

BIDDING DOCUMENTS
FOR
CONTRACT
FOR THE PROVISION OF
BOILER No. 1 REPLACEMENT SERVICES
FOR THE
SAN ELIJO JOINT POWERS AUTHORITY
SAN ELIJO WATER RECLAMATION FACILITY
SPECIFICATION NUMBER SE 2020 BRS

BOARD OF DIRECTORS

DAVID ZITO
JODY HUBBARD
KRISTI BECKER
CATHERINE BLAKESPEAR

MANAGEMENT

MICHAEL T. THORNTON, P.E., GENERAL MANAGER
PAUL KINKEL, DIRECTOR OF FINANCE/ADMINISTRATION
CHRISTOPHER A. TREES, P.E., DIRECTOR OF OPERATIONS

Bids to be Opened on November 7, 2019 at 11:00 a.m. at the following address:

SAN ELIJO JOINT POWERS AUTHORITY
2695 Manchester Avenue
Cardiff, California 92007
(760) 753-6203

**SAN ELIJO JOINT POWERS AUTHORITY
PROVISION OF BOILER No. 1 REPLACEMENT SERVICES
FOR THE SAN ELIJO WATER RECLAMATION FACILITY
BID SPECIFICATION SE 2020 BRS**

NOTICE INVITING BIDS

INTRODUCTION

San Elijo Joint Powers Authority (SEJPA) is seeking bids from qualified firms to provide BOILER No. 1 REPLACEMENT services at the San Elijo Water Reclamation Facility (SEWRF).

SEJPA is a public agency existing and operating pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code. SEJPA provides wastewater treatment and disposal services and is also a wholesale producer and distributor of recycled water for irrigation.

These Bidding Documents describe the required scope of services, the provider selection process, and the minimum information that must be included in the bid submission. Failure to submit information in accordance with the requirements and procedures described in this Notice Inviting Bids and Information for Bidders may be cause for disqualification. SEJPA reserves the right to waive minor bid submission deviations or omissions at its sole discretion.

DESCRIPTION OF WORK: SEJPA is soliciting proposals for Boiler Removal and Replacement per the specification stated elsewhere in this solicitation document. This is a prevailing wage project. The Work shall include all material, labor, services and equipment, whether specifically mentioned or not, necessary to complete the Work described in these Bidding Documents, specifically Bid Specification Number SE 2020 BRS.

SITE OF WORK: The Site of the Work is at the SEWRF, 2695 Manchester Avenue, Cardiff, CA 92007.

COMPLETION OF WORK: The services comprising the Work will be performed within 180 calendar days of issuance of the Notice to Proceed. Time is of the essence in the performance of the Contract, and each Bidder, by submitting a Proposal, certifies his/her acceptance of the time allowed by the Contract for the completion of the work specified.

PRE-SUBMITTAL ACTIVITIES

All communications relating to the Bidding Documents should be directed to the PROJECT ADMINISTRATOR:

Chris Trees, Director of Operations
San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff-by-the-Sea, CA 92007
(760) 753-6203, ext. 70
treesc@sejpa.org

No interpretations of or changes to the bid instructions, specifications or other contract documents will be made by telephone. Bidders shall not be entitled to rely upon any information provided by SEJPA unless such information is communicated in writing. SEJPA reserves the right to revise the Bidding Documents prior to the date that proposals are due.

NOTICE REGARDING MINORITY BUSINESS ENTERPRISES: SEJPA hereby notifies all potential bidders that it will ensure that in any Agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

WAGE RATES: Pursuant to the Labor Code of the State of California, it will be required that not less than the locally prevailing wage rates, as specified by the Director of Industrial Relations of the State of California, be paid to all workmen employed or engaged in the performance of this project.

REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS (“DIR”): No contractor or subcontractor may be listed on a bid proposal unless registered with the DIR pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the DIR. The successful bidder shall be required to post all job site notices prescribed by law or regulation. The successful bidder and its subcontractors shall be required to furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) (A) at least monthly or more frequently if specified in the contract with the awarding body and (B) in a format prescribed by the Labor Commissioner.

PAYMENT AND PERFORMANCE BONDS (only required if the Total Bid Amount is greater than \$25,000): As a condition to contract award, the successful bidder shall be required to furnish a payment bond, made payable to SEJPA in the amount of one hundred percent (100%) of the Total Bid Amount, and a performance bond made payable to the SEJPA in the amount of one hundred percent (100%) of the Total Bid Amount, on the forms provided in this request for bids.

NON-DISCRIMINATION: SEJPA does not discriminate on the basis of handicapped status in the admission or access to, or treatment, or employment in its programs or activities.

PRE-BID MEETING: All bidders shall attend the mandatory pre-bid meeting scheduled for: **October 24, 2019 at 9:00 a.m. (local)**, at 2695 Manchester Ave., Cardiff-by-the-Sea, CA 92007. Failure to attend the pre-bid meeting shall result in disqualification.

LICENSE REQUIREMENTS: All bidders must possess a valid California contractor’s license of the required **Class A General Engineering Contractor or Class C-4 Boiler, Hot Water Heating and Steam Fitting Contractor** at the time of submitting this bid. The successful bidder must also possess such valid license at the time of signing the Agreement and maintain such license during the term of this Agreement.

DEADLINE FOR BIDS AND OPENING OF BIDS: Sealed Bids must be delivered to and received by SEJPA at the Office of the General Manager, 2695 Manchester Ave, Cardiff-by-the-Sea, CA 92007, no later than 11:00 a.m. (local) on November 7, 2019, at which time they will be publicly opened and read aloud at said office by the General Manager or his representative. Any Bids received after this time will be returned unopened.

BID AWARD: SEJPA, through its duly authorized body or its designee, will award the contract to the lowest responsive and responsible bidder complying with these instructions. The low bidder will be determined by the lowest Total Bid Amount stated in the Bid Submission Form.

RESERVATION OF RIGHTS: SEJPA reserves the right, after opening bids, to reject any or all bids, to make an award to the lowest responsive and responsible Bidder and reject all other bids, to waive any non-substantial irregularities or informalities in a bid, and to accept any bid or portion thereof and to make awards in the best interest of SEJPA.

A handwritten signature in black ink, appearing to read "M. Thornton", with a stylized flourish at the end.

Michael T. Thornton, P.E.
General Manager

**SAN ELIJO JOINT POWERS AUTHORITY
INFORMATION FOR BIDDERS**

**BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS**

Article 1. General

Bidding Documents containing the Bidding Requirements are provided to prospective Bidders to enable them to prepare a Bid. Documents that must be submitted with the bid are listed at the end of the Information for Bidders.

Article 2. Defined Terms

2.1 The term "Addenda" (plural of "Addendum") means the written or graphic instruments issued prior to execution of the Agreement which modifies or interprets the Bidding Documents and Contract Documents.

2.2 The term "Agreement" means the written contract with SEJPA to perform work outlined in these Bidding Documents, which Agreement shall be executed by and between SEJPA and the Successful Bidder. The Agreement shall be made in the form adopted by SEJPA and incorporated in these Bidding Documents.

2.3 The term "Bidder" means any person, firm or corporation submitting a Bid directly to SEJPA, as distinct from a sub-Bidder, who submits a bid to a Bidder.

2.4 The term "Successful Bidder" means the lowest, responsible and responsive Bidder to whom SEJPA (on the basis of SEJPA's evaluation as hereinafter provided) makes an award.

2.5 The term "Bid" means the offer or proposal of the Bidder submitted on the prescribed forms setting forth the prices for the work to be performed and furnishing other required information.

2.6 The term "Bidding Documents" includes the Public Notice Inviting Bids, Instructions to Bidders, the Bid Specifications, the Special Bid Terms and Conditions, the Bid Submission Form with related documents, the form of the Agreement between SEJPA and the Successful Bidder, and all Addenda issued prior to receipt of Bids.

2.7 The term "Contract Documents" includes the following (as applicable) Change Orders or Field Orders, Permits and License Agreements, Addenda, Supplementary Conditions, Specifications, Plans (Contract Drawings), Agreement, General Conditions, Instructions to Bidders, Notice Inviting Bids, Contractor's Bid Forms, Standard Plans, Standard Specifications for Public Works Construction, and Reference Documents

2.8 The term "Notice of Award" is a written notice by SEJPA to the Bidder that it is the successful Bidder and upon the Bidders compliance with the SEJPA's requirements SEJPA will execute the Agreement.

2.9 The term "Work" means all material, labor, services and equipment, whether specifically mentioned or not, necessary to complete the Work described in these Bidding Documents, specifically Bid Specification Number SE 2020 BRS .

Article 3 Examination of Contract Documents and Site

3.1 It is the responsibility of each Bidder before submitting a Bid to (a) examine the Bidding Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work; (c) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work; (d) study and carefully correlate Bidder's observations with the Contract Documents; and (e) notify SEJPA of all conflicts, errors or discrepancies in the Contract Documents.

3.2 By submitting a Bid each Bidder represents and warrants:

3.2.1 It has had an opportunity to visit the site and has reviewed the Bidding Documents and all information available to Bidders, and has made any other investigations, explorations or tests and has obtained any other data it considers necessary for preparation of its Bid.

3.2.2 It has read, studied and understands the entire set of Bidding Documents including the Specifications and finds them fit and sufficient for the purpose of preparing its Bid and constructing the Work required.

3.2.3 Its Bid is based on providing all of the material, labor, equipment and services necessary to perform the Work in full compliance with the Contract Documents without exception.

Article 4. Communications/Questions Regarding Bid, Interpretations and Addenda (Before Contract Award)

4.1 All questions about the meaning or intent of the Contract Documents are to be directed to SEJPA's designated project administrator (the "PROJECT ADMINISTRATOR"). Interpretations or responses considered necessary by the PROJECT ADMINISTRATOR in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the PROJECT ADMINISTRATOR as having received the Bidding Documents. Questions received less than five days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or responses will be without legal effect and are not to be relied upon by the Bidders unless they are integrated into the written Contract Documents.

4.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by the SEJPA.

Article 5. Bid Security (only required if the Total Bid Amount is greater than \$25,000)

Each Bid must be accompanied by bid security in the amount of ten percent (10%) of the Total Bid Amount, and must be in the form of cash, a cashier's check made payable to SEJPA, a certified check made payable to SEJPA, or a Bid Bond in the form included in these Bidding Documents.

Article 6. Listing of Subcontractors

The Contractor's Bid must include a listing of subcontractors conforming to the requirements and format of the Subcontractor Listing Sheet included with the Bidding Documents.

Article 7. Bid Submission Form

7.1 The Bid Submission Form is included with the Bidding Documents; additional copies may be reproduced by the Bidder.

7.2 All blanks on the Bid Submission Form must be completed legibly in ink or by typewriter. Bid amounts must be stated in words and in figures.

7.3 Bids by corporations must be executed in the corporate name by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

7.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

7.5 All names must be legibly printed in ink or typed below the signature.

7.6 The Bid shall contain an acknowledgement of receipt of all ADDENDA (the numbers of which must be filled in on the Bid Submission Form).

7.7 The address and telephone number for communications regarding the Bid must be shown.

Article 8. Requirement to Meet All Bid Provisions

Each Bidder shall meet all of the specifications and bid terms and conditions. By virtue of the Bid submission and acceptance of the bid award, the Bidder acknowledges agreement with and acceptance of all provisions of the specifications, except as expressly qualified in the Bid proposal. Non-substantial deviations may be considered provided that the Bidder submits a full description and explanation of, and justifications for, the proposed deviations. Final determination of any proposed deviation will be made by SEJPA.

Article 9. Bid Submission

Each Bid must be submitted on the form(s) provided in the bid package. Each Bid shall be enclosed in an envelope, which shall be sealed and addressed to the San Elijo Joint Powers Authority, 2695 Manchester Avenue, Cardiff, CA 92007. In order to guard against premature opening, the Bid should be clearly labeled with the Bid title, name of Bidder, and date and time of Bid opening. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it to prevent premature opening.

Article 10. Opening of Bids

On November 7, 2019 at 11:00 a.m. local time, all Bids timely received will be opened and (unless obviously non-responsive) read aloud publicly by the General Manager or his representative.

Article 11. Bids to Remain Subject to Acceptance

All Bids will remain subject to acceptance, examination and comparison for sixty days after the day of the Bid opening, but SEJPA may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

Article 12. Award of Contract

12.1 SEJPA reserves the right to reject any and all Bids and to waive any and all non-substantial irregularities in Bids, and to reject or delete one part of a Bid and accept the other. SEJPA reserves the right to reject any nonconforming, incomplete, unbalanced or conditional Bids as nonresponsive. SEJPA also reserves the right to reject the Bid of any Bidder that in SEJPA's judgment is non-responsible.

12.2 In evaluating Bids, SEJPA will consider whether or not the Bids comply with the prescribed requirements and include unit prices and other data as may be required in the Bid Submission Form and supplements thereto.

12.3 Discrepancies in the multiplication of units of Work and unit prices, if any, will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between Bid amounts stated in words and in figures will be resolved in favor of the amount stated in words.

12.4 SEJPA will determine the lowest Bidder on the basis of the Total Bid Amount.

12.5 If the Contract is to be awarded, it will be awarded to the lowest responsible and responsive Bidder that in the SEJPA's judgment will be in the best interests of the Project.

12.6 If the Contract is to be awarded, SEJPA will give the Successful Bidder a Notice of Award within the number of days that Bids are subject to acceptance as stated in Article 11.

Article 13. Bid Quotes and Unit Price Extensions

The extensions of unit prices for the quantities indicated and the lump sum prices quoted by the Bidder must be entered in figures in the spaces provided on the Bid Submission Form(s). Any lump sum Bid shall be stated in figures. The Bid Submission Form(s) must be totally completed. If the unit price and the total amount stated by any Bidder for any item are not in agreement, the unit price alone will be considered as representing the Bidder's intention and the total will be corrected to conform to the specified unit price.

Article 14. Bid Withdrawal

A Bidder may withdraw its proposal prior to the time specified for the Bid opening, without prejudice, by submitting a written request to SEJPA's General Manager for its withdrawal, in which event the proposal will be returned to the Bidder unopened. No proposal received after the time specified or at any place other than the place stated in the "Notice Inviting Bids" will be considered. All Bids will be opened and declared publicly. Bidders or their representatives are invited to be present at the opening of the Bids.

If, within five days after Bids are opened, any Bidder files a duly signed, written notice with the SEJPA and promptly thereafter demonstrates in detail to the reasonable satisfaction of SEJPA that there was a material and substantial mistake in the preparation of its Bid, how the mistake occurred, that the mistake was not due to an error in judgment or to carelessness in inspecting the site or reading the plans or specifications, that Bidder may withdraw its Bid and the Bid Security will be returned. Withdrawal will be permitted for mistakes made in filling out the bid provided the Bidder establishes, to SEJPA's satisfaction, that such a mistake was made. Withdrawal will not be permitted for mistakes resulting from errors in judgment or carelessness in inspecting the site of the work or in reading the specifications or other contract documents. The decision to accept or reject a request for withdrawal shall be solely SEJPA's.

Article 15. Interpretations or Corrections

Interpretation or correction of this request for Bids will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person or firm receiving a copy of this request for Bids. SEJPA will not be responsible for any other explanations or interpretations of the proposed Contract Documents.

Article 16. Documents to Rely Upon

Only these Bidding Documents, including any SEJPA-issued Addenda, shall be relied upon for preparation of Bids, and unless specifically corroborated by the request for Bids, any and all statements or representations made by SEJPA or other third parties regarding the work prior, during, or after submission of Bids will not be binding.

Article 17. Addenda

Addenda shall become a part of this request for Bids. Any addenda issued shall be covered and acknowledged in the Bid.

Article 18. Submission of One Bid Only

No individual, or business entity of any kind shall be allowed to make or file, or to be interested in more than one Bid, except an alternative bid when specifically requested; however, an individual or business entity which has submitted a sub-proposal to a Bidder submitting a proposal, or who has quoted prices on materials to such Bidder, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other Bidders submitting proposals.

Article 19. Bid Protest

If any Bidder wishes to challenge a potential Bid award, he shall file a written objection within five (5) calendar days following the bid opening. The written objection shall

include specific reasons why SEJPA should reject the Bid questioned by the Bidder. SEJPA may, in its discretion, consider the protest during the public meeting at which the contract award is to be considered, or it may consider it at a prior meeting. SEJPA shall give the challenging Bidder and the challenged apparent low Bidder at least five (5) working days' notice of the board meeting at which the challenge shall be considered by SEJPA Governing Board. No other notice, other than that required for agenda descriptions by the Ralph M. Brown Act, shall be required. SEJPA's Governing Board may, in its discretion, continue its consideration and determination of the issue to future meetings of the Board within the time authorized for award of the contract. SEJPA's Governing Board's decision shall be final.

Article 20. Signing of Agreement

When SEJPA gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within twelve (12) working days thereafter the Successful Bidder shall sign and deliver the required number of counterparts of the Agreement together with the required Bonds and insurance certificates to the SEJPA. Within ten (10) days thereafter SEJPA will deliver one fully signed counterpart to the Successful Bidder. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification which shall be signed by the parties to the Agreement. Should Successful Bidder fail to deliver the required number of counterparts of the Agreement and required Bonds and insurance certificates within this time, SEJPA may consider Successful Bidder non-responsive.

In no case will the Notice to Proceed be considered as allowing the Work to begin until the required counterparts of the Agreement and required Bonds and insurance certificates are received by the SEJPA, even though the Contract Time as stated in the Notice to Proceed will commence to run.

Article 21. Compliance with Laws.

The Bidder warrants that he/she possesses, or has arranged through subcontracts, all capital and other equipment, labor and materials to carry out and complete the work hereunder in compliance with all Federal, State, County, City and Special District Laws, Ordinances, and Regulations which are applicable.

Article 22. Insurance

22.1 SEJPA's requirements for insurance are set forth in Article 7 of the Agreement.

22.2 The Successful Bidder shall purchase insurance from an insurance company or companies who meet the requirements of Article 7 of the Agreement and will provide the required insurance and will furnish insurance certificates.

22.3 The Successful Bidder shall deliver the required insurance certificates to SEJPA within twelve (12) Working Days following SEJPA's Notice of Award. Should Successful Bidder fail to deliver required certificates within this time, SEJPA may consider Successful Bidder non-responsive.

22.4 In no case will the Notice to Proceed be considered as allowing the Work to begin until the insurance certificates are received by SEJPA.

22.5 If Acts of God insurance is required, it will be quoted as a separate Bid item.

Article 23. Failure to Accept Contract

If the Bidder to whom the award is made fails to enter into the contract: the award will be annulled; any bid security will be forfeited in accordance with the Special Bid Terms and Conditions if a Bidder's bond or security is required; and an award may be made to the next lowest responsible Bidder who shall fulfill every stipulation as if it were the party to whom the first award was made.

Article 24. Contract Assignment

The Bidder shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the prior written consent of San Elijo Joint Powers Authority.

Article 25. Non-Discrimination

In the performance of the terms of this contract, the Bidder agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, physical or mental disability, or religion of such persons.

Article 26. Termination

If, during the term of this contract, SEJPA determines that the Bidder is not faithfully abiding by any term or condition contained herein, the SEJPA may notify the Bidder in writing of such defect or failure to perform; which notice must give Bidder five (5) working days thereafter in which to reaffirm said work or cure the deficiency. If the Bidder has not performed the work or cured the deficiency within five (5) days specified in the notice, such shall constitute a breach of this contract and SEJPA may terminate this contract immediately by written notice to the Bidder to said effect. In said event, the Bidder shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day it received SEJPA's notice of termination, minus any offset from such payment representing the SEJPA's damages from such breach. SEJPA reserves the right to delay any such payment, to allow for a full and complete accounting of costs. In no event, however, shall the Bidder be entitled to receive in excess of the compensation quoted in its bid.

Article 27. Liquidated Damages

Provisions for liquidated damages, if any, are set forth in the Agreement.

Article 28. Payment Terms

SEJPA's payment terms are forty-five (45) days after completion of the services for the month in question and SEJPA's receipt of an original invoice referencing SEJPA's Purchase Order Number and acceptance of the materials, supplies, equipment, or services (Net 45).

Payment will only be released upon authorization from the Project Administrator of the SEJPA. Payments will be made once a month for work performed or supplies provided.

Article 29. Site Preservation

The completion of all work defined within this contract specification shall be done so that there is no damage to the existing facilities and the site shall be kept in a clean and orderly fashion throughout the terms of this contract.

Article 30. Non-interference with Plant Operations

All work will be performed in such a manner that there is no interference with plant operations.

Article 31. Site Conditions

Bidders are required to inform themselves fully of the conditions relating to the work, and the successful Bidder shall employ, as far as possible, such methods and means in carrying out his work as will not cause any interruption or interference to others working at the sites.

Article 32. Procurement of Permits and Licenses

Unless otherwise stated, the successful Bidder shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of the work.

Article 33. California Contractor's License

Attention is directed to the Contractor's License Law concerning the licensing of Contractors. Contractors are required to be licensed and regulated by the Contractor's State License Board. Bidders shall have a valid California contractor's license issued by the Contractors State License Board under the specialty license classification for the work included in each Bid. The license(s) shall be active and in good standing as of the date of submittal of the bid and shall remain active and in good standing continuously until the termination of the contract.

Article 34. Wage Rates

Pursuant to Sections 1770 *et seq.* of the California Labor Code, the successful Bidder and its subcontractors of any tier shall pay all workers employed on the work not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of the prevailing rate of per diem wages are on file at San Elijo Joint Powers Authority, 2695 Manchester Avenue, Cardiff-by-the-Sea, CA 92007, and shall be made available to any interested party upon request. Copies may also be obtained from State of California, Division of Labor Statistics and Research, (415) 557- 0561. The successful Bidder shall post a copy of such determination at each job site. The successful Bidder may be subject to penalties if workers are paid less than the required prevailing wages, as provided by Labor Code Section 1775. The successful Bidder shall, as a penalty to the SEJPA, forfeit two hundred dollars (\$200.00) 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 the successful Bidder or by any subcontractors under him unless the requirements of Labor Code Section 1775(b) are met.

Article 35. Apprentices

The successful Bidder shall comply with all applicable provisions of Section 1777.5 and 1777.6 of the California Labor Code relating to employment of apprentices. Additional information is provided in the form of agreement included in this request for bids.

Article 36. Working Hours

The successful Bidder shall comply with all applicable provisions of Sections 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The successful Bidder shall, as a penalty to SEJPA, forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the successful Bidder or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, unless such worker receives compensation for all hours worked in excess of eight (8) hours at not less than one and a half (1 1/2) times the basic rate of pay.

Article 37. Registration with the Department of Industrial Relations and Compliance Monitoring

No contractor or subcontractor may be listed on a bid proposal for the Work unless registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)). No contractor or subcontractor may be awarded a contract for the Work unless registered with the DIR pursuant to Labor Code section 1725.5. The Successful Bidder must be, and must require its subcontractors to be, registered with the DIR prior to execution of the Agreement, if any awarded pursuant to this bid invitation. All contractors and subcontractors who bid or work on, and/or who are awarded a public works project must register with and pay an annual fee to the DIR. The Successful Bidder shall not perform any work with a subcontractor who is ineligible to perform work on a public works project pursuant to California Labor Code Sections 1777.1 or 1777.7.

This project is subject to compliance monitoring and enforcement by the DIR. The successful Bidder is required to post all job site notices prescribed by law or regulation. The successful Bidder and all of its subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) (A) at least monthly or more frequently if specified in the contract with the awarding body and (B) in a format prescribed by the Labor Commissioner.

Article 38. Pre-bid Conference.

All bidders shall attend the mandatory pre-bid meeting scheduled for: October 24, 2019 at 9:00 a.m. (local), at 2695 Manchester Ave., Cardiff-by-the-Sea, CA 92007. Failure to attend the pre-bid meeting shall result in disqualification.

Article 39. Substitution of Securities.

Pursuant to the provisions of section 22300 of the California Public Contract Code, the successful Bidder may substitute securities for any monies withheld by the SEJPA to ensure performance of the Work. Procedures shall be as provided in said section 22300.

Article 40. Documents that Must be Submitted with Bids

Bidders must submit the following signed Documents with their Bids:

Bid Submission Form
Statement of Qualifications and References
Statement of Bidder's Past Contract Disqualifications
Non-Collusion Declaration
Bid Bond
List of Subcontractors Form
Compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C § 1324)

SPECIAL BID TERMS AND CONDITIONS

BOILER No. 1 REPLACEMENT SERVICES Specification Number SE 2020 BRS

Submission of Statement of Qualifications and References - Each Bidder shall submit a statement of qualifications and references on the form provided in the bid package. To be considered qualified, the proponent must demonstrate in its proposal that it has the background, experience, and the technical and management resources required to organize and conduct the services outlined in this RFB. The Bidder shall furnish information documenting its ability to provide and perform all work related to its implementation and ongoing effectiveness of the project, in a timetable acceptable by SEJPA. SEJPA reserves the right to investigate the qualifications of firms under consideration to confirm any part of the information furnished by the Proponent. Anything less than satisfactory performance on a prior SEJPA contract may lead to SEJPA concluding that the Proponent is not qualified.

Minimum Qualifications - Each Bidder shall demonstrate successful completion of at least three (3) projects of similar size and scope within the past five (5) years.

Statement of Bidder's Past Contract Disqualifications - Each Bidder shall submit a statement regarding any past governmental agency bidding or contract disqualifications on the form provided in the bid package.

BID SPECIFICATIONS

BOILER No. 1 REPLACEMENT SERVICES Specification Number SE 2020 BRS

LOCATION: SAN ELIJO WATER RECLAMATION FACILITY
2695 Manchester Avenue
Cardiff, CA 92007

Time Frame: December 16, 2019 to June 30, 2020

SERVICES REQUIRED:

1. SCOPE

It is the intent of this specification to describe the labor and materials necessary to remove and replace (1) existing Smith Boiler 28A-8 (www.smithboiler.com) and burner at the SEWRF located at 2695 Manchester Avenue, Cardiff by the Sea, CA 92007. The existing Smith boiler was installed in 1997 to utilize digester gas to heat a water loop. The boiler is equipped with a burner capable of automatically switching from natural gas to digester methane. The existing burner is a PowerFlame model C2-GG-20A, full modulating to maintain fuel-air ratios automatically.

2. BRAND NAME OR EQUAL

A Brand Name is used to identify the characteristics and level of quality that will satisfy SEJPA requirements. Proposed 'or equal' units must be of the same or better quality and comply with the manufacturer's requirements and specifications; physical, functional and/or performance characteristics. The Proposer shall state the proposed manufacturer name and part number and provide documentation sufficient, in the SEJPA's judgment, to permit a determination as to whether the unit bid constitutes an 'or equal'. Documentation shall include a table listing the existing boiler characteristics and the new boiler characteristics side-by-side. The intent of this specification is to install a replacement boiler with equal to or better quality and performance than the existing boiler.

3. SYSTEM REQUIREMENTS

The replacement boiler and existing hot water system must be configured with the necessary controls to monitor various system water temperatures in order to vary the firing rate of the replacement boiler. The firing rate of the boiler must be variable to meet the heating load of the system. The use of a valve to vary water flow in the system is not permitted.

The replacement boiler must be fitted with shutoff valves and powered actuators, to prevent water flow through the boiler when the boiler is not in use. These valves must be connected to the replacement boiler control system. A control panel will control ignition, starting and stopping of the burner, and provide both pre- and post-combustion purge. Burner will shut down in the event of ignition, pilot or main flame failure. Interlock will shut down burner upon combustion air pressure drop. Control panel will include indicating lights or other method to show low water level, flame failure, fuel valve open and load demand. Control panel will include automatic switchover between existing and new boiler. Boiler will be supplied with all required gauges, instruments and controls to operate safely and efficiently.

Natural gas and methane piping will be stainless steel. Gas train will include high and low gas pressure switches, plug valve and gas pressure regulator, and any additional accessories as needed to meet code requirements and provide a fully operating system.

Boiler will be installed in accordance with manufacturer's instructions, and to meet NFPA 54 and applicable codes. All materials furnished and all work installed shall comply with National Fire codes. All electrical work will conform to applicable Building Code and NFPA 70. Products furnished will be listed and classified by Underwriters Laboratories, Inc. The resulting system must be installed and function per the Uniform Plumbing Code. All materials, components and equipment must be installed and function per the respective materials, components and equipment manufacturer's requirements. Installation will include any additional accessories required to meet code requirements and provide a fully operating system.

4. REQUIRED WORK

The tasks that must be performed in order to replace the existing boiler include, but are not limited to, the following:

- Successfully complete a permit application to modify existing San Diego County Air Pollution Control District Permit No. 920729 and receive an Authority to Construct.
- Submit shop drawings to include performance curves, data sheets, flow diagrams, wiring diagrams, and descriptive drawings. Submittals are for review of general conformance with the design concepts of the project and general compliance with the Contract Documents. The Contractor is responsible for the final design conforming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating the work of all trades, and performing the work in a safe and satisfactory manner.
- Disconnect and lock out of the digester gas, natural gas, and electrical connections
- Drain the system as necessary
- Disconnect the hot water piping, drains and stack connections
- Removal of all connections that will not be required by the resulting system
- Removal and proper disposal of the existing boiler
- Position the replacement boiler over the footprint of the existing boiler
- Installation of and connection of new shut off valves
- Reconnect of hot water piping, drains and stack connections
- Insulate new hot water piping and stack
- Reconnect digester gas, natural gas, and electrical connections
- Installation of new wall mounted control panel in remote location
- Installation and interconnection of the necessary sensors and controls
- Fill system as necessary
- Start system and confirm system functionality
- Balancing of hot water flow as required by the manufacturer
- Calibrate and/or program the system to meet the required functionality
- Test all safety devices
- An authorized representative of the boiler or burner manufacturer shall perform the boiler start-up, final adjusting, and testing of the burners and controls in the presence of the Owner's operating personnel, and provide written certification of successful startup.
- Provide three (3) copies of all Operation and Maintenance Manuals

5. COMPONENTS AND EQUIPMENT

This section lists suggested components and equipment. A proponent may propose other components and equipment. Such alternatives must meet or exceed the characteristics listed in this section.

The replacement boiler and burner shall be a new high efficiency boiler system to significantly meet the heating requirements of the digester sludge heating system, full modulation hot water boiler. The intent of this specification is to install a replacement boiler and burner with equal to or better quality and performance than the existing boiler.

The components and equipment must include, but not be limited to, the following:

- Boiler Output.....1,709,000 BTU's/hr
- Water Working Weight.....7,507 lbs
- Electrical characteristics120/1 Phase/60Hz/ 15 Amps
- I=B=R Burner Capacity.....2,499 MBH (gas 1,000 BTU/cf @ 0.60 spec gravity)
- Minimum Relief Valve Capacity.....1,965 Lbs/Hr
- Maximum Working Pressure50 psi
- Primary fuel source.....Digester Gas
- Secondary fuel source.....Natural Gas

The new boiler and the resulting system shall be configured and controlled with a Digital Combustion Management system. The system must provide these characteristics and functions:

- Text based display
- Temperature control
- Flame safeguard
- Firing rate control
- Blocked flue protection
- Cycle limitation
- Electronic fuel/air ratio controller
- Data exchange with existing PLC via TCP/IP communication protocol

Other components that must be furnished:

- ASME Relief valve
- Manufacturer recommended spare parts
- Any and all components necessary to meet emission requirements of the San Diego County Air Pollution Control District

6. DELIVERY OF GOODS AND SERVICES

The delivery of goods and services required must be completed within 180 days after receipt of a Contract and Notice to Proceed.

7. WARRANTY

The proponent must provide a warranty for labor costs for a period of 1 year after the required work has been completed. The proponent must administer the component or equipment manufacturer's warranty during the one year labor warranty period. The proponent must provide the SEJPA with the component or manufacturer's warranty documents.

8. SAFETY

The contractor must comply with the applicable Federal, State and local safety requirements and the SEJPA Contractor Safety Program. Prior to initiation of services, the contractor shall provide a copy of their written safety program to the SEJPA for review.

BID SUBMISSION FORM

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

TO: Michael T. Thornton, P.E., General Manager
San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff, CA 92007

Dated: _____

| Bid Item | Description | Total Lump Sum Price |
|----------|--|----------------------|
| 1 | Having carefully examined the Specifications entitled: SE2020 BRS – BOILER No. 1 REPLACEMENT SERVICES as well as the premises and conditions affecting the work, the undersigned proposes to furnish all labor and materials and to perform all work as required by and in strict accordance with the above-named documents for the following sum: | \$ |

Any other items necessary to complete the work, including labor costs: \$ _____

TOTAL BID AMOUNT \$ _____

THE ONLY EXCEPTIONS FROM THE SPECIFICATIONS ARE:

This Bid, as presented herein, is irrevocable and may not be withdrawn for a period of sixty (60) days from the date accepted by SEJPA, except in accordance with the withdrawal of Bid provisions in the Information for Bidders. This Bid shall be submitted in accordance with all provisions of the Notice Inviting Bids, Information for Bidders, Bid Specifications and any other supplied Bidding Documents and Addenda.

All prices quoted are F.O.B. job site, tested and operational with all applicable sales taxes, State and/or Federal, and any other special taxes, patent rights or royalties, freight and full insurance to the job site paid by Bidder.

The low bid will be determined based on the Total Bid Amount listed on this Form.

Signature of Authorized Bidder Representative: _____

Name of Individual (Typed): _____ Title: _____

Firm Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Telephone: _____

**STATEMENT OF
QUALIFICATIONS AND REFERENCES**

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

Proposing Contractor shall submit the number of years engaged in providing services included within the scope of the bid specifications under the present business name: _____
_____.

List and describe fully the last three contracts performed by your firm that demonstrate your ability to provide the supplies, equipment, or services included with the scope of the bid specifications. Attach additional pages if required. The Authority reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

Reference No. 1

Customer Name: _____
Contact Individual: _____ Phone No.: _____
Address: _____

Contract Amount: _____ Year: _____
Description of supplies, equipment, or services provided: _____

Reference No. 2

Customer Name: _____
Contact Individual: _____ Phone No.: _____
Address: _____

Contract Amount: _____ Year: _____
Description of supplies, equipment, or services provided: _____

Reference No. 3

Customer Name: _____
Contact Individual: _____ Phone No.: _____
Address: _____

Contract Amount: _____ Year: _____
Description of supplies, equipment, or services provided: _____

Signature of Authorized Bidder Representative

**STATEMENT OF BIDDER'S PAST CONTRACT
DISQUALIFICATIONS**

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

Pursuant to Section 10162 of the Public Contract Code, the Bidder shall state whether such prospective Bidder, any officer of such Bidder, of any employee of such Bidder who has a proprietary interest in such Bidder, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a Federal, State or local government project because of the violation of law or a safety regulation, and if so to explain the circumstances.

1. Do you have any disqualification, removal, etc., as described in the above paragraph to declare?
Yes _____ No _____

2. If yes, explain the circumstances.

Executed on _____ at _____, California.

I declare, under penalty of perjury, that the foregoing is true and correct.

Signature of Authorized Bidder Representative

NON-COLLUSION DECLARATION

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

Failure to submit a Non-collusion Declaration in this form shall constitute grounds for rejection of the bid. This Declaration to be fully executed.

The undersigned declares:

I am the _____ [title] of _____
[company name], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder. All statements contained in the bid are true. The Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____
[date], at _____ [city], _____ [state].

Signature of: President, Secretary,
Manager, Owner, or Representative

(Attach here Acknowledgement on Standard Form)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA
 COUNTY OF [COUNTY]

On _____ before me _____ Notary
 Public,

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 following paragraph is true and correct.

WITNESS my hand and official seal.

 (SIGNATURE OF THE NOTARY PUBLIC)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S)
 TITLE(S): _____
- PARTNERS
 - LIMITED
 - GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE
- GUARDIAN/CONSERVATOR
- OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

 TITLE OR TYPE OF DOCUMENT

 NUMBER OF PAGES

 DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

| |
|----------------------------------|
| Right Thumbprint of Signer |
| |

BID BOND

**BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS**

KNOW ALL MEN BY THESE PRESENTS:

That we _____
_____, as PRINCIPAL, and

_____, as SURETY, are held and firmly bound unto the San Elijo Joint Powers Authority, a political subdivision of the State of California, hereinafter called the SEJPA, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the SEJPA for the work described below for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the Principal has submitted the above-mentioned bid to the SEJPA for certain work specifically described as follows, for which bids are to be opened on _____ (date), or at a later date as may be established by the SEJPA in its sole discretion, for Bid Specification SE 2020 BRS – BOILER No. 1 REPLACEMENT Services.

NOW THEREFORE, If the aforesaid principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within sixty (60) days after said opening, and shall within the period specified therefore, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written contract with the SEJPA, in the prescribed form, in accordance with the bid as accepted, and file the two bonds with the SEJPA, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the SEJPA and judgment is recovered, the surety shall pay all costs incurred by the SEJPA in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____ .A.D. 20____.

Principal

(Seal)

Signature for Principal Title

(Seal)

Surety

Signature for Surety Title

LIST OF SUBCONTRACTORS FORM

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

The Bidder is required to furnish the following information in accordance with the provisions of the California Subletting and Subcontracting Fair Practices Act, contained in Sections 4100 to 4114, inclusive, of the Public Contract Code of the State of California (the "Act") and any amendments thereto, for each subcontractor performing more than one-half of one percent (0.5%) of the Total Bid. Do not list alternative subcontractors for the same work. The Contractor shall list only one subcontractor for each such portion of Work as is defined by the Contractor in his Bid. Contractor shall not substitute any person as subcontractor in the place of a subcontractor listed below, except as provided in the General Conditions.

The Bidder understands that if he/she fails to specify a subcontractor for any portion of the Work to be performed under the Contract, or specifies more than one subcontractor for the same portion of the Work, he/she shall be deemed to have agreed that he/she is fully qualified to perform that portion himself/herself and that he/she shall not be permitted to sublet or subcontract that portion of the Work, except as provided in the Act.

| Name Under Which Subcontractor Licensed | License Number | Address and Telephone Number | Specific Description of Subcontract and Percent of Total Base Bid |
|---|----------------|------------------------------|---|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

**COMPLIANCE WITH THE IMMIGRATION REFORM AND
CONTROL ACT OF 1986 (8 U.S.C. § 1324)**

**BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS**

As a condition of submitting a bid for the Project, Bidders are required to verify whether or not they have been fined or otherwise penalized within the past three (3) years for failing to obtain and/or maintain valid Employment Eligibility (“I-9”) forms for employees pursuant to the Immigration Reform and Control Act of 1986 (the “Act”). The Bidder shall check the appropriate box below, sign and date this page, and submit it to the San Elijo Joint Powers Authority (SEJPA) as part of his or her bid package.

Failure to properly submit this completed form shall result in the possible rejection of the bid as being non-responsive, in the SEJPA’s sole discretion. In the event a Bidder has been fined or otherwise penalized within the past three (3) years, the SEJPA reserves the right, in its sole discretion, to reject the bid as being non-responsive. In the event the SEJPA awards a contract to a Bidder and subsequently discovers that the Bidder was fined or otherwise penalized for failing to obtain and/or maintain valid I-9 forms within the past three (3) years and failed to disclose such information, the SEJPA shall have the right, in its sole discretion, to immediately terminate the contract and award the bid to the next lowest Bidder, or re-bid the project. The SEJPA reserves the right to recover from the Bidder any costs and/or damages sustained by the SEJPA as the result of having to terminate the Bidder from the Project and/or re-award the contract due to the Bidder’s failure to disclose previous I-9 violations.

ALL BIDDERS MUST CHECK ONE OF THE BOXES BELOW AND SIGN:

- Within the past three (3) years, Bidder HAS been fined or otherwise penalized for failing to obtain and/or maintain valid I-9 forms for its employees.

- Within the past three (3) years, Bidder HAS NOT been fined or otherwise penalized for failing to obtain and/or maintain valid I-9 forms for its employees.

Bidder’s Signature

Company

Date

AGREEMENT

BOILER No. 1 REPLACEMENT SERVICES Specification Number SE 2020 BRS

THIS AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 2019, by and between San Elijo Joint Powers Authority, a joint powers authority organized and operating pursuant to Government Code Sections 6500 et seq., hereinafter referred to as "AUTHORITY" or the "SEJPA," and _____, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS, on _____, 2019, AUTHORITY invited bids for the provision of BOILER No. 1 REPLACEMENT Services per Specifications No. SE 2020 BRS .

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a bid which was accepted by AUTHORITY for said services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. Unless earlier terminated in accordance with Section 10, the term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until _____, 2020.
 - 1.1 Time for Completion. CONTRACTOR will perform the services comprising the Work within 180 calendar days of issuance of the Notice to Proceed.
 - 1.2 Liquidated Damages. AUTHORITY and CONTRACTOR recognize that time is of the essence in this Agreement and that AUTHORITY will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.1 above. They also recognize the delays, expense and difficulties involved in proving in a legal action or arbitration proceeding the actual loss suffered by AUTHORITY if the Work is not completed on time. Accordingly, instead of requiring any such proof, AUTHORITY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay AUTHORITY One Thousand Dollars (\$1,000.00) for each day that expires after the time specified in Paragraph 1.1 for Completion of the Work until the Work is fully complete and AUTHORITY issues a notice of Final Completion.
2. INCORPORATION BY REFERENCE. The Public Notice Inviting Bids, the Information for Bidders, the Special Bid Terms and Conditions, Bid Submission Form(s) and their accompanying documents, the Bid Specifications, and the Payment and Performance Bonds (collectively, the "Contract Documents"), are hereby incorporated in and made a part of this Agreement. In the event of any inconsistencies or conflicts in the Contract Documents, the order of precedence from highest to lowest shall be: Any amendments to this Agreement, this Agreement, the Bid Specifications, the Information for Bidders, the Special Bid Terms and Conditions, the Notice Inviting Bids, the Payment and Performance Bonds, and the Bid Submission Form(s).

3. AUTHORITY'S OBLIGATIONS. For furnishing labor, materials, services and/or equipment as specified in the Agreement, AUTHORITY will pay and CONTRACTOR shall receive compensation for BOILER No. 1 REPLACEMENT services per the attached bid submission. The total lump sum amount shall be \$_____. This total contract price shall be used for the purposes of the Faithful Performance and Payment Bonds executed in connection with this Agreement.

Payments to the CONTRACTOR shall be made within forty-five (45) days after completion of the services for the month in question and AUTHORITY's receipt of an original invoice from the CONTRACTOR referencing the AUTHORITY's Purchase Order Number and acceptance of the materials, supplies, equipment, or services (Net 45). CONTRACTOR shall invoice no more frequently than monthly for services or supplies provided. Neither AUTHORITY'S acceptance of, nor payment for any of the services, shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement. AUTHORITY may withhold or reduce payments otherwise due CONTRACTOR as reasonably necessary to remedy deficiencies in the Work or damages caused by CONTRACTOR, or to protect AUTHORITY against claims or liabilities arising from the operations of CONTRACTOR or its subcontractors under this Agreement. Pursuant to section 10262 of the California Public Contract Code and section 7108.5 of the California Business and Professions Code, CONTRACTOR shall pay its subcontractors and suppliers within seven (7) days of receipt of payment from AUTHORITY.

Notwithstanding the above, AUTHORITY will retain a portion of the amount otherwise due CONTRACTOR. The amount retained by AUTHORITY will be as follows:

- AUTHORITY shall retain five percent (5%) of such estimated value of the Work as part security for the fulfillment of the Agreement by CONTRACTOR.
- Said amount shall be withheld until final completion and acceptance of the Work, consistent with Public Contract Code 9203 and the terms of this Agreement.

Final payment will only be released upon authorization from the Board of Directors of the AUTHORITY. Final payment of undisputed contract amounts is contingent upon CONTRACTOR furnishing the AUTHORITY with a release of all claims against AUTHORITY arising by virtue of the Agreement. CONTRACTOR shall deliver to AUTHORITY written waivers from its subcontractors and suppliers on the forms required pursuant to Civil Code Sections 8136 (conditional) and 8138 (unconditional). In the event that the governing board of AUTHORITY takes final acceptance without obtaining the waivers from CONTRACTOR, CONTRACTOR is not released from its obligation to provide such waivers to AUTHORITY.

4. CONTRACTOR'S OBLIGATIONS. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by AUTHORITY, CONTRACTOR agrees with AUTHORITY to furnish the Work and to do everything required by this Agreement and the Specifications. Without limiting the generality of the foregoing, CONTRACTOR warrants on behalf of itself and all subcontractors engaged for the performance of this Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder. In performing Work under this Agreement, CONTRACTOR agrees to comply with all laws, rules and

regulations and ordinances, whether federal, state or local, and any and all AUTHORITY policies, procedures, departmental rules or other directives applicable to the Work. Any changes to AUTHORITY'S policies and procedures that relate to CONTRACTOR will be provided to CONTRACTOR in writing. CONTRACTOR agrees to review such policies, procedures, rules and directives and shall be deemed to have knowledge of them. CONTRACTOR shall ensure that any report generated under this Agreement complies with California Government Code section 7550.

5. CONTRACTOR DECLARATIONS

The CONTRACTOR declares the Work will be conducted pursuant to the following additional requirements of the State of California:

5.1 Prevailing Wage Scale: Reference is hereby made to, and CONTRACTOR agrees to fully comply with, the rate of prevailing wage scale established by the State of California Director of Industrial Relations, a copy of which is available for inspection in the AUTHORITY'S office, the provisions of which are hereby specified as the rate of prevailing wage to be paid workers on this Work, and the provisions of Article 2, Chapter 1, Part 7, Division 2 (commencing with Section 1770) of the Labor Code shall be fully applicable to the Work. As applicable to the Work and pursuant to Sections 1770 et seq. of the Labor Code, CONTRACTOR and any of CONTRACTOR'S subcontractors shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations.

5.1.1 The CONTRACTOR shall be subject to the penalties set forth in Section 1775 of the Labor Code for any violation of prevailing wage requirements.

5.2 Hours of Labor: Eight-hour labor constitutes a legal day's work. The CONTRACTOR shall forfeit, as penalty to the AUTHORITY, twenty-five dollars (\$25.00) for each worker employed in the execution of the Agreement by him or by any subcontractor, for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except as permitted by the provisions of Article 3, Chapter 1, Part 7, Division 2 (commencing with Section 1810) of the Labor Code of the State of California.

5.3 Apprentices: The CONTRACTOR has the responsibility to comply with the provisions of Section 1777.5 of the Labor Code for all apprenticeable occupations, including but not limited to, employment requirements, training requirements and payment of the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Prior to commencing Work on the Project, the CONTRACTOR shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the Work, and shall also submit a copy of such information to the AUTHORITY. Within sixty (60) days after concluding the Work, the CONTRACTOR and each subcontractor shall submit to the AUTHORITY, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed. Pursuant to Section 1777.5, subdivision (e), this information shall be public. Penalties for violations of Section 1777.5 are set forth in Section 1777.7 of the Labor Code. Information relative to number of apprentices, identifications, wages, hours of employment and standards of working conditions shall be obtained from the Director of the Department of Industrial Relations, who is the Administrative Officer of the California Apprenticeship Council.

5.4 Prohibited Employment Discrimination: Attention is directed to Section 1735 of the California Labor Code, which reads as follows:

A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

5.5 Workers' Compensation Insurance: In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the California Labor Code, the CONTRACTOR is required to secure the payment of compensation to his employees and shall for that purpose obtain and keep in effect adequate Workers' Compensation Insurance. The undersigned CONTRACTOR certifies it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation claims or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the Work in this Contract.

5.6 Security for Compensation: The CONTRACTOR further agrees to secure the payment of compensation to his employees in accordance with the provisions of Section 3700 of the California Labor Code.

5.7 Warranty: Neither final payment nor any provision in the Contract Documents shall relieve CONTRACTOR of responsibility for faulty materials or workmanship incorporated in the Project. CONTRACTOR warrants that all work under this Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) working days upon receiving notification from SEJPA, to remedy, repair or replace, without cost to SEJPA, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Work and ending one (1) year after the termination or expiration of this Agreement. The foregoing warranty of CONTRACTOR also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by CONTRACTOR and/or any party retained by, through or under CONTRACTOR in connection with the Work, but the foregoing warranty of CONTRACTOR does not guarantee against damage to the Work sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Work made or done by parties not directly responsible to CONTRACTOR, except where such changes or additions to the Work are made in accordance with CONTRACTOR's directions. No guarantee furnished by a party other than CONTRACTOR with respect to equipment manufactured or supplied by such party shall relieve CONTRACTOR from the foregoing warranty obligation of CONTRACTOR. The warranty period set forth herein above shall not apply to latent defects appearing in the Work, and with respect to such defects, the applicable statute of limitations shall apply. CONTRACTOR agrees to provide SEJPA with all equipment and materials warranties provided by manufacturers to SEJPA but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

5.8 CONTRACTOR'S License: The CONTRACTOR agrees to abide by all applicable licensing laws and regulations in the performance of any work under this Agreement. The CONTRACTOR declares that it possesses a valid California CONTRACTOR's

License of the required **Class A General Engineering Contractor or Class C-4 Boiler, Hot Water Heating and Steam Fitting Contractor** at the time of signing this Agreement, and shall maintain such license during the term of this Agreement. The CONTRACTOR shall affirm its license number, classification and expiration date as stated on its Bid by signing this Agreement. The following statement is included in accordance with Section 7030 of the California Business and Professions Code:

“Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P.O. Box 26000, Sacramento, California 95826.”

5.9 Payroll Records: The CONTRACTOR shall, and shall require each subcontractor to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid by each journeyman, apprentice, worker, other employee employed by him or her in connection with the Work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any Work performed by his or her employees on the Project. The payroll records shall be certified, available for inspection, and electronic copies thereof furnished directly to the Labor Commissioner (A) at least monthly or more frequently, or (B) in a format prescribed by the Labor Commissioner, as prescribed in Section 1776 of the Labor Code. The CONTRACTOR shall inform the SEJPA of the location of the records, including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address. Penalties for noncompliance include those provided at subdivision (h) of Section 1776 of the Labor Code.

5.10 Public Works Contractor Registration Program: CONTRACTOR must be, and must require its subcontractors to be, registered with the Department of Industrial Relations (DIR) prior to execution of this Agreement. All contractors and subcontractors who bid or work on, and/or who are awarded a public works project must register with and pay an annual fee to the DIR. No contractor or subcontractors may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5. This project is subject to compliance monitoring and enforcement by the DIR. CONTRACTOR shall not perform any work under this Agreement with a subcontractor who is ineligible to perform work on a public works project pursuant to California Labor Code Sections 1777.1 or 1777.7.

5.11 Compliance with Laws/Rules. In performing the services specified in this Agreement, CONTRACTOR agrees to comply with all laws, rules, regulations and ordinances, whether federal, state or local, and any and all of AUTHORITY’s policies, procedures, departmental rules and other directives applicable to the services to be performed and provided by AUTHORITY to CONTRACTOR, including, but not limited to,

AUTHORITY's Safety Policies and Procedures. CONTRACTOR will post, and/or will require its subcontractors to post, all job site notices prescribed by law or regulation. CONTRACTOR will perform all services under this Agreement in good faith and in the best interests of SEJPA.

CONTRACTOR represents, warrants and covenants to AUTHORITY that (a) the Contract Price includes funds sufficient to allow CONTRACTOR to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided under this Agreement, (b) CONTRACTOR will fully comply with all such laws and regulations, and (c) CONTRACTOR shall defend, indemnify and hold AUTHORITY harmless from and against any claims arising out of CONTRACTOR's failure to fully perform and honor its obligations under this Section 5.11. In submitting bid, signing the Agreement, performing the Work, and requesting and receiving payment, CONTRACTOR certifies it has not and will not submit false claims, pursuant to Government Code Section 12650 et seq.

6. HOLD HARMLESS AND INDEMNIFICATION. To the fullest extent permitted by law, CONTRACTOR agrees to defend, indemnify, and hold harmless AUTHORITY, its member agencies (to include the City of Encinitas and the City of Solana Beach), and each of their respective directors, officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties"), from and against all claims, lawsuits, liabilities or damages, including attorney's fees and costs, of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of CONTRACTOR, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Agreement. The CONTRACTOR shall thoroughly investigate any and all claims and indemnify the Indemnified Parties and do whatever is necessary to protect the Indemnified Parties as to any such claims lawsuits, liabilities, expenses, or damages. Nothing in this Agreement shall impose on CONTRACTOR, or relieve SEJPA from, liability to the extent of the active negligence, sole negligence or willful misconduct of AUTHORITY. AUTHORITY shall timely notify CONTRACTOR of the receipt of any third-party claim relating to the Agreement.

7. INSURANCE. During the course of the Agreement, CONTRACTOR shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the Work covered hereby. CONTRACTOR SHALL FURTHER TAKE OUT AND SHALL FURNISH SATISFACTORY PROOF BY CERTIFICATE OR OTHERWISE AS MAY BE REQUIRED, THAT IT HAS TAKEN OUT COMPREHENSIVE GENERAL LIABILITY INSURANCE AND AUTO LIABILITY WITH AUTHORITY, ITS MEMBER AGENCIES (TO INCLUDE THE CITY OF ENCINITAS AND THE CITY OF SOLANA BEACH), AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS ("INSURED PARTIES") NAMED HEREIN AS ADDITIONAL INSUREDS, AS WELL AS ALL OTHER COVERAGE REQUIRED BY THIS AGREEMENT. Insurance carrier(s) shall be satisfactory to AUTHORITY, and insurance shall be purchased from insurance companies with a current A.M. Best rating of no less than A:VII, unless otherwise agreed in writing by AUTHORITY. Insurance shall be in such form approved by AUTHORITY so as to protect all Insured Parties against loss from liability assumed by contract or imposed by law from damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting

directly or indirectly from the negligent performance or execution of this Agreement by CONTRACTOR or any subcontract with CONTRACTOR thereunder, and also to protect all Insured Parties against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution of the Agreement by CONTRACTOR; which insurance shall also cover accidents arising out of the use and operation of owned, non-owned and hired automobiles, trucks, and/or other mobile equipment. Automobile liability shall be at least as broad as form number CA 0001, covering code 1 (any auto), covering bodily injury and property damage, with a combined single limit of no less than \$1,000,000 per claim for bodily injury and property damage. General liability shall be at least as broad as occurrence form CG 0001, covering bodily injury, personal injury and property damage. The amounts of coverage of said insurance shall not be less than the following:

| | |
|------------------|--|
| Public Liability | \$1,000,000 single limit/\$3,000,000 aggregate |
| Property Damage | \$1,000,000 single limit/\$3,000,000 aggregate |

CONTRACTOR shall further maintain adequate Worker's Compensation Insurance, including occupational disease provisions, under the laws of the State of California and employer's general liability insurance for the benefit of its employees with a combined single limit of no less than \$1,000,000 per claim for bodily injury or disease, and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to AUTHORITY showing compliance with above.

CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of AUTHORITY for all work performed by CONTRACTOR, its employees, agents and subcontractors.

Each insurance policy shall provide that coverage shall not be canceled, except with notice to AUTHORITY.

All insurance policies shall be on an occurrence basis and cover the period of performance under this Agreement.

The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties.

CONTRACTOR'S insurance shall be primary insurance as respects the Insured Parties, and each of them. Any insurance, self-insurance or other coverage maintained by Insured Parties shall be excess of the CONTRACTOR'S insurance and not contribute to it.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Insured Parties.

CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

All insurance policies shall specifically cover any contractual liability incurred pursuant to this Agreement.

Any deductibles or self-insured retention limits must be disclosed to AUTHORITY prior to execution of this Agreement. At the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles as respects the Insured Parties; or CONTRACTOR shall provide a financial guarantee satisfactory to AUTHORITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

CONTRACTOR shall furnish to AUTHORITY certificates of insurance prior to the commencement of Work under this Agreement, and as may be periodically requested by AUTHORITY. CONTRACTOR shall include all endorsements necessary to comply with this Agreement, including additional insured endorsements, signed by the insurer's representative. Such evidence shall include confirmation that coverage includes or has been modified to include all provisions required by this Agreement. CONTRACTOR shall, upon request of AUTHORITY at any time, deliver to AUTHORITY complete, certified copies of the policies of insurance, including endorsements, and receipts for payment or premiums thereon, required by this Agreement. Failure to obtain the required documents prior to the Work beginning shall not waive CONTRACTOR'S obligation to provide them.

If any of the required coverages expire during the term of this Agreement, CONTRACTOR shall deliver the renewal certificate(s) including the general liability and auto liability additional insured endorsements to AUTHORITY at least ten (10) days prior to the expiration date.

In the event that CONTRACTOR employs subcontractors to perform any portion of the services to be performed pursuant to this Agreement, it shall be CONTRACTOR'S responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified in this Agreement.

8. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the General Manager of the AUTHORITY.
9. EXTRA WORK. The Contract Price is intended by the parties to be inclusive of all cost and expense to CONTRACTOR to provide, among other things, the labor, materials and equipment to maintain the irrigation system at the Project site, including any necessary repairs or replacements. Nevertheless, to the extent that the Contract Documents (including the Specifications) indicate that an item of work is considered to be "Extra Work," or if the parties mutually agree that an item of work is not included in the scope of the Contract Documents, then CONTRACTOR shall promptly submit a written request for an "Extra Work Authorization" ("EWA") and shall include within that EWA CONTRACTOR's proposed cost to perform the Extra Work, supported by such documentation as AUTHORITY may reasonably request. If AUTHORITY approves the EWA it will sign and return it to CONTRACTOR to authorize the performance of the Extra Work. If the parties are unable to reach agreement on the EWA, then AUTHORITY may direct CONTRACTOR to perform the Extra Work on a time and materials basis, in which event CONTRACTOR shall submit daily time and material reports to AUTHORITY for verification. In no event shall CONTRACTOR be entitled to receive compensation for

the performance of any Extra Work for which it has not received written authorization from AUTHORITY to perform.

10. TERMINATION.

10.1 If, during the term of this Agreement, AUTHORITY determines that CONTRACTOR is not faithfully abiding by any term or condition contained herein, AUTHORITY may notify CONTRACTOR in writing of such defect or failure to perform; which notice must give CONTRACTOR five (5) working days thereafter in which to perform said work or cure the deficiency. If CONTRACTOR has not performed the work or cured the deficiency within five (5) days specified in the notice, such shall constitute a breach of this Agreement and AUTHORITY may, at its election, perform the Work and/or remedy the defect and charge the expense to Contractor, or terminate this Agreement immediately by written notice to CONTRACTOR to said effect. Such termination shall terminate CONTRACTOR's right to proceed with the Work hereunder, but shall not terminate CONTRACTOR'S ongoing obligations, including without limitation its indemnification, hold harmless and defense obligations. In the event of such termination, CONTRACTOR shall be entitled to receive payment based on the Contract Price for the services performed up through the day it received AUTHORITY's Notice of Termination, minus any offset from such payment representing AUTHORITY's damages or reasonably likely damages from such breach. AUTHORITY reserves the right to delay any such payment, to allow for a full and complete accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive payment in excess of the compensation quoted in its bid.

10.2 AUTHORITY may terminate this Agreement, in whole or in part, for AUTHORITY's convenience and without cause upon providing thirty (30) days' written notice to CONTRACTOR. Upon its receipt of such notice CONTRACTOR shall perform no additional Work and shall place no additional subcontracts or purchase orders except as otherwise directed by AUTHORITY in writing. Upon such termination CONTRACTOR shall be entitled to receive payment as provided in Section 10.1, but shall not be entitled to receive any profit, overhead or other markup on Work not performed.

11. STATUS OF CONTRACTOR. CONTRACTOR and its employee(s) are engaged in an independent contractor relationship with AUTHORITY in performing all work, duties and obligations hereunder. AUTHORITY shall not exercise any control or direction over the methods by which CONTRACTOR shall perform its Work and functions. AUTHORITY'S sole interest and responsibility is to ensure that the services covered by this Agreement are performed and rendered in a competent, satisfactory and legal manner. CONTRACTOR represents that its employee(s) have the qualifications and skills necessary to perform the Work and services under this Agreement in a competent, professional manner, without the advice or direction of AUTHORITY. CONTRACTOR will supply all tools, materials and equipment required to perform the Work and services under this Agreement. The parties agree that no work, act, commission or omission of CONTRACTOR or its employee(s) pursuant to this Agreement shall be construed to make CONTRACTOR and its employee(s) the agent, employee or servant of AUTHORITY. CONTRACTOR and its employee(s) are not entitled to receive from AUTHORITY vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind. CONTRACTOR shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance

and for otherwise complying with all other employment law requirements with respect to CONTRACTOR or its employee(s). To the maximum extent allowable by law, CONTRACTOR agrees to indemnify, defend and hold AUTHORITY harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) AUTHORITY suffers as a result of (a) CONTRACTOR'S failure to meet its employer obligations, or (b) a third party's designation of CONTRACTOR or its employee as an employee of AUTHORITY, regardless of any actual or alleged negligence by AUTHORITY.

12. ASSIGNMENT. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of AUTHORITY. AUTHORITY has entered into this Agreement in order to receive the professional services of CONTRACTOR. The provisions of this Agreement shall apply to any subcontractor of CONTRACTOR. AUTHORITY shall have the right to approve any subcontractor agreements, in addition to the written consent required by this section. Effective immediately upon the tender of final payment to CONTRACTOR, CONTRACTOR assigns to AUTHORITY all rights, title and interest in and to all causes of action CONTRACTOR may have under the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (California Business and Professions Code section 16700, et seq.) arising from purchases of goods, services, or materials pursuant to this Agreement.
13. PROPRIETARY RIGHTS. Any written, printed, graphic, or electronically or magnetically recorded information furnished by AUTHORITY for CONTRACTOR'S use are the sole property of AUTHORITY. CONTRACTOR and its employee(s) will keep any information identified by AUTHORITY as confidential in the strictest confidence, and will not disclose it by any means to any person except with AUTHORITY approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONTRACTOR'S employees, agents, and subcontractors. On termination of this Agreement, CONTRACTOR will promptly return any confidential information in its possession to AUTHORITY.
14. PARTIAL INVALIDITY. If any non-material provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
15. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.
16. PROVISIONS REQUIRED BY LAW. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either party, the Agreement shall forthwith be physically amended to make such insertion.
17. GOVERNING LAW. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance

with the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom, or rule of law requiring construction against the draftsman.

18. SUBSTITUTION OF SECURITIES FOR AMOUNTS WITHHELD

18.1 Pursuant to Section 22300 of the California Public Contract Code, CONTRACTOR may substitute securities for any money withheld by AUTHORITY to ensure performance of the Agreement. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with AUTHORITY or with a State or Federally chartered bank as the escrow agent, who shall release such securities to CONTRACTOR following the expiration of thirty-five (35) days from the date of filing of a Notice of Completion of the Work by CONTRACTOR, to the extent such securities have not previously been utilized by AUTHORITY for purposes as provided hereinafter or are not then subject to withholding by AUTHORITY to satisfy stop notices, claims, and costs associated therewith.

18.2 Alternatively, CONTRACTOR may request and AUTHORITY shall make payment of retentions earned directly to the escrow agent at the expense of CONTRACTOR. At the expense of CONTRACTOR, CONTRACTOR may direct the investment of the payments into securities and CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in Section 22300 of the Public Contract Code for securities deposited by Contractor. Upon satisfactory completion of the Agreement, CONTRACTOR shall receive from the escrow agent all securities, interest, and payments received by the escrow agency from AUTHORITY, pursuant to the terms of Section 22300 of the Public Contract Code.

18.3 If CONTRACTOR elects to receive interest on moneys withheld in retention by AUTHORITY, he or she shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by CONTRACTOR from the subcontractor. If CONTRACTOR elects to receive interest on any moneys withheld in retention by AUTHORITY, then the subcontractor shall receive the identical rate of interest received by CONTRACTOR on any retention moneys withheld from the subcontractor by CONTRACTOR, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If CONTRACTOR elects to substitute securities in lieu of retention, then, by mutual consent of CONTRACTOR and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by CONTRACTOR.

- This subdivision shall apply only to those subcontractors performing more than five (5) percent of CONTRACTOR's total Bid.
- No CONTRACTOR shall require any subcontractor to waive any provision of this subdivision 18.3.

18.4 The request for substitution of securities to be deposited with AUTHORITY, or with a State or Federally chartered bank as escrow agent, shall be submitted on the escrow form contained and with procedures as set forth in Section 22300, which form when executed by CONTRACTOR and AUTHORITY shall constitute a Supplemental

Agreement forming a part of the contract documents. AUTHORITY shall have thirty (30) days from receipt of any such written request, properly completed and signed by CONTRACTOR and, if applicable, accompanied by an escrow agreement in a form acceptable to AUTHORITY, to approve said request and effect the substitution. AUTHORITY will not unreasonably withhold approval of said request. AUTHORITY will determine the value of any security so deposited. Such supplemental agreement and any escrow agreement shall provide for the release of the securities to Contractor as set forth herein and shall also set forth the manner in which AUTHORITY may convert the securities or portions thereof to cash and apply the proceeds to the accomplishment of any purposes for which moneys may be withheld and utilized as described in the contract Documents, including but not limited to the completion of the work, correction of defective work, and the answering of any stop notice, claims, and costs associated therewith.

19. CLAIMS. Notwithstanding any other law, including Public Contract Code sections 10240 and 20104, the parties to this Agreement are subject to the provisions of Section 9204 of the Public Contract Code, which requires compliance with the procedures set forth in this section to resolve any claim by CONTRACTOR arising under the Contract.

19.1 For purposes of this section only:

“Claim” means a separate demand by CONTRACTOR sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the AUTHORITY under the AGREEMENT.

(B) Payment by AUTHORITY of money or damages arising from work done by, or on behalf of, the CONTRACTOR pursuant to the Agreement and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the AUTHORITY.

“Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with the CONTRACTOR or is a lower tier subcontractor.

19.2 Upon receipt of a Claim pursuant to this section, the AUTHORITY shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, AUTHORITY and CONTRACTOR may, by mutual agreement, extend the time period provided in this subdivision.

19.3 CONTRACTOR shall furnish reasonable documentation to support the Claim.

19.4 If AUTHORITY needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail

or certified mail, return receipt requested, AUTHORITY shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

19.5 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after AUTHORITY issues its written statement. If AUTHORITY fails to issue a written statement, paragraph (J) shall apply.

19.6 If the claimant disputes AUTHORITY's written response, or if AUTHORITY fails to respond to a Claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, AUTHORITY shall schedule a meet and confer conference within 30 days for settlement of the dispute.

19.7 Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, AUTHORITY shall provide the claimant a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after AUTHORITY issues its written statement. Any disputed portion of the Claim, as identified by the CONTRACTOR in writing, shall be submitted to nonbinding mediation, with the AUTHORITY and the claimant sharing the associated costs equally. AUTHORITY and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.

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

19.9 Unless otherwise agreed to by AUTHORITY and the CONTRACTOR in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

19.10. Failure by AUTHORITY to respond to a Claim from CONTRACTOR within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of AUTHORITY's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.

19.11 Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

19.12 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against AUTHORITY because privity of contract does not exist, CONTRACTOR may present to AUTHORITY a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that CONTRACTOR present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to AUTHORITY shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, CONTRACTOR shall notify the subcontractor in writing as to whether CONTRACTOR presented the Claim to the AUTHORITY and, if CONTRACTOR did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so

20. JURISDICTION, FORUM AND VENUE. The proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, County of San Diego. AUTHORITY and CONTRACTOR agree not to bring any action or proceeding arising out of or relating to this Agreement in any other jurisdiction, forum or venue. AUTHORITY and CONTRACTOR hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purposes of any legal action or proceeding to enforce this Agreement, whether on grounds of inconvenient forum or otherwise.
21. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.
22. AUDIT. AUTHORITY shall have the option of inspecting and/or auditing all records and other written materials used by CONTRACTOR in preparing its statements to AUTHORITY as a condition precedent to any payment to CONTRACTOR. This Agreement is subject to examination and audit of the State Auditor, at the request of AUTHORITY or as part of any audit of AUTHORITY, for a period of three (3) years after final payment under the Agreement. CONTRACTOR shall cooperate with AUTHORITY, including any authorized representatives of AUTHORITY, regarding any such audit at no charge to AUTHORITY.
23. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

AUTHORITY

CONTRACTOR

General Manager
San Elijo Joint Powers Authority
2695 Manchester Avenue



Notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first.

- 24. PROTECTION OF EXISTING FACILITIES AND NON-INTERFERENCE WITH PLANT OPERATIONS. CONTRACTOR shall perform its duties in such a way that there will be no damage done to existing facilities and all facilities shall be left in the condition they were in prior to the beginning of the contract. CONTRACTOR will also perform all work in such a way that there is no interference with plant operations.
- 25. AUTHORITY TO EXECUTE AGREEMENT. AUTHORITY and CONTRACTOR do covenant that the individual executing this Agreement on their behalf is a person duly authorized and empowered to execute this Agreement for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

SAN ELIJO JOINT POWERS AUTHORITY

 Michael T. Thornton, P.E.
 General Manager

CONTRACTOR

By: _____ (Signature)

Name: _____ (Print)

Title: _____

 Contractor's License and Expiration Date

This form is required.

FAITHFUL PERFORMANCE BOND

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

KNOW ALL MEN BY THESE PRESENTS, THAT, WHEREAS, the San Elijo Joint Powers Authority, a political subdivision of the State of California (the "SEJPA") has, on _____, 20____, awarded to _____ (the "Principal"), a contract for the furnishing all labor, materials, equipment and services for BOILER No. 1 REPLACEMENT services for the San Elijo Water Reclamation Facility, as specified in the Contract Documents, and all miscellaneous work as specified and directed for in the Bid Submission Form for BOILER No. 1 REPLACEMENT Services - Specification Number SE 2020 BRS (the "Contract").

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract:

NOW, THEREFORE, WE, the Principal, and _____, as Surety, are held and firmly bound unto the SEJPA, its successors and assigns for the penal sum of One Hundred Percent of the Contract Price, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the Contract and any alterations made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and hold harmless the SEJPA, its officers, employees and agents as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue and Principal and Surety, in the event suit is brought on this bond, will pay to the SEJPA such reasonable attorneys' fees and costs as shall be fixed by the court.

As a condition precedent to the satisfactory completion of the Contract, the above obligation in the said amount shall remain in effect for a period of one (1) year after the completion and acceptance by the SEJPA of the work undertaken pursuant to the Contract, during which time if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the SEJPA from loss of damage made evident during said period of one year from the date of acceptance of the work, and resulting from or caused by defective materials and/or faulty workmanship in the prosecution of the work done, the above obligation in the said amount shall remain in full force and effect. However, notwithstanding anything in this paragraph to the contrary, the obligation of the Surety hereunder shall continue in effect so long as any obligation of the Principal remains.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed

thereunder or the specifications accompanying the same shall, in any way, affect its obligations under this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, specifications thereto, or to the Work. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

As a part of the obligation secured hereby and in addition to the amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees and court costs, incurred by the SEJPA in successfully enforcing any and all obligations, hereunder all to be taxed as costs and included in any judgment rendered.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

Principal

(Seal)

Signature for Principal

Title

Surety

(Seal)

Signature for Surety

Title

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss:

COUNTY OF [COUNTY])

On _____, before me, [Notary Name] , Notary Public, personally appeared [Name of person] , 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 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

This form is required.

PAYMENT BOND

BOILER No. 1 REPLACEMENT SERVICES
Specification Number SE 2020 BRS

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the San Elijo Joint Powers Authority, a political subdivision of the State of California (hereinafter designated as SEJPA) on _____ 20_____
awarded to _____
(hereinafter designated as the PRINCIPAL) a contract for the work described as follows:_____

WHEREAS, said Principal is required by Section 9550 of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, We, the Principal and _____

_____ as Surety, are held and firmly bound unto the SEJPA in the penal sum of _____ Dollars (\$_____) lawful money of the United States, 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, hers/his/its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 9554 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, the surety or sureties will pay for the same in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This Bond shall inure to the benefit of any of the persons named in Section 9554 of the California 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 hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefor, 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 hereinabove described, nor by any 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 his bond be construed most strongly against the surety and in favor of all persons for whose benefit such bond is given, by reason of any breach of contract between the SEJPA and Principal 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 9554 of the California 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. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

This bond shall remain in full force and effect for one year after the date of final payment under the Contract, unless otherwise provided by law.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20_____

| | |
|--------|--|
| (Seal) | _____ Principal |
| | _____ Signature for Principal Title |
| (Seal) | _____ Surety |
| | _____ Signature for Surety Title |

In the event the successful Bidder enters into a contract with the SEJPA and chooses to make security deposits in lieu of retentions, this form shall be mandatory and non-negotiable.

**ESCROW AGREEMENT SECURITY DEPOSIT IN LIEU OF RETENTION FORM
WITHHELD CONTRACT FUNDS
PUBLIC CONTRACT CODE SECTION 22300**

This Escrow Agreement is made and entered into by and between the San Elijo Joint Powers Authority whose address is

_____ hereinafter called "SEJPA," and _____ whose address is

_____ hereinafter called "CONTRACTOR" and _____ whose address is

_____ hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, SEJPA, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by the SEJPA pursuant to the Agreement entered into between the SEJPA and Contractor for BOILER No. 1 REPLACEMENT services in the amount of _____ dated _____ (hereinafter referred to as the "Agreement"). Alternatively, on written request of Contractor, the SEJPA shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the SEJPA within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between SEJPA and Contractor. Securities shall be held in the name of _____, and shall designate Contractor as the beneficial owner.

(2) SEJPA shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Agreement provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When SEJPA makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this contract is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when SEJPA pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of SEJPA. These expenses and payment terms shall be determined by SEJPA, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the SEJPA.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the SEJPA to the Escrow Agent that the SEJPA consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) SEJPA shall have a right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice to the Escrow Agent from the SEJPA of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the SEJPA.

(8) Upon receipt of written notification from SEJPA certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Agreement, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the SEJPA and Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the SEJPA and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the SEJPA and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of SEJPA:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

At the time the Escrow Account is opened, SEJPA and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

On behalf of CONTRACTOR:

Title

Name

Signature

Address

On behalf of San Elijo Joint Powers Authority:

Title

Name

Signature