

AMENDED AGENDA

(NOTE: This amendment is limited to the addition of Agenda Item #14)

REGULAR MEETING

**GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT BOARD OF DIRECTORS
6425 MAIN STREET, GEORGETOWN, CALIFORNIA**

**TUESDAY, DECEMBER 13, 2016
2:00 P.M.**

MISSION STATEMENT

It is the purpose of the Georgetown Divide Public Utility District to:

- Provide reliable water supplies
 - Ensure high quality drinking water
 - Promote stewardship to protect community resources, public health, and quality of life
 - Provide excellent and responsive customer services through dedicated and valued staff
 - Insure fiscal responsibility and accountability are observed by balancing immediate and long term needs.
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1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

2. ADOPTION OF AGENDA

3. BOARD REORGANIZATION

- A. Adoption of Resolution 2016-18** Accepting and Declaring the results from the El Dorado Registrar of Voters for the November 8, 2016, Election of the Georgetown Divide Public Utility District Board of Directors.

Discussion – The El Dorado County Registrar of Voters certified the results of the November 8, 2016, election. Resolution 2016-18 provides for the acceptance of these results by the Board of Directors.

Board Action – Adopt Resolution 2016-18 Accepting and Declaring the results of the November 8, 2016, Election.

B. Oath of Office of Elected Directors, Administered by Legal Counsel

❖ **Dane Wadle** (Seat 4)

❖ **David Halpin** (Seat 5)

C. Election of Officers for Calendar Year 2017 (President, Vice-President, and Treasurer)

Discussion – Each year the Board of Directors elects its officers. While there is no legal requirement or timing of officer elections, officers have traditionally been elected during the December or January Board Meeting.

Director Hoelscher, as Vice-President, will preside over the election of officers.

Possible Board Action – Receive nominations and elect officers.

D. Presentation of Commendations to Outgoing Directors for Distinguished Service to the District

4. **PUBLIC FORUM** – Any member of the public may address the Board on any matter within the jurisdictional authority of the District. Public members desiring to provide comments, must be recognized by the Board President, and speak from the podium. Comments must be directed only to the Board. The public should address the Board members during the public meetings as President, Vice President, or Director, followed by the Board member's individual last name. The Board will hear communications on matters not on the agenda, but no action will be taken.

No disruptive conduct shall be permitted at any Board meeting. Persistence in disruptive conduct shall be grounds for summary termination, by the President, of that person's privilege of address.

5. **CONSENT CALENDAR**

- A. Approval of Minutes of Regular Meeting of November 8, 2016, and Special Meeting of November 16, 2016.

B. Financial Reports

1. Early Pays – December 2016
2. October 2016 Month End Cash Disbursements Report
3. October 2016 Month End Payable Activity Report

- C. Approval of Contract with Sacramento Prestige for Gunite Work at Upper and Lower Cherry Acres

Discussion – The Board-approved 2016-17 Capital Budget provides for funding for regular maintenance and repairs (M & R). When the Board considered the approval of the Capital Budget, District Staff provided a list of M & R projects to be funded through this account. The gunite work at Upper and Lower Cherry Acres is included on this list.

Possible Board Action – It is Staff's recommendation that the Board authorize the Interim General Manager to negotiate a contract with Sacramento Prestige Gunite for all necessary labor, material, and equipment for the placement of gunite at Upper and Lower Cherry Acres, with payment from Account 5200, Maintenance and Repairs.

- D. Approval of Contract with Crowton's Excavation & Grading for Blacktop Patchwork

Discussion – The Board-approved 2016-17 Capital Budget provides for funding for regular maintenance and repairs (M&R). When the Board considered the approval of the Capital Budget, the District Staff provided a list of M & R projects to be funded through this account. The blacktop patch work at various locations within the District was included on this list.

Possible Board Action – It is Staff's recommendation that the Board authorize the Interim General Manager to negotiate a contract with Crowton's Excavation & Grading for all necessary labor, materials, and equipment for the repair of blacktop at various locations within the District, with payment from Account 5200, Maintenance and Repairs.

- E. Approval of Contract with K & W Backflow Service for Hazard Survey

Discussion – This contract with K & W Backflow Service will provide for compliance by the District with a State requirement to conduct an annual cross connection hazard survey of the District’s potable water system. Payment for this service will come from Account 5300 of the General Fund.

Possible Board Action – It is Staff’s recommendation that the Board authorize the Interim General Manager to negotiate a contract with K & W Backflow Service with payment from Account 5400 of the General Fund.

6. UPDATE ON THE GENERAL MANAGER SELECTION PROCESS

Discussion – It was reported at the regular Board meeting of November 8, 2016, that the executive search consultant has received 16 applications for the General Manager position.

At the special Board meeting of November 16, 2016, the Board created the General Manager Hiring Committee to include Directors Hanschild, Hoelscher, Uso; newly elected Directors Halpin and Wadle; and Interim General Manager Darrell Creeks. The Board also indicated that this committee would vet all the applications received in a special closed session.

Possible Board Action – Set a Special Closed Session Meeting for Thursday, December 15, 2016, at 5:30 p.m. and direct District Staff to post the agenda as required.

7. PRESIDENT’S REPORT

8. BOARD REPORTS

9. GENERAL MANAGER’S REPORT

10. OPERATIONS MANAGER’S REPORT

11. FINANCE COMMITTEE REPORT

12. GEORGETOWN DIVIDE RECREATION DISTRICT WATER BILL

Discussion – At the regular Board meeting of October 11, 2016, the Board of Directors considered a request from the Georgetown Divide Recreation District (GDRD) for a reduction in their water bill for the July-August period due to leakage.

The GDRD has indicated they will pay the balance of the bill, but is requesting that payment be deferred to February.

Possible Board Action – It is Staff’s recommendation that the Board allow the GDRD to pay the remaining balance of \$5,539 on their July-August bill with their February payment.

13. ALT TREATMENT UPDATE

Discussion – This constitutes this month’s update on the ALT Treatment Plant Project with the most prominent item being the receipt, by District Staff, of a fully executed Installment Sales Agreement (Loan) from the State. The other update items pertain to the Notice to Proceed with the construction contract, and the status of the RFP for construction management.

Possible Board Action – It is Staff’s recommendation that the Board authorize the issuance of the Notice to Proceed with the work subject to execution of the Construction Contract.

14. **RESOLUTION 2016-21 -- AUTHORIZING THE CONTRACT WITH MYERS & SONS TO CONSTRUCT THE ALT WATER TREATMENT PLANT**

Discussion – This agenda item requests the Board adopt Resolution 2016-21 authorizing the Interim General Manager to enter into a contract with Myers & Sons for the construction of the ALT Water Treatment Plant and approve the Construction Contract subject to finalizing by Legal Counsel.

Possible Board Action -- It is Staff’s recommendation that the Board adopt Resolution 2016-21 and approves the contract with Myers & Sons subject to finalizing by Legal Counsel representing the District and Myers & Sons.

15. **BOARD MEMBER COMMENTS, REQUESTS FOR ADDITIONS TO FUTURE MEETING AGENDAS AND REQUESTS FOR INFORMATION OR RESEARCH TO BE COMPLETED BY STAFF** – Opportunity for Board members to discuss matters of interest to them and provide input for future meetings as well as report on their District-related meeting attendance.

16. **CLOSED SESSION**

A. CONFERENCE WITH LEGAL COUNSEL – Discussion about Ongoing Litigation.

Name of Case: Jacoby vs. GDPUD

B. Public Employee Performance Evaluation pursuant to Government Code Section 54957(b). Title: District CPA

ADJOURN TO OPEN SESSION – Announcement of action taken in closed session.

17. **NEXT MEETING DATE AND ADJOURNMENT** – Next regular meeting January 12, 2017, at 2:00 PM at the Georgetown Divide Public Utility District office.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact Darrell Creeks by telephone at 530-333-4356 or by fax at 530-333-9442. Requests must be made as early as possible and at least one-full business day before the start of the meeting. In accordance with Government Code Section 54954.2(a), this *AMENDED* agenda was posted on the District’s bulletin board at the Georgetown Divide Public Utility District office, at 6425 Main Street, Georgetown, California, on December 9, 2016.

Memo



To: Board of Directors
From: George Sanders, Engineering Consultant
Date: December 9, 2016
SUBJECT: **ADOPTION OF RESOLUTION 2016-21 AUTHORIZING INTERIM GENERAL MANAGER TO ENTER INTO A CONTRACT WITH MYERS & SONS TO CONSTRUCT THE AUBURN LAKE TRAILS WATER TREATMENT PLANT**

Board Meeting of December 13, 2016; **Agenda Item #14**

BACKGROUND / DISCUSSION

This agenda item requests the Board adopt Resolution 2016-21 authorizing the Interim General Manager to enter into a contract with Myers & Sons for the construction of the Auburn Lake Trails Water Treatment Plant (**Attachment 1**).

Included with this Staff Report is the Construction Contract (**Attachment 2**) which has undergone review of Legal Counsel, representing both the District and the Contractor. In a final review by District Staff, there may remain additional items that need to be included, subject to the approval of the Counsel representing both parties.

RECOMMENDATION

It is Staff's recommendation that the Board adopt Resolution 2016-21 authorizing the Interim General Manager to enter into a contract with Myers & Sons, LP, for the construction of the Auburn Lake Trails Water Treatment Plant; and approve the Construction Contract, subject to finalizing by Legal Counsel representing the District and Myers & Sons.

RESOLUTION NO. 2016-21

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GEORGETOWN
DIVIDE PUBLIC UTILITY DISTRICT AUTHORIZING THE INTERIM GENERAL
MANAGER TO ENTER INTO A CONTRACT WITH MYERS AND SONS
CONSTRUCTION, LP TO CONSTRUCT THE AUBURN LAKE TRAILS WATER
TREATMENT PLANT CONSTRUCTION PROJECT**

WHEREAS, the Georgetown Divide Public Utility District (“District”) is in the process of upgrading its drinking water treatment system to comply with state regulations regarding the filtration of drinking water by constructing a project commonly known as the Auburn Lake Trails Water Treatment Plant Construction Project (“Project”); and

WHEREAS, the District issued a request for proposals to construct the Project on April 4, 2016 and accepted bids until 2:00 p.m. on Wednesday, June 8, 2016; and

WHEREAS, Myers and Sons Construction, LP (“Myers and Sons”) submitted a bid to construct the Project during the bidding period and was the lowest responsible bidder; and

WHEREAS, on August 23, 2016, at the District Board of Director’s meeting, the Board of Directors awarded Myers and Sons the contract to build the Project, contingent upon securing funding for the Project from the State Water Resources Control Board Drinking Water State Revolving Fund program; and

WHEREAS, the District has successfully secured funding for the Project through the State Water Resources Control Board Drinking Water State Revolving Fund program and has negotiated a contract with Myers and Sons to construct the Project; and

WHEREAS, the District’s Board of Directors wishes to authorize the District’s Interim General Manager to execute the contract with Myers and Sons to construct the Project.

NOW, THEREFORE, be it resolved and order by the Board of Directors of the Georgetown Divide Public Utility District that:

The Board of Directors hereby authorizes the Interim General Manager, or designee to execute a contract with Myers and Sons Construction, LP to construct the Auburn Lake Trails Water Treatment Plant.

PASSED AND ADOPTED by the Board of Directors of the GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT this 13th day of December 13, 2016.

AYES:

NOES:

ABSENT/ABSTAIN:

_____, President
Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

ATTEST:

Darrell Creeks, Clerk and ex officio
Secretary, Board of Directors
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of Resolution 2016-XX duly and regularly adopted by the Board of Directors of the Georgetown Divide Public Utility District, County of El Dorado, State of California, on the 13th day of December, 2016.

Darrell Creeks, Clerk and ex officio
Secretary, Board of Directors
Georgetown Divide Public Utility District

**GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT
PROJECT: Auburn Lake Trails Water Treatment Plant
PROJECT NO.**

AGREEMENT FOR CONSTRUCTION SERVICES

THIS CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20____, by and between the Georgetown Divide Public Utility District, a public utility district of the State of California (“District”), and _____, a _____, (“Contractor”) (each individually, a “Party” and collectively, the “Parties”). There are no other parties to this Agreement.

RECITALS

A. District’s Board of Directors (the “Board”) caused plans and specifications for the construction work herein described (the “Project”), and did approve and adopt said plans and specifications (the “Plans”), which are attached hereto as **Exhibit A**.

B. District did publish a notice and invitation to submit sealed bids for the performance of the Project (the “Invitation to Bid”), which is attached hereto as **Exhibit B**, on April 4, 2016, at the time and in the manner required by law and District policy.

C. District also provided instructions for submitting bids on the Project (“Instructions for Bidders”) and the State Revolving Fund Requirements and Forms (“SRF Requirements”), which are attached hereto as **Exhibit C**.

D. Contractor, in response to such Invitation to Bid, submitted to District within the time specified in the Invitation to Bid and in the manner provided therein, a sealed bid to perform the Project as specified in said plans and specifications, which the Board publicly opened and canvassed in the manner provided by law with other bids submitted for the Project.

E. Contractor’s bid included a bid schedule (the “Bid Schedule”), which is attached hereto as **Exhibit D**, and which sets forth details about Contractor’s completion of the Project, including extended costs for the Project materials.

F. Contractor provided the required bid guarantee and executed bid guarantee form, which is attached hereto as **Exhibit E**, at the same time Contractor submitted its bid.

G. Contractor’s bid included a list of subcontractors designated to perform specified

portions of the Project (“Designation of Subcontractors”), which is attached hereto as **Exhibit F**.

H. Within five (5) business days of the last day to submit bids for the Project, Contractor submitted certifications of qualification for Contractor and its subcontractors on the Project, which are collectively attached hereto as **Exhibit G**.

I. Contractor was the lowest responsible bidder for the performance of the Project. The Board, as a result of the canvass of said bids, determined and declared Contractor as the lowest responsible bidder for the Project and awarded a contract therefor.

J. Contractor represents to District that it is a duly qualified firm experienced in the construction of water facilities.

K. In the judgment of the Board, it is necessary and desirable to employ the services of Contractor to perform construction work on the Project.

L. Pursuant to Contractor’s bid, Contractor will complete the Project in accordance with District’s Plans and all other Contract Documents (defined below).

M. Contractor’s timeframe for completing the Project is set forth in the “Time Allowed for Completion and Liquidated Damages,” which is attached hereto as **Exhibit H** (the “Completion Schedule”).

N. As a condition of awarding the Project to Contractor, Contractor must furnish payment and performance bonds (the “Bonds”).

O. District desires to retain Contractor to perform the Project in accordance with District’s General Conditions (the “General Conditions”), attached hereto as **Exhibit I**, District’s general performance standards (the “Performance Standards”), which are contained within Article 13 of the General Conditions, and the terms and conditions set forth in this Agreement.

P. Unless otherwise provided in this Agreement, abbreviations and capitalized terms shall have the meanings ascribed to them in sections 1.01 and 1.02 of the General Conditions.

Q. Collectively, this Agreement along with Exhibits A through I comprise the contract documents (the “Contract Documents”).

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (the “Recitals”) are true and correct, and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistencies between the Recitals and Sections 1 through 23 of this Agreement, Sections 1 through 23 shall prevail.

Section 2. Term. This Agreement shall commence on the effective date and naturally terminate after final payment to Contractor by District as defined by section 14.07 of the General Conditions. Article 15 of the General Conditions provides for “Terminations for Cause or Convenience.”

Section 3. Effective Date. This Agreement shall only become effective once all of the Parties have executed the Agreement (the “Effective Date”). Contractor, however, shall not commence the performance of services until it has been given notice by District (the “Notice to Proceed”).

Section 4. Work.

(a) *Services.* Subject to the terms and conditions set forth in this Agreement and the Contract Documents, Contractor shall perform the services necessary to complete the Project (the “Services”) within the required timeframe and in accordance with the standards and specifications established in the Contract Documents. Contractor shall not be entitled to receive additional compensation with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in case of emergency or in the case of uncovering work, as provided by the Contract Documents.

(b) *Modification of Services.* The District, without invalidating this Agreement, may order changes to the Services, consisting of additions, deletions, or other revisions. All such changes to the Services, including contract price and contract time, shall be authorized by change order or work change directive, signed by District’s General Manager. Contractor shall not be entitled to an increase in the contract price or an extension of the contract time if it fails to secure such written authorization for such work, except in the case of an emergency as provided in General Conditions section 6.16, or in the case of uncovering work, as provided in General Condition section 13.04.D.

Section 5. Time of Performance. Contractor warrants that it will commence performance of the Services on the date specified in the Notice to Proceed, and shall conform to the Completion Schedule. The time of performance is a material term of this Agreement relied on by District in entering into this Agreement. It is agreed by the Parties that time is of the essence, and that if the Project is not substantially complete within five hundred ninety (590) days after the date of commencement provided in the Notice to Proceed, and not completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within six hundred fifty (650) days after the date of commencement provided in the Notice to Proceed, damage will be sustained by District, and it may be impracticable to determine the actual amount of damage resulting from the delay. It is, therefore, agreed that Contractor shall pay to District as damages, the amount of Two Thousand Three Hundred Fifty-Eight Dollars (\$2,358.00) for each and every day substantial

completion is not reached within five hundred ninety (590) days after the date of commencement provided in the Notice to Proceed, plus any proper extension provided in the Contract Documents. It is agreed that Contractor shall pay to District as damages, the amount of One Thousand Three Hundred Fifty Dollars (\$1,350.00) for each and every day the Project is delayed following substantial completion prior to the date in which the work is completed and ready for final payment, unless such date is reached within six hundred fifty (650) days after the date of commencement provided in the Notice to Proceed, plus any proper extension provided in the Contract Documents. The Parties expressly agree that this liquidated damage clause is reasonable under the circumstances existing at the time this Agreement is made. The District shall have the right to deduct the amount of liquidated damages owed pursuant to this section from any money due or to become due to Contractor.

Section 6. Payment.

(a) *Payment.* District shall pay Contractor for all services which are to be performed by Contractor, and Contractor agrees to accept the compensation provided in the Bid Schedule, which is summarized as follows:

Total compensation for completion of Project: \$ _____ total.

(b) *Progress Payments; Retainage.* Owner shall make progress payments on account of the contract price ten (10) days after presentation of Contractor's application for payment to District during performance of the work. All such payments will be measured by the schedule of values established as provided in paragraph 2.07.A of the General Conditions (and in the case of unit price work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.

Prior to substantial completion, progress payments will be made in an amount equal to the percentage indicated below, subject to the provisions of paragraph 14.02 of the General Conditions.

- i. Ninety-five percent (95%) of work completed (with the balance being retainage).
- ii. Ninety-five percent (95%) of cost of materials and equipment not incorporated in the work (with the balance being retainage).

Upon substantial completion, District shall pay an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the work completed, less such amounts as engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less one hundred percent (100%) of engineer's estimate of the value of work to be completed or corrected, as shown on the tentative list of items to be completed or corrected attached to the certificate of substantial completion.

Section 7. Representations of Contractor. District relies upon the following representations by Contractor in entering into this Agreement:

(a) *Standard of Care.* District has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that it is qualified to perform the Services provided in the Contract Documents and that all of its work will be performed in accordance with the performance standards provided in the Contract Documents, using generally accepted construction practices and standards, in compliance with all applicable federal, state and local laws.

(b) *Independent Contractor.* In performing the Services hereinafter specified, Contractor shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of District, and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits District provides its employees. In the event District exercises its right to terminate this Agreement, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees. Nothing contained herein shall be construed as creating an employment, agency, or partnership relationship between District and Contractor.

(c) *Taxes.* Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and taxes under the Federal Insurance Contributions Act. Contractor agrees to indemnify and hold District harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case District is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish District with proof of payment of taxes on these earnings.

(d) *Authority.* Contractor represents that it possesses the necessary licenses, permits, or approvals required to perform the Services or will obtain such licenses, permits, or approvals prior to the time such licenses, permits, or approvals are required. Contractor shall also ensure that all subcontractors are similarly licensed and qualified. Contractor represents and warrants to District that Contractor shall, at Contractor's sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Contractor to practice Contractor's profession at the time the Services are rendered.

(e) *Warranty.* Contractor warrants that the work performed shall be free of defects for a period of one (1) year from the Project completion. If any installation fails as the result of the workmanship of Contractor, Contractor shall repair or replace the defective installation at no cost to District. Warranty work shall be performed promptly following notice by District that such work is required.

(f) *Records Maintenance.* Contractor shall keep and maintain full and complete documentation and accounting records concerning all the Services performed that are compensable under this Agreement and shall make such documents and records available to District for inspection at any reasonable time. Contractor shall maintain such records for a period of not less than five (5) years following completion of work hereunder.

(g) *No Conflict of Interest.* Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement. Contractor further promises that in the performance of this Agreement, no person having such interest will be knowingly employed. If requested to do so by District, Contractor shall complete and file, and shall cause any person doing work under this Agreement to complete and file, a "Statement of Economic Interest" with the El Dorado County clerk disclosing their financial interests.

(h) *Nondiscrimination.* Contractor shall not discriminate against any employee, applicant for employment, or volunteer because of race, color, creed, religion, national origin, sex, age, or physical or mental handicap. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, or physical or mental handicap. Such protections shall include but not be limited to, the following: employment, promotion, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; or selection for training, including apprenticeship. Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices that Contractor shall provide an atmosphere free of sexual harassment for employees, clients, volunteers, and the general public.

Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability or national origin. In addition, all agreements with subcontractors will include language as required by the Office of Federal Contract Compliance Programs that requires subcontractors to maintain equal employment opportunity policies and, as necessary, affirmative action policies.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, or physical or mental handicap.

(i) *Prevailing Wage.* Contractor agrees to pay all craftsmen and laborers working on the Project at least the minimum prevailing wage required by the Department of Industrial Relations of the State of California. Contractor understands and agrees that it is Contractor's responsibility to determine the minimum prevailing wage and to report compliance as required under California law. Contractor shall post a copy of the current prevailing wage rate of per diem wages as determined by the Director of the Department of Industrial Relations at the job site.

Section 8. Conformity with Law and Safety. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All of the Services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify District's risk manager by telephone. If any accident occurs in connection with this Agreement, Contractor shall promptly submit a written report to District, in such form as District may require. This report shall include the following information: (a) name and address of the injured or deceased persons; (b) name and address of Contractor's subcontractor, if any; (c) name and address of Contractor's liability insurance carrier; and (d) a detailed description of the accident, including whether any of District's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of this Agreement, Contractor shall immediately notify District. Contractor shall not store hazardous materials or hazardous waste within District's limits without a proper permit from District.

Section 9. Assurance of Performance. If, at any time, District believes Contractor may not be adequately performing its obligations under this Agreement or may fail to complete the Services as required by this Agreement, District may submit a written request to Contractor for written assurances of performance and a plan to correct observed deficiencies in Contractor's performance. Failure to provide written assurances subsequent to such written request, constitutes grounds to declare a breach under this Agreement.

Section 10. Excusable Delays. Contractor shall not be in breach of this Agreement in the event of excusable delays, as further defined in Article 12 of the General Conditions.

Section 11. Assignment Prohibited. No Party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect. Contractor hereunder offers and agrees to assign to District, and agrees to require its subcontractors to offer and agree to assign to District, all rights, title, and interest in and to all causes of actions it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Bus. and Prof. Code, § 16700 *et*

seq.), arising from purchases of goods, services or materials pursuant to this contract or any subcontracts entered into hereunder. This assignment shall be made and become effective at the time District tenders final payment to Contractor, without further acknowledgement of the Parties.

Section 12. Ownership and Disclosure of Work Product. District shall be the owner of the drawings, specifications, addenda, change orders, work change directives, and field orders during the term of this Agreement regarding the Project (“Work Product”). Contractor may retain copies of the above-described documents but agrees not to disclose such documents or any information regarding the design of the Project without the express written permission of District, during the term of this Agreement and for a period of one hundred eighty (180) days following expiration of the term of this Agreement.

When this Agreement is terminated, Contractor agrees, upon District’s written request, to return to District all documents, drawings, photographs and other written or graphic material, however produced, that it received from District, its contractors or agents, in connection with the performance of the Services under this Agreement within thirty (30) days. All materials shall be returned in the same condition as received.

Section 13. Liability for Breach. Neither Party waives the right to recover damages against the other for breach of this Agreement including any amount necessary to compensate such Party for all detriment proximately caused by the breaching Party's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom. District reserves the right to offset such damages against any payments owed to Contractor. In the event of termination by either Party, copies of all finished or unfinished Work Product shall become the property of District.

Section 14. Workers Compensation Certification. Contractor is aware of the provisions of California Labor Code section 3700, requiring every employee to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

Section 15. Performance and Payment Bonds. Contractor shall, before commencing the Services under this Agreement, file a performance bond and a payment bond (pursuant to Civil Code division 3, part 4, title 15, chapter 7) with District, each payable to District. These bonds shall be issued by a surety company authorized to do business in the State of California, and shall remain in effect until one (1) year after the date when final payment becomes due or until completion of the correction period specified in the Contract Documents, whichever is later, except as provided otherwise by laws or regulations or by the Contract Documents, at the sole and absolute expense of Contractor. Each bond shall be for the amount of one hundred percent (100%) of the total compensation under this Agreement. Any alterations made to the Contract Documents or the specifications to the Project shall not operate to release any surety from liability on any bond

required herein, and surety hereby consents such alterations in any surety on said bonds, and hereby waives the provisions of California Civil Code sections 2819 and 2845.

Section 16. Insurance Coverage: Contractor shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII, and will provide District with written proof of said insurance. Contractor shall maintain coverage as follows and will provide District with written proof of said insurance. Such insurance shall remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work Product. Contractor shall maintain coverage as follows:

(a) *General Liability.* Contractor shall carry commercial general liability insurance in an amount no less than One Million Dollars (\$1,000,000.00) combined single limit for each occurrence, covering bodily injury and property damage. If commercial general liability insurance or another form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate shall be Two Million Dollars (\$2,000,000.00). Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

“The Georgetown Divide Public Utility District, its officers and employees are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.”

“The California State Water Resources Control Board, its officers, agents, employees, and servants are named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.”

“The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.”

“The insurance provided herein is primary coverage to the Georgetown Divide Public Utility District with respect to any insurance or self-insurance programs maintained by District.”

“This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the Georgetown Divide Public Utility District, Attention: General Manager.”

(b) *Builder's Risk Insurance.* Contractor shall carry builder's risk insurance with limits of liability equal to Three Million Dollars (\$3,000,000.00). Said policy shall be endorsed with the following specific language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Georgetown Divide Public Utility District, Attention: General Manager."

(c) *Workers Compensation Insurance and Employer's Liability.* Contractor shall carry workers' compensation insurance as required by the California Labor Code. Employer's liability coverage shall be in the amount of at least One Million Dollars (\$1,000,000.00). Said policy shall be endorsed with the following specific language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Georgetown Divide Public Utility District, Attention: General Manager."

(d) *Automobile Liability Insurance.* Contractor shall carry automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

"This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to Georgetown Divide Public Utility District, Attention: General Manager."

(e) *Documentation.* The following documentation shall be submitted to District:

(i) Properly executed certificates of insurance clearly evidencing all coverages, limits and endorsements required above ("Certificates"). Said Certificates shall be submitted prior to the execution of this Agreement.

(ii) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement.

(iii) Upon District's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of District's request.

(iv) Coverages shall contain no special limitations on the scope of protection afforded to District, and shall contain standard separation of insured provisions.

(f) *Policy Obligations.* Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

(g) *Material Breach.* If Contractor, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, District may purchase such required insurance coverage, and without further notice to Contractor, District may deduct from sums due to Contractor any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

Section 17. Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Contractor shall defend, indemnify, and hold harmless District, and District's elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("District's Agents") from and against any and all action, claim, loss, costs, damages, injuries (including, without limitation, disability, injury or death of an employee of Contractor or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to performance of the work, provided that any such action, claim, loss, cost, damage, injury, expense or liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable (collectively, "Liabilities"). Such obligations to defend, hold harmless and indemnify District and District's Agents shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of, or for defects in design furnished by, District or District's Agents, but shall apply to all other Liabilities. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts or other employee benefit acts.

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Contractor from its obligations to indemnify District and District's Agents.

Section 18. Notices. Any notice or communication required hereunder between District and Contractor must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (b) five (5) days after a registered or certified letter containing such notice, properly

addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express, UPS or other similar couriers, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District: Georgetown Divide Public Utility District
6425 Main Street
Georgetown, CA 95634
Attention: General Manager
Tel: (530) 333-4356

With courtesy copy to: Churchwell White LLP
1414 K Street, Third Floor
Sacramento, California, 95814
Attention: Barbara A. Brenner, Esq.
Tel: (916) 468-0950

If to Contractor: _____

Section 19. Exhibits. All "Exhibits" referred to below or attached to herein are by this reference incorporated into this Agreement, with the same force and effect as if the same were set forth at length herein, and the Parties will be and are bound by any and all of said Exhibits:

| Exhibit Designation | Exhibit Title |
|---------------------|--|
| Exhibit A: | Plans and Specifications |
| Exhibit B: | Invitation to Bid |
| Exhibit C: | Instruction for Bidders and SRF Requirements |
| Exhibit D: | Bid Schedule |
| Exhibit E: | Bid Guarantee |
| Exhibit F: | Designation of Subcontractors |
| Exhibit G: | Certifications of Qualification |
| Exhibit H: | Completion Schedule |
| Exhibit I: | General Conditions |

Section 20. Contract Documents. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to include all work necessary for the completion of this Agreement. The Contractor shall

perform all the Services in conformance with the Contract Documents, unless otherwise directed in writing by District, pursuant to section 4(b) of the Contract Documents.

Section 21. General Provisions.

(a) *Modification.* No alteration, amendment, modification, or termination of this Agreement shall be valid unless made in writing and in accordance with the Contract Documents.

(b) *Waiver.* No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

(c) *Authority.* All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms, and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement have been fully complied with.

(d) *Drafting and Ambiguities.* Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(e) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) *Venue.* Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of El Dorado.

(g) *Severability.* If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

(h) *Counterparts.* This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(i) *Audit.* District shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor's charges to District under this Agreement.

(j) *Entire Agreement.* This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

(k) *Supersedes Prior Agreement.* It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations whether, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

(l) *Mandatory and Permissive.* "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

(m) *Headings.* Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

(n) *Attorney's Fees and Costs.* If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(o) *Necessary Acts and Further Assurances.* The Parties shall at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

(p) *Time is of the Essence.* Time is of the essence in this Agreement for each covenant and term of a condition herein.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, this Agreement has been entered into by and between District and Contractor as of the Effective Date.

DISTRICT:

Georgetown Divide Public Utility District, a public utility district of the State of California

By:
Darrell Creeks, Interim General Manager

Date:

Approved as to Form:

By:
Barbara A. Brenner, General Counsel

CONTRACTOR:

_____, a _____

By:
_____, _____

Date:

EXHIBIT A: PLANS AND SPECIFICATIONS

EXHIBIT B: INVITATION TO BID

EXHIBIT C: INSTRUCTION TO BIDDERS AND SRF REQUIREMENTS

EXHIBIT D: BID SCHEDULE

EXHIBIT E: BID GUARANTEE

EXHIBIT F: DESIGNATION OF SUBCONTRACTORS

EXHIBIT G: CERTIFICATIONS OF QUALIFICATIONS

EXHIBIT H: COMPLETION SCHEDULE

EXHIBIT I: GENERAL CONDITIONS