have been for at least one year prior to the opening of bids, residents of the Monterey Bay Area in sufficient numbers so that no less than fifty percent (50%) of the CONTRACTOR's total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Monterey Bay Area residents. For the purpose of this Section, the following terms have the meanings indicated:

- "Board" shall mean the Monterey County Board of Supervisors.
- "Qualified individual" shall mean a person who is specially trained, skilled, and experienced in the work, trade, or craft specified in the portion of the public work of improvement to be performed or who is enrolled in a certified State or federally approved apprenticeship program in the applicable trade or who is a journey person in his or her applicable trade.
- "Resident of Monterey Bay Area" shall mean a person who resides within the boundaries of Monterey County, Santa Cruz County, or San Benito County.

ARTICLE 19: GENERAL TERMS AND CONDITIONS

19.1 Notice:

Notices required under this AGREEMENT shall be in writing and delivered personally or by first class or certified mail with postage prepaid. Notice shall be deemed effective upon personal delivery or on the third day after deposit with the U.S. Postal Service. CONTRACTOR shall give AGENCY prompt notice of any change of address. Unless changed according to these notice provisions, notices shall be addressed to:

TO AGENCY:

Attn: Manuel Saavedra
Monterey County Water Resources Agency
1441 Schilling Place, North Building
Salinas, CA 93901
Tel: (831) 755-4860
Email: saavedram@co.monterey.ca.us

TO CONTRACTOR:

Attn: Michael Maggiora
Maggiora Bros. Drilling, Inc.
595 Airport Blvd.
Watsonville, CA 95076
Tel: (831) 724-1338
Email: watsonville@maggiorabros.com

"Notice" shall be included in the subject line. Notice by facsimile or electronic mail shall not constitute "Notice" under this Section.

19.2 Governing Law:

This Agreement is made under and will in all respects be interpreted, enforced and governed by the laws of the State of California, without regard to that state's conflict of laws principles.

19.3 Amendment:

This Agreement cannot be altered, amended or modified in any respect, except by a writing duly executed by the Parties.

19.4 Non-Waiver:

No course of dealing between or among the Parties shall be deemed to affect, modify, amend or discharge any provision or term of this Settlement Agreement. No delay in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise of any right or remedy shall operate as waiver hereof, and so single or partial exercise of any such right or remedy shall preclude other or future exercise thereof. This Settlement Agreement is the result of good faith negotiations and compromise. The agreements and releases contained in this Settlement Agreement effect the settlement of claims which are denied and contested, and nothing set forth herein shall be construed as an admission by any party hereto of any liability of any kind to the other, or to any other person, corporation or any other type of entity. This Settlement Agreement is executed solely as a compromise to avoid the expense of litigation.

19.5. Claims and Dispute Resolution:

19.5.1 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

19.5.2 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

19.5.3 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

19.5.4. Prompt resolution of differences required. It is the intention of this Article that differences between the parties arising under and by virtue of this Contract be brought to the attention of Engineer at the earliest possible time in order that such matters may be promptly settled, if possible, or other appropriate action may be taken promptly. To that end, Agency and Contractor agree to attempt informal resolution of disputes prior to initiating the Claim process.

19.5.5. Contract interpretations/ performance judging/decisions by Engineer.

a) All Claims may be presented informally first to Engineer. To the extent that resolution of the Claim does not involve an extension of time or additional payments, Engineer may resolve, in writing, or otherwise, Claims that have been presented informally.

(b) The Engineer will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance there under by both Agency and Contractor. The Engineer will, within a reasonable time, render such interpretations, as may deem necessary for the proper execution or progress of the Work. Claims, disputes, and other matters in question between Contractor and Agency relating to the execution or progress of the Work or interpretation of the Contract Documents shall be referred initially to the Engineer for decision which Engineer will render, in writing, within a reasonable time. In Engineer's capacity as interpreter and judge, Engineer will exercise his or her best efforts to ensure faithful performance by both Agency and Contractor and will not show partiality to either. All interpretations and decisions of the Engineer shall be consistent with the intent of the Contract Documents.

19.5.6 Obligation to Seek Informal Resolution Prior to Filing Claim for Disputed Work. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any Work performed, Work omitted, extra Work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time, compensation or payment FOR ANY REASON WHATSOEVER, then Contractor shall first follow procedures set forth in the Contract. If a dispute remains, then Contractor shall give written notice to Agency that expressly invokes this Article 33. Agency shall decide the issue in writing within fifteen (15) days; and Agency's written decision shall be final and conclusive.

19.5.7 Time for giving notice. Notice of dispute or potential Claim must be given in writing by the Contractor as follows:

(a) For a potential Claim of an increase in the Contract Sum, Contractor shall give the Engineer written notice thereof within ten (10) days after the occurrence of the event giving rise to such Claim; in addition, this notice shall be given by Contractor before proceeding to execute the portion of the Work to which the Claim relates, except in an emergency endangering life or property, and except where Contractor could not reasonably have discovered the facts giving rise to the Claim prior to commencement of that portion of the Work.

(b) For a potential Claim of an extension of time, Contractor shall give written notice to the Engineer no more than ten (10) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one (1) Claim is necessary.

(c) In all other cases, notice shall be given within ten (10) days after the happening of the event, thing, or occurrence giving rise to the potential Claim.

19.5.8 Form and Contents of Claim: If Contractor disagrees with Agency's decision, or if Contractor contends that Agency failed to provide a decision timely, then Contractor's SOLE AND EXCLUSIVE REMEDY is to promptly file a written Claim setting forth Contractor's position as required herein. The Claim shall be submitted to Agency within thirty (30) calendar days of receiving Agency's written decision, or the date Contractor contends such decision was due. The Contractor shall furnish reasonable documentation to support the Claim. Contractor's written Claim must identify itself as a "Claim" under this Article 19 and must include the following: (1) a narrative of pertinent events; (2) citation to contract provisions; (3) theory of entitlement; (4) complete pricing of all cost impacts; (5) a time impact analysis of all time delays that shows actual time impact on the critical path; and (6) documentation supporting items (1) through (5). The Claim must be verified under penalty of perjury by Contractor as to the Claim's accuracy, and shall be priced like a Change Order, and must be updated monthly as to cost and entitlement if a continuing Claim. The Claim must be sent by registered mail or certified mail with return receipt requested to the Agency, Notices, of the Agreement. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a Claim. Contractor shall bear all costs incurred in the preparation and submission of a Claim.

19.5.9 Actions by Agency Upon Receipt of Claim:

- (a) Upon receipt of a Claim, the Agency shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed.
- (b) The Agency and the Contractor may, by mutual agreement, extend the time period provided in this Article.
- (c) If the Agency needs approval from the Board of Supervisors to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Board does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the Agency shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the forty-five (45) day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

19.5.10 Written Statement by Agency: Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Agency issues its written statement. Failure by the Agency to issue a written statement shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the Agency's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Article 19, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the Contractor.

19.5.11 Contactor's Dispute of Written Response: If the Contractor disputes the Agency's written response, or if the Agency fails to respond to a Claim issued pursuant to this Article within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the Agency shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

19.5.12 Written Statement by Agency After Meet and Confer Conference: Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Agency shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Agency issues its written statement.

19.5.13 Nonbinding Mediation:

(a) Any disputed portion of the Claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the Agency and the Contractor sharing the associated costs equally. The Agency and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall

select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(b) Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

(c) If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this Article.

(d) Unless otherwise agreed to by the Agency and the Contractor in writing, the mediation conducted pursuant to this Article shall excuse any further obligation under Section 20104.4 of the Public Contract Code to mediate after litigation has been commenced.

(e) The Claim resolution procedures in this Article do not preclude the Agency from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this Article does not resolve the parties' dispute.

19.5.14 Amounts Not Paid Timely: Amounts not paid in a timely manner as required by this Article shall bear interest at 7 percent per annum.

19.5.15 Claims by Subcontractors: If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a Claim against the Agency because privity of contract does not exist, the Contractor may present to the Agency a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a Claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the public entity shall furnish reasonable documentation to support the Claim. Within forty-five (45) days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Claim to the Agency and, if the original Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

19.5.16 Prompt response when needed: Whenever it appears that a prompt response is essential, Agency will respond to Claims sooner than the limits prescribed above.

19.5.17 Compliance:

(a) The provisions of this Article constitute a non-judicial Claim settlement procedure that, pursuant to Section 930.2 of the California Government Code, shall constitute a condition precedent to submission of a valid Claim under the California Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a Claim. Any Claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the Claims procedure herein and the previous dispositions of the Claims asserted. Pursuant to Government Code section 930.2, the one (1) year period in Government Code section 911.2 shall be reduced to one hundred and fifty (150) days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.

(b) Failure to submit and administer Claims as required in Article 19 shall waive Contractor's right to Claim on any specific issues not included in a timely submitted Claim. Claim(s) or issue(s) not raised in a timely protest and timely Claim submitted under this Article 19 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

(c) Agency shall not be deemed to waive any provision under this Article 19, if at Agency's sole discretion; a Claim is administered in a manner not in accord with this Article 19. Waivers or modifications of this Article 19 may only be made through a signed Change Order approved as to form by legal counsel for both Agency and Contractor; oral or implied modifications shall be ineffective.

19.5.18 Filing of Government Code claims: If the Contractor still remains unsatisfied and desires to preserve his/her right to pursue the matter further, Contractor must then file a claim with Agency, pursuant to Government Code sections 900, *et seq.* or sections 910, *et seq.*

19.5.19 Civil action: If the Government Code claim is denied, Contractor may file an action in court. Such action shall be subject to Public Contract Code sections 9204 or 20104.4. This Section applies only to claims subject to Public Contract Code sections 9204 or 20104. If a claim is not subject to Public Contract Code sections 9204 or 20104, the Contractor's right to file a civil action shall be as otherwise provided by law.

19.5.20 Claims for damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his/her/its employees, agents, or others for whose acts he/she/it is legally liable, Claim shall be made, in writing, to such other party within a reasonable time after the first observance of such injury or damage, provided that in no case may such a Claim be filed after expiration of any applicable statute of limitations for filing such a Claim. Claims against Agency that are subject to this Article shall comply with all procedures set forth in the California Government Code concerning claims against public entities.

19.5.21 Consistency with Public Contract Code sections 9204 and 20104, *et seq.* If any Claim arising under this Contract is subject to the provisions of Public Contract Code sections 9204 or 20104, *et seq.* (Div. 2, Part 3, Chapter 1, Article 1.5), and if provisions of that Article require a procedure or procedural element different from that established in this Contract, then the provisions of that Article shall apply in place of the conflicting procedure or procedural element established herein.

19.6 Enforcement:

If there is litigation of any kind between the Parties arising out of or concerning the enforcement of this Settlement Agreement or if the releases set forth herein are interposed as a defense in any litigation between the Parties, the prevailing party shall be entitled to recover from the other party the reasonable attorney's fees and costs incurred in connection with such litigation.

19.7 Counterparts:

This Settlement Agreement may be executed in counterparts and has the same force and effect as if all the signatures were obtained in one document.

ARTICLE 20: OTHER PROVISIONS

20.1 In order to induce Agency to enter into this Agreement, CONTRACTOR represents that it is duly organized, existing and in good standing under applicable state law; is licensed to perform all aspects of the Work; will employ only persons and Subcontractors and designers with all required licenses and certifications; that CONTRACTOR is duly qualified to conduct business in the State of California; that CONTRACTOR has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be

performed herein; and that the Contract Documents do not violate or create a default under any instrument, Agreement, order or decree binding on CONTRACTOR.

- 20.2** CONTRACTOR shall not assign any portion of the Contract Documents.
- 20.3** Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding Agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 20.4** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Agency or acting as an employee, agent, or representative of Agency, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Agency is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 20.5** In entering into a Public Works Contract or a Subcontract to supply goods, services or materials pursuant to a Public Works Contract, CONTRACTOR or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the Public Works Contract or the Subcontract. This assignment shall be made and become effective at the time Agency tenders final payment to CONTRACTOR, without further acknowledgment by the parties.
- 20.6** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Agency's Office and shall be made available to any interested party on request. Pursuant to California Labor Code sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every CONTRACTOR will be required to secure the payment of compensation to his/her/its employees. CONTRACTOR represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in

accordance with the provisions of that code, and CONTRACTOR shall comply with such provisions before commencing the performance of the Contract Documents.

20.7 Agency shall have the right to review all phases of CONTRACTOR's design of deferred submittals including, but not limited to, Drawings, Specifications, Shop Drawings, samples and submittals, as specified in the Contract Documents. Such review and other action shall not relieve CONTRACTOR of its responsibility for a complete design of deferred submittals complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of Agency's monitoring and accepting the design of deferred submittals as developed and issued by the CONTRACTOR, consistent with these Contract Documents. CONTRACTOR's responsibility to design deferred submittals and construct the Project in conformance with the Contract Documents shall be absolute.

20.8 This Agreement and the Contract Documents shall be deemed to have entered into in the Monterey County Water Resources Agency and governed in all aspects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Monterey.

IN WITNESS WHEREOF, AGENCY and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

WATER RESOURCES AGENCY

CONTRACTOR

NAME: _____

Brent Buche

General Manager

Signed *

Date

Print Name

Title

Date

Signed *

Print Name

Title

Date

* If CONTRACTOR is a corporation (including limited liability and non-profit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

Approved as to form:

Deputy County Counsel

Date

Risk Management

Date

Auditor-Controller's Office

Date

County Administrative Office

Date