

GHAD RESOLUTION NO. 03 -2012

A RESOLUTION AWARDING A CONTRACT TO ENGINEERED SOIL REPAIRS, INC. FOR THE KELOK WAY DEWATERING WELLS PROJECT IN AN AMOUNT NOT TO EXCEED \$648,873.00.

**THE BOARD OF DIRECTORS
Oakhurst Geological Hazard Abatement District
Clayton, California**

WHEREAS, for several years, there has been ongoing land movement occurring in the open space slope between North Valley Park (at the intersection of Keller Ridge Drive and Golden Eagle Place) and the homes on the north side of Kelok Way; and

WHEREAS, numerous lawsuits have been filed by several homeowners potentially affected by said land movement; and

WHEREAS, a settlement agreement has been reached by all parties in the lawsuits which includes the construction of six dewatering wells in Kelok Way, as designed by the firm of Stevens, Ferrone & Bailey Engineering Company, Inc., all of which will be drained to an existing storm drain in Golden Eagle Place; and

WHEREAS, the settlement agreement includes the payment of specified proceeds from the various parties in the lawsuit into a Settlement Funds account; and

WHEREAS, it has been agreed by all parties that a portion of the Settlement Funds are to be used for the construction of the dewatering wells by a specific contractor, Engineered Soil Repairs, Inc. (“ESR”); and

WHEREAS, ESR has agreed to construct the dewatering wells for a not-to-exceed cost of \$648,873.00; and

WHEREAS, based upon the evidence presented, the project is exempt from the requirements of the California Environmental Quality Act as provided below:

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The Board of Directors hereby finds, based upon the entirety of the evidence before it, that the project is categorically exempt from the requirements of the California Environmental Quality Act, as per State CEQA Guidelines Section 15304 (Minor Alterations to Land and Water), and Section 15301 (Existing Facilities). Further, the Board of Directors also finds that the project is exempt per CEQA Guidelines Section 15269 (Emergency Project), as the project is being undertaken on an urgent basis to prevent a hillside from sliding onto, among other areas, a public right of way, and this would be accomplished by dewatering the hillside via wells.
2. The Board of Directors further finds that substantial evidence supports the determination that none of the exceptions to categorical exemptions listed in State CEQA Guidelines

Section 15300.2 apply to the proposed project, and that the project is still categorically and statutorily exempt.

3. The Board of Directors hereby awards a construction contract to Engineered Soil Repairs, Inc. for the construction of the Kelok Way Dewatering Wells in the amount of \$648,873.00 and authorizes the District Manager to execute the contract on behalf of the GHAD upon receipt of the Settlement Agreement funds.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting thereof held on 17th day of July 2012 by the following vote:

AYES: Vice Chairman Medrano, Boardmembers Geller and Shuey.

NOES: None.

ABSENT: Chairman Stratford and Boardmember Pierce.

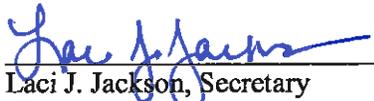
ABSTAIN: None.

THE BOARD OF DIRECTORS OF GHAD



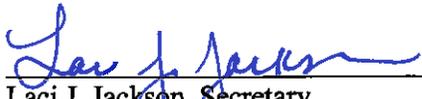
Hank Stratford, Chairman

ATTEST:



Laci J. Jackson, Secretary

I hereby certify that the foregoing resolution was duly and regularly passed by the Board of Directors of the Oakhurst Geological Hazard Abatement District at a regular public meeting held on July 17, 2012.



Laci J. Jackson, Secretary

**CONSTRUCTION CONTRACT BY AND BETWEEN THE
OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT AND
ENGINEERED SOIL REPAIRS, INC.
KELOK WAY DEWATERING WELLS PROJECT**

This CONTRACT is made and entered into this 04 day of AUGUST, 2012 ("Execution Date") by and between OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT, hereinafter called "District," and ENGINEERED SOIL REPAIRS, INC. (ESR), hereinafter called "Contractor" for the Kelok Way Dewatering Wells Project ("Project"). The District and Contractor, for the considerations stated herein, agree as follows:

1. RELATIONSHIP OF PARTIES.

- 1.1 The Contractor's relationship with the District is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed contractor and not as an agent, fiduciary, partner, member or subsidiary of, or otherwise affiliated with the District. Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, Contractor represents herein it does possess the proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. The Contractor and any subcontractors shall be appropriately licensed in accordance with this Contract and the above-cited law prior to the Execution Date of the Contract.
- 1.2 The Contractor shall supervise and direct the Project using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Project. Contractor expressly acknowledges that the District shall not be responsible for the Contractor's work. Contractor assumes entire responsibility for the acts and omissions of its agents or employees, subcontractors, suppliers, any of their agents or employees, or any other persons performing any of the Project on behalf of Contractor and agrees that the District shall not be responsible for any such acts or omissions. Contractor agrees that neither District, its Board of Directors, its General Manager, nor the District's Engineer will be responsible for Contractor's failure to carry out the Project in strict accordance with the Contract Documents.

2. CONTRACT DOCUMENTS.

The complete contract includes all of the following documents, whether or not attached hereto (hereinafter referred to as the "Contract Documents"): the Contract, Plans and Specifications, the Bond(s), executed in connection herewith, Certificates of Insurance, Special Conditions, and all official papers and documents relating to the work to be performed hereunder, and all modifications incorporated in these documents before their execution. Any and all obligations of District and Contractor are fully set forth and described herein.

3. SCOPE OF WORK.

The Project involves performing all work and furnishing all labor, materials, and equipment, as provided by the Contract Documents, for the installation of dewatering wells for Kelok Way, as further described in the plans and specifications.

- 3.1 **Project Phasing.** The Contractor acknowledges that the Project is subject to strict budgetary requirements in accordance with the agreed upon Contract Price. The parties have agreed that the Project will proceed in phases in order to assist the District in assuring the budget is strictly adhered to and that the total Project cost never exceeds the Contract Price due to any Change Order(s) as described in Section 11 below. Accordingly, the agreed upon components/phases, and the corresponding schedule of values for each are as shown in Exhibit D attached hereto.
- 3.2 **Notice to Proceed.** Prior to commencing work in any phase, the Contractor shall obtain a written notice to proceed from the District. No compensation for work in any phase shall be due to the Contractor, unless and until the District issues such written notice to proceed. The District reserves the right to not proceed with any phase, if the total cost of the Project will exceed the Contract Price set forth below. If the District decides not to issue such a notice(s) to proceed, it may then terminate any future phases and/or the remainder of the Contract for convenience in accordance with Section 18 below. However, at no time will the Contractor be entitled to any compensation and/or termination expenses for any phase of the Project work for which a notice to proceed has not been issued.

4. **CONTRACT PRICE.**

The District shall pay to the Contractor as full compensation for the performance of the Contract including any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, a fixed fee sum of Six Hundred Forty-Eight Thousand Eight Hundred Seventy-Three Dollars (\$648,873.00) ("Contract Price"). As described above, the Contract work shall proceed in phases, and the District reserves the right to not proceed with any phase if changes or adjustments to the Contractor pursuant to Section 11 herein result in the possibility of the Project cost exceeding the Contract Price.

5. **PAYMENT.**

- 5.1 The District shall make monthly progress payments following receipt of an undisputed and properly submitted invoice from Contractor. All invoices shall be submitted directly to Mr. Rick Angrisani, P.E., City Engineer with a complete copy to Mr. Ken Ferrone of Stevens, Ferrone & Bailey Engineering Company, Inc. The District shall coordinate review and approval of such invoices with its consultant, and the District, and/or Mr. Ferrone shall inform Contractor of any disputed and/or incomplete invoice. Public Contract Code Section 9203 prohibits progress payments in excess of ninety five (95%) of the percentage of actual work completed plus a like percentage of the value of material delivered and unused. Therefore, District must withhold at least five percent (5%) of each progress payment and the total Contract Price until final completion and acceptance of the Project. After fifty percent (50%) of the Project has been completed and District finds that satisfactory progress is being made, the District may make any of the remaining progress payments in full for actual work completed.
- 5.2 The period covered by each invoice shall be one calendar month ending on the last day of the month. The Contractor shall submit with each invoice the Contractor's conditional waiver of lien for the entire amount covered by such

invoice, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all work and materials included in any prior invoices for which payment has been received. Waivers of lien shall be in the forms prescribed by Civil Code Section 3262.

- 5.3 Provided that Contractor has complied with its obligations under this Section 5, payments shall be made by the District on account of materials or equipment not incorporated into the Project but delivered to the Project site and suitably stored by Contractor or stored off-Project site under the control and prior approval of the District. Such payments shall only be considered upon submission by Contractor of satisfactory evidence that it has acquired title to same, that the material or equipment will be utilized in the Project and that the material is satisfactorily stored, protected and insured, and that such other procedures are in place satisfactory to District to protect District's interests. The District shall have the right to pre-approve, in its sole discretion, the amount of material and equipment that may be stored on the Project site at any given time.
- 5.4 The Contractor shall, after the full completion of the Project, submit an application for the remaining unpaid balance of the Contract Price ("Final Payment Application"). All prior progress estimates shall be subject to correction in the Final Payment Application. Unless otherwise required by law, the remaining balance of the Contract Price ("Final Payment"), if unencumbered, shall be paid no later than sixty (60) days after the date of recordation of the notice of completion for the Project. Final Payment shall constitute a waiver of all claims against the District and the Engineer arising from this Contract. Prior to Final Payment, the Contractor shall submit a final waiver of lien pursuant to Section 5.2 for the Project, together with releases of lien from any of its subcontractor or materialmen.
- 5.5 No payment (final or otherwise) made under or in connection with this Contract shall be conclusive evidence of the performance of the Project or of this Contract, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Contractor from any of its obligations under this Contract; nor shall entrance onto or use of the Project site by the District constitute acceptance of the Project or any part thereof.

6. PAYMENTS WITHHELD

- 6.1 In addition to amounts which the District may retain under other provisions of the Contract Documents, the District may withhold payments due to Contractor as may be necessary to cover: (a) stop notice claims; (b) defective work not remedied; (c) failure of Contractor to make proper payments to its subcontractors or suppliers; (d) completion of the Project if there exists a reasonable doubt that the Project can be completed for the balance then unpaid; (e) damage to another contractor or third party caused by Contractor; (f) amounts which may be due to District for claims against Contractor; (g) Project site clean up; (h) failure of the Contractor to comply with requirements of the Contract Documents; (i) disputed amounts in the invoices; and (j) legally permitted penalties.

- 6.2 Upon completion of this Contract, the District may reduce the Final Payment to reflect costs charged to the Contractor, backcharges or payments withheld pursuant to the Contract Documents.
- 6.3 If any claim or stop notice is made or filed against the District or the Project by any person claiming that the Contractor or any of its subcontractors or suppliers has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Project, or if at any time there shall be evidence of such nonpayment or of any claim or stop notice for which, if established, the District might become liable and which is chargeable to the Contractor, the District may, in its discretion, allow the Contractor to file a bond with the District in an amount equal to one hundred twenty five percent (125%) of the claim stated in the stop notice pursuant to Civil Code Section 3196 and the District shall release the Final Payment to the Contractor. If the District does not permit the Contractor to post a bond under Civil Code Section 3196, the District shall have the right to retain from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge and/or defend against any such claim or stop notice action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and (3) compensate the District therefor. The Contractor shall indemnify and hold the District harmless against any and all losses, liability, damages, costs and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both of them in connection with the Contractor's failure to timely and properly make payments to its subcontractors and suppliers. The District shall have the right to apply and charge against the Contractor as much of the amount retained as may be required for the foregoing purposes. If the amount is insufficient therefor, the Contractor shall be liable for the difference and pay the same to the District within ten (10) days of delivery to Contractor of District's written notice of the difference and the amount due.

7. SUBSTITUTE OF SECURITY.

Pursuant to Public Contract Code Section 22300, Contractor may substitute securities for any money withheld by District to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the District, with the State or federally chartered bank as the escrow agent, who shall return such securities to the Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the District, which provides that no portion of the securities shall be paid to the Contractor until the District has certified to the escrow agent, in writing, that the contract has been satisfactorily completed.

8. TIME FOR COMPLETION.

The Project shall be completed within one hundred twenty (120) calendar days from the date set forth in the District's notice to proceed for the commencement of work ("Construction Term"). Work shall commence on the Project no later than twenty-one (21) calendar days from the date set forth in the District's notice to proceed. Time is of the essence for each and every task for this Project. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Project.

9. EXTENSION OF TIME

9.1 If the Contractor is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Project by: (i) any negligent act or omission of the District, Engineer, other contractors, or employees, subcontractors, agents or consultants of any of the above; (ii) changes ordered in the Project; (iii) damage caused by Force Majeure, Acts of God and unavoidable casualties such as fire, earthquake, flood, acts of terror; (iv) inclement weather; (v) governmental directive, order, or extraordinary conditions arising out of war or government regulations; or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Contractor, its officers, agents, employees, subcontractors or suppliers, then the Contractor shall be entitled to an extension of Construction Term for a reasonable period of time as agreed to by the parties. Notwithstanding the above, the Contractor shall not be entitled to any such extension of time unless the Contractor (1) notifies the District in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof and (2) demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof.

9.2 Damages caused by unreasonable District delay, including delays caused by items that are the responsibility of the District pursuant to Government Code Section 4215, shall be based on actual costs only. No proportions or formulas shall be used to calculate any delay damages.

10. LIQUIDATED DAMAGES.

In accordance with Government Code section 53069.85, if the Contractor fails to complete the Project within the Construction Term, then determining the resulting damages, including consequential damages, would be impracticable or extremely difficult, because of the nature of the Project. Therefore, the parties agree that, in the event of such a delay, Contractor shall pay One Thousand Dollars (\$1,000.00) to the District, as liquidated damages, for each calendar day beyond the Construction Term in which the Project is not completed and accepted by the District.

11. CHANGES IN THE SCOPE OF WORK

11.1 District Changes. The District reserves the right, from time to time, to make changes, additions and/or omissions in the Project as it may deem necessary, upon written order to the Contractor ("Change Order"). All such changes in the Project shall be authorized by Change Order, executed by the District, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith with any adjustment in the Contract Price or revision to the Construction Term as authorized by the District and agreed to by the Contractor, subject to the full and final settlement of all costs (direct, indirect and overhead) related to the Project. If the Contractor disagrees with the adjustment authorized by the District, the Contractor may dispute the adjustment pursuant to the provisions of Contract Documents. However, the Contractor shall proceed with the Change Order work as directed by the District in a timely manner.

11.2 **Contractor Changes.** Except and only to the extent provided herein, by signing the Contract, the Contractor agrees:

- a. That only Change Orders expressly permitted pursuant to this Section 11 may be approved by the District. Unless otherwise agreed by the District, the Contractor shall only be entitled to a Change Order for concealed or unknown conditions, if any, which may be encountered in performing the Contract, but only to the extent such conditions are not described in the Contract Documents, and/or cannot reasonably be identified by the Contractor based on the Contract Documents and the Contractor's inspection of the Project site; and
- b. That the Contractor's Contract Price for the Contract was made with full knowledge of the Change Order requirements of this Contract.
- c. Contractor shall not be entitled to perform any Change Order work nor receive any compensation for such Change Order work without the prior written approval of the District.

11.3 The only other grounds for which a Contractor may make a Change Order request for an adjustment to the Contract Price or Construction Term shall be:

- a. Fire; or
- b. Strikes, boycotts, or other like obstructive actions by employees or labor organizations; or
- c. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or
- d. An error or omission in the Contract Documents caused by the District.

11.4 All Contractor requests for changes pursuant to the above shall be presented in writing to the District within 24 hours of discovery of such conditions by the Contractor so that the District's Representative can review. Contractor shall not be entitled to any adjustment of the Construction Term or Contract Price pursuant to these provisions unless such change is explicitly approved and authorized by the District in writing before the expense is incurred. No work shall be allowed to lag pending such potential adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been performed unless a written Change Order has been issued or timely written notice of a claim has been made by the Contractor. Contractor shall not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of any omission of any item or portion of the Project under the executed Change Order.

12. **UTILITIES**

12.1 If the work involves utilities, this Contract shall provide for the removal, relocation and protection of utilities according to Government Code section 4215. As used in this Section, the word "utility" shall be understood to include tracks, overhead or underground wires, cables, pipelines, conduits, ducts, sewers

or storm drains. As used in this Section, the term "construction interference" shall be understood to include any utility or service connection within the limits of excavation or over excavation required for the work under the Contract as shown or as ordered by District or any utility or service connection located in the space which will be required by any of the work under the Contract.

- 12.2 In the event a utility or service connection is required to be disturbed or removed to permit construction of a pipeline or other structure under the Contract, such disturbance or removal shall be done only with the approval of District and following notification to the owner of the interfering utility or service connection. Any such utility or service connection removed or otherwise disturbed shall be constructed as promptly as possible in its original or other authorized location in a condition at least as good as prior to such removal or disturbance, subject to the inspection of the owner of same. The Contractor's responsibility under this Section to remove or replace utilities or service connections shall apply even in the event such damage or destruction occurs after backfilling or is not discovered until after completion of backfilling. The owner of the utility or service connection shall be notified immediately after damage or destruction occurs or is discovered.
- 12.3 During the performance of the work under this Contract, the owner of any utility affected by the work shall have the right to enter when necessary upon any portion of the work for the purpose of maintaining service and of making changes in or repairs to said utility.
- 12.4 The Plans and Specifications show the approximate positions of known utilities in the immediate vicinity of the work, but District does not guarantee that all existing utilities are shown. Contractor, before commencing any excavation, shall ascertain, from records or otherwise, the existence, horizontal and vertical position, and ownership of all existing facilities and service connections. If Contractor discovers any utility in the line of the work which is not shown on the plans, it shall immediately notify District of the existence of same. District will not be liable for any consequences arising as a result of a service connection being incorrectly located in the field by the agency having jurisdiction over said service connection.
- 12.5 Except as required by law, the costs involved in removing, relocating, protecting, supporting, repairing, maintaining or replacing any utility or service connection shall be borne by Contractor.
- 12.6 Contractor shall not be assessed liquidated damages for failure to complete the work on time to the extent that such delay was caused by failure of District or of the agency having jurisdiction over the utility to authorize or otherwise provide for the removal, relocation, protection, support, repair, maintenance or replacement of a main or trunkline utility facility..
- 12.7 District reserves the right, upon determination of the actual position of existing utilities and service connections, to make changes in alignment or grade of the District's pipelines when, by so doing, the necessity for relocation of existing utilities or service connections will be avoided. Such changes will be ordered in writing by District. Where applicable, adjustment in the Contract price will be on

the basis of the unit prices stated in the Bidding Schedule. Where unit prices in the Bidding Schedule are not applicable, adjustment in Contract price will be in accordance with the General Provisions.

- 12.8 In all cases the public utility shall have the sole discretion to perform repairs or relocation work or to permit Contractor to perform the same at a reasonable price.

13. MATERIALS AND EQUIPMENT.

Contractor agrees to perform the work and to furnish all tools, equipment, apparatus, facilities, labor and material necessary to perform and complete, in a good workmanlike manner, all parts of the work as called for in a manner designated in and in strict conformance with the Plans and Specifications. It is understood and agreed that said tools, equipment, apparatus, facilities, labor and material shall be furnished and said work performed and completed as required in said plan and specifications under the direction and supervision of, and subject to the approval of the District's authorized representative.

14. PUBLIC SAFETY.

During the performance of the work, Contractor shall take all the necessary precautions and place proper guards for the prevention of accidents; shall indemnify and hold harmless the District and the Board, its officers, agents and employees from all damages and costs which may be incurred by reason of injury to person or property resulting from the Contractor or his agents acts or omissions in the performance of this Contract, construction of the Project, or from any improper materials used in its construction.

15. INSURANCE.

15.1 Commercial General Liability

15.1.1 Contractor shall take out and maintain, during the Construction Term and any extensions thereof, if applicable, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the District.

15.1.2 Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).

15.1.3 Commercial General Liability Insurance must include coverage for the following:

- (a) Bodily Injury and Property Damage
- (b) Personal Injury/Advertising Injury
- (c) Premises/Operations Liability
- (d) Products/Completed Operations Liability

- (e) Contractual Liability with respect to this Contract
- (f) Broad Form Property Damage
- (g) Independent Contractor Coverage

15.2 Automobile Liability.

15.2.1 At all times during the Construction Term and any extensions thereof, if applicable, Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

15.2.2 Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).

15.2.3 The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by the District.

15.3 Workers' Compensation/Employer's Liability

15.3.1 At all times during the Construction Term, Contractor shall maintain workers' compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in amounts indicated herein.

15.3.2 Contractor hereby agrees to accept exclusive liability for, and shall hold District, District's officers, directors, employees and agents harmless from, all payroll taxes for contributions to unemployment insurances or old age pensions, or annuities, measured by wages, salaries or other remuneration paid to employees of Said Contractor of any subcontractors.

15.3.3 The workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District.

15.3.4 Before beginning work, Contractor shall furnish to the District satisfactory proof that he/she has taken out for the period covered by the work under this Contract, full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Contract, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof. Contractor shall require all subcontractors to obtain and maintain, for the period covered by the work under this Contract, worker's compensation of the same type and limits as specified in this section.

15.3.5 By executing this Contract, Contractor certifies as follows:

"I am 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 I will comply with such provisions before commencing the performance of the work of this contract."

This Contract and the execution hereof shall serve as Contractor's Workers Compensation Certificate pursuant to Labor Code section 1861.

15.4 The following insurance limits are required for the Contract:

Combined Single Limit	
Commercial General Liability	<u>\$2,000,000</u> per occurrence / <u>\$5,000,000</u> aggregate for bodily injury, personal injury and property damage
Automobile Liability	<u>\$1,000,000</u> per occurrence for bodily injury and property damage
Employer's Liability	<u>\$1,000,000</u> per occurrence

15.5 Evidence Required

15.5.1 Prior to execution of the Contract, Contractor shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Accord Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

15.5.2 Insurance certificates shall be attached hereto as Exhibit "B."

15.5.3 Contractor's obligation to indemnify (Section 28 infra) shall not be restricted to insurance proceeds, if any, received by the Indemnitees.

15.6 Policy Provisions Required

15.6.1 Carrier(s) shall be admitted California insurers and have an A.M. Best rating of not less than an A-VII. All policies shall contain a provision for 30 days advance written notice by the insurer(s) to the District of any cancellation. Statements that the carrier "will endeavor" and "that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives," will not be acceptable on certificates.

15.6.2 All policies shall contain a provision stating that Contractor's policies are primary insurance and that the insurance of the District or any named insureds shall not be called upon to contribute to any loss.

15.6.3 All such policies shall name the District, the board, its officials, officers, employees, agents and designated volunteers as Additional Insureds under the policy.

15.6.4 The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, and agents for losses paid under the terms of the insurance policies provided pursuant to this Contract.

16. BONDS.

Contractor shall provide the District with a payment bond in an amount not less than fifty percent (50%) of the fixed fee Contract Price and a performance bond in an amount not less than one hundred percent (100%) of the fixed fee Contract Price. These bonds shall be submitted on the prescribed bond forms, attached hereto and incorporated herein as Exhibit "C." These bonds must be executed by an admitted surety approved to conduct business in the State of California. (Civil Code of Procedure, § 995.120.) The Contractor shall be responsible for paying fifty percent (50%) of the costs associated with acquiring the bonds. The District shall pay the remaining fifty percent (50%) of the costs associated with acquiring the bonds out of the money contributed by LYON, up to a maximum contribution of \$ 4,200. However, the Parties may, by separate mutual written agreement agree to an alternative method/manner for acquiring the performance bond, or other performance security deemed acceptable by the District.

17. ASSIGNMENT OF CONTRACT.

Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or of his/her right, title of interest in or to the same or any part thereof without previous consent in writing from District's authorized representative.

18. SUSPENSION/TERMINATION OF CONTRACT:

18.1 If Contractor fails to commence work as provided in the Contract, or fails to make delivery of materials promptly as ordered, or to maintain the rate of delivery or progress of the work in such manner as in the opinion of District's authorized representative will ensure a full compliance with the Contract within the time limit, or if in the opinion of District's authorized representative, Contractor is not carrying out the provisions of the Contract in their true intent and meaning, written notice will be served on Contractor and its surety to provide, within a specified time to be fixed by District's authorized representative, for satisfactory compliance with the Contract. If Contractor neglects or refuses to comply with such notice within the time therein fixed, he/she shall not thereafter exercise any rights under said Contract or be entitled to receive any of the benefits thereof, except as hereinafter provided, and District's authorized representative may with the approval of the Board of Directors perform any part of the work or purchase any or all of the material included in

the contract or required for the completion thereof, or take possession of all or any part of the machinery, tools, appliances, materials and supplies used in the work covered by the contract or that have been delivered by or on account of Contractor for use in connection therewith, and the same may be used either directly by District or by other parties for it, in the completion of the work.

18.2 District has the right to terminate or abandon any portion or all of the work under this Contract by giving ten (10) calendar days written notice to Contractor and its surety. In such event, District shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Except as limited by Section 3 above, District shall pay Contractor the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by District and Contractor of the portion of such task completed but not paid prior to said termination. District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

18.3 Contractor may terminate its obligation to provide further services under this Contract upon thirty (30) calendar days' written notice to District only in the event of substantial failure by District to perform in accordance with the terms of this Contract through no fault of Contractor.

19. SUBCONTRACTS.

Contractor shall comply with Sections 4100 to 4113 inclusive of the Public Contract Code of California, if applicable, relating to subcontracting work.

20. PERMITS AND LICENSES.

Contractor shall comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of public health and safety, obtaining all necessary permits and licenses for the construction of the project, pay all fees and post all deposits or bonds required by law.

21. BRAND NAME OR EQUAL.

21.1 Pursuant to Public Contract Code Section 3400(b), the District may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

21.2 Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, the District may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with the Contractor.

21.3 The District has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from the Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the District in a timely fashion will result in the rejection of the proposed substitution.

21.4 The Contractor shall bear all of the District's costs associated with the review of substitution requests. The Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the special conditions adopted for the Project (if any) to review any findings made pursuant to Public Contract Code section 3400.

22. DISCREPANCIES AND OMISSIONS.

Any discrepancies or omissions found in the Contract Documents shall be reported to District immediately. District will clarify discrepancies or omissions, in writing, within a reasonable time. In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order: (1) Addenda, if applicable; (2) Contract; (3) Special Conditions; and (4) Plans and Specifications. Figure dimensions on drawings shall take precedence over scale dimensions, detailed drawings shall take precedence over general drawings.

23. GUARANTEE OF PROJECT.

District requires Contractor to specifically guarantee its work for one (1) year from the date of acceptance. Contractor's guarantee pursuant to this Section 23 shall in no way impair or limit the

District's rights and remedies, pursuant to federal, state or local law or this Contract, in regards to construction defects or damages.

24. COMPLIANCE WITH PROVISION OF LAW RELATIVE TO PUBLIC CONTRACTS.

It is stipulated and part of the contract that District is a California Public Agency, subject to all laws of the State applicable to public contracts which include, but are not limited to, the payment of the prevailing wages, hours of labor, apprentice employment, debarment of contractors and retention of payroll records. Contractor may be subject to penalties for noncompliance.

25. LABOR CODE PROVISIONS.

It shall be mandatory upon the Contractor herein and upon all subcontractors under Contractor to comply with all applicable provisions of the Labor Code of the State of California relative to contracts for public works. It shall be the sole responsibility of the Contractor to determine whether any volunteer labor is subject to the Labor Code provisions set forth herein and, to this end, Contractor shall defend, with legal counsel of the District's choosing, and indemnify the District to the fullest extent provided by law for any failure to comply with applicable Labor Code provisions, including but not limited to, those Labor Code provisions applicable to volunteer labor. To this end, to the extent applicable, Contractor shall comply with the following provisions:

- 25.1 Prevailing Wages: District has copies of the general prevailing wage rate per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the contract on file at the principal office of the District at the office of the District Manager located at 5375 Clayton Road, Concord, CA, 94521, and which shall be posted at each job site. Contractor shall, as a penalty to District, forfeit not more than \$50 for each calendar day, or portion thereof, for each worker paid less than the specified prevailing rates for such work or craft in which such worker is employed, whether paid by Contractor or by any subcontractors under Contractor, where prevailing wages are applicable. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.
- 25.2 Eight Hour Law. Eight hours labor shall constitute a legal day's hours per day, and forty hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to District \$50.00 for each calendar day during which such worker is required, or permitted to work more than eight hours in any one day or forty hours in any one calendar week in violation of the provisions of the California Labor Code.
- 25.3 Payroll Records: Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey man, apprentice, worker, or other employee employed by him or her in connection with the public work. The

payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to District, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner of the California Department of Industrial Relations. If Contractor is found to have violated the provisions of law regarding wages on the Project with the intent to defraud, he/she shall be ineligible to bid on any public project contracts for a period of one to three years, as determined by the Labor Commissioner. 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. The responsibility for compliance with this section is on the Contractor.

25.4 Ineligible Contractors/Subcontractors/Debarment: Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

25.5 Apprentice: Attention is called to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under Contractor.

26. NOTICE OF THIRD PARTY CLAIMS.

Pursuant to Public Contract Code Section 9201, the District shall provide the Contractor with timely notification of the receipt of any third-party claim relating to the Contract. The District is entitled to recover its reasonable costs incurred in providing such notification.

27. DISPUTES.

27.1 Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor performed during the completion of this contract, said dispute shall be decided by District's authorized agent and the decision of the latter shall be final and conclusive, subject to the approval of the Board of Directors of the District.

27.2 The parties to this Contract are subject to the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of the Public Contract Code (as amended by the Statutes of 1990, Chapter 1414, effective January 1, 1991), which requires compliance with the following procedures to resolve any claim by the contractor of \$375,000 or less regarding an extension of time, a change order, extra work, or any other disputed amount.

27.3 All claims shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

27.4 For claims of less than fifty thousand dollars (\$50,000), District shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim any additional documentation supporting the claim or relating to defenses or claims District may have against the claimant.

27.4.1 If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement to District and the claimant.

27.4.2 District's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

27.4.3 If the claimant disputes District's written response, or District fails to respond within the time prescribed, the claimant may so notify District, in writing, either within 15 days of receipt of District's response or within 15 days of District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, District shall schedule a meeting and confer conference within 30 days for settlement of the dispute.

27.4.4 If following the meeting and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference. If after the foregoing procedures are completed a civil action is filed, the action shall be subject to the mediation and arbitration provisions required by Section 20104.4 of the Public Contract Code.

28. INDEMNIFICATION.

Contractor ESR shall defend, hold harmless and indemnify WILLIAM LYON HOMES, INC., the CITY and OAKHURST GEOLOGICAL HAZARD ABATEMENT DISTRICT (District), and their officers, employees and agents, from and against any and all actions, damages, claims and penalties arising from personal injury or death, damage to property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the work by ESR (including its subcontractors, agents or employees) whether or not such liabilities are caused in part by a party indemnified hereunder. The foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design, or (ii) the

active, proven negligence of WILLIAM LYON HOMES, INC., the CITY or GHAD. The provisions of this section shall survive any expiration or termination of the Contract.

Until the completion and final acceptance by the CITY and GHAD of all work under this Contract, the work shall be under ESR's responsible care and charge. ESR shall rebuild, repair, restore and make good all injuries, damages, re-erections and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the work, except as otherwise stipulated.

In furtherance to, but not in limitation of the indemnity provisions in this Contract, Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and hold harmless as provided in this Contract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under workers' compensation laws.

29. GENERAL CONTRACT PROVISIONS.

29.1 Contract Interpretation. In interpreting this Contract, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Contract or any provision thereof.

29.2 Governing Law. This Contract shall be construed in accordance with and be governed by the laws of the State of California. Venue shall be in Contra Costa County, California.

29.3 Notices. Notice to the Parties in connection with this Contract shall be given personally or by certified mail, return receipt requested, addressed as follows:

TO DISTRICT: Oakhurst Geological Hazard Abatement District 6000 Heritage Trail Clayton, CA 94517 ATTN: District Manager	TO CONTRACTOR: Engineered Soil Repairs, Inc. ATTN: William Gibson 1267 Springbrook Road Walnut Creek, CA 94597 Telephone: (925) 210-2150
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Notice shall be effective at the time of delivery.

29.4 Binding Effect. This Contract shall inure to the benefit of and shall be binding upon Contractor and Authority and their respective successors and assigns.

29.5 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

29.6 Amendments. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

29.7 Integrated Contract. This Contract and the Contract Documents embodies the entire agreement between the Parties pertaining to the matters described herein. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Contract, that induced the other party to sign this document. No modification of this Contract shall be valid unless agreed to in writing by the Parties. This Contract may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures, when received, shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, this Contract is executed by each Party's authorized representative.

OAKHURST GEOLOGICAL
HAZARD ABATEMENT DISTRICT

ENGINEERED SOIL REPAIRS, INC.

By: 

By: 

Printed Name: RICK ADGRISAUI

Printed Name: William J. Gibson

Its: DISTRICT MANAGER

Its: Vice President

Date: 8/8/2012

Date: 7/20/2012

EXHIBIT "A"
PLANS AND SPECIFICATIONS

EXHIBIT "B"
INSURANCE CERTIFICATES

EXHIBIT "C"

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Oakhurst Geologic Hazard Abatement District (hereinafter designated as the "District"), has awarded to _____ (hereinafter designated as the "Principal") a contract for the work described as follows: Kelok Way Dewatering Wells (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as surety, are held and firmly bound unto the District in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

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

It is further stipulated and agreed that the surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond,

nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or District and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the Civil Code, and has not been paid the full amount of his claim and that surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 200_.

Contractor/Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged, \$ _____.

(The above must be filled in by corporate surety.)

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

My Commission expires _____.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Oakhurst Geologic Hazard Abatement District (hereinafter designated as the "District"), has awarded to _____ (hereinafter designated as the "Principal") a contract for the work described as follows: Kelok Way Dewatering Wells (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the District in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by District in enforcing such obligation. As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the District to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the District's option:

(1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

(2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the District, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

(3) Permit the District to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the District, when declaring the Contractor in default, notifies Surety of the District's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 200_.

Contractor/Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged, \$ _____.

(The above must be filled in by corporate surety.)

STATE OF CALIFORNIA)
)
COUNTY OF _____) **ss.**

On _____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

My Commission expires _____.

EXHIBIT "D"

PROJECT PHASING AND COSTS BY PHASE

As stated in Section 3.1, "Project Phasing", of the agreement, the parties agree that the Project will proceed in phases in order to assist the District in assuring the budget is strictly adhered to and that the total Project cost never exceeds the Contract Price due to a Change Order(s) as described in Section 11.

It is agreed that the phases and their corresponding schedule of values for each shall be as follows:

Phase 1 – Mobilization and Installation of Dewatering Wells Numbers 1 thru 6 (note: Identity of each well to be determined by the Contractor and Ken Ferrone of Stevens, Ferrone and Bailey Engineering Company, Inc. prior to commencement of work)

Schedule of values for Phase 1:

Mobilization and Permit:	\$ 50,000.00
Materials:	\$ 62,559.00
Installation:	<u>\$122,935.00</u>
Total Phase 1 Cost:	\$235,494.00

Phase 2 – Mobilization and Installation of Horizontal Drains to Dewatering Wells Numbers 1 thru 6

Schedule of values for Phase 2:

Mobilization:	\$ 75,000.00
Materials:	\$ 38,553.00
Installation:	<u>\$271,973.00</u>
Total Phase 2 Cost:	\$385,526.00

Phase 3 – Construction of Drainage Box, Connection and Storm Drain, Project Clean-up and Closeout

Schedule of values for Phase 3:

Mobilization:	\$ 5,000.00
Materials:	\$ 2,750.00
Installation:	<u>\$19,936.00</u>
Total Phase 3 Cost:	\$27,686.00

Total Project Cost (Phases. 1 – 3) \$648,706.00

The District shall issue a Notice to Proceed within 7 calendar days of completion of a previous phase. Failure of the District to timely issue a Notice to Proceed shall allow the Contractor the opportunity to request additional funds for any actual demobilization and re-mobilization costs it may incur. Commencement of work per each Notice to Proceed may be subject to the completion of specified tasks for the previous phase. Any delays in commencement of the new phase due to

the completion of the specified tasks in the Notice to Proceed shall not entitle the Contractor to any additional remuneration for any demobilization and/or re-mobilization costs it may incur.

The District may, but shall not be obligated to, authorize more than one phase at a time if so requested by the Contractor.

Should the work be terminated for any reason, the District shall only be responsible for cost of materials used or delivered to the job site for a phase which has received a Notice to Proceed from the District. Any unused materials shall be delivered to the City's Corporation Yard by the Contractor at no cost to the District prior to final payment by the District.

