

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION**

AGREEMENT

FOR

**WILLOW ROAD EXTENSION PHASE 2 &
US HIGHWAY 101 INTERCHANGE PROJECT
NIPOMO, CA
CONTRACT NO. 300129 / 300142
FEDERAL PROJECT NO. FHWA Q101(189)**

COUNTY OF SAN LUIS OBISPO

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____, between the County of San Luis Obispo, a political subdivision and county of the State of California, party of the first part, hereinafter called "County" and _____ the party of the second part, hereinafter called "Contractor".

WITNESSETH, that for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. That the Contractor will, at its own proper cost and expense, do all the work and furnish all the equipment and materials necessary to construct and complete in good and workmanlike manner to the satisfaction of the Board of Supervisors of said County, for

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all in strict accordance with the Contract Documents, including without limitation, the Project Plans, the Standard Specifications of the State of California, Department of Transportation, dated May 2006 (hereinafter called, "Standard Specifications"), the Standard Plans of the State of California, Department of Transportation, dated May 2006 (hereinafter called, "Standard Plans"), and the Special Provisions therefor, on file in the Department of Public Works and Transportation and the Office of the Clerk of the Board of Supervisors of the County of San Luis Obispo, State of California.

ARTICLE 2. This Agreement, together with the Notice and Instructions to Bidders, Bid Proposal and Forms, Standard Specifications, Standard Plans, the Special Provisions, including without limitation the Project Plans incorporated therein, and all addenda thereto, form the contract, and said documents by this reference become as fully a part of this Agreement as if set forth in full and are herein sometimes referred to as "Contract" or as "Contract Documents". The terms set forth below, when utilized in said documents, shall mean as follows:

PUBLIC WORKS DIRECTOR: Means the Director of Public Works and Transportation (hereinafter, also the Department of Public Works) of the County of San Luis Obispo, State of California, acting either directly or through properly authorized agent(s), acting within the scope of the particular duties delegated to them, including registered engineers employed by the Department of Public Works and Transportation.

COUNTY CLERK: Means the Clerk of the Board of Supervisors of the County of San Luis Obispo, State of California.

ARTICLE 3. The Contractor shall begin work within ten (10) calendar days, not including Saturdays, Sundays, or legal holidays, from the date of receipt of County's Notice to Contractor to Proceed, and the work to be accomplished under this contract shall be completed within the time limit provided in Section 4, "Prosecution and Progress of the Work", of the Special Provisions. Attention is directed to the provisions of said Section 4, "Prosecution and Progress of the Work", of the Special Provisions for the amount of liquidated damages.

ARTICLE 4. The total Contract price is the amount of the Contractor's bid as set forth in the award of the Contract approved by the County's Board of Supervisors. The Contractor will receive and accept and the County will pay the prices specified in the attached Bid Proposal, which is incorporated herein by reference, as full compensation for furnishing all labor, materials, and equipment for doing all the work contemplated and embraced in this Agreement. To the extent permitted by law, the Contractor assumes during the progress of the work and before its acceptance, any and all loss or damage arising out of the nature of the work aforesaid or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the County; and assumes any and all expenses incurred by or in consequence of the suspension or discontinuance of work, for well and faithfully completing the work, and the whole thereof, in the manner and to the requirements of the Plans, Special Provisions, Standard Specifications, Standard Plans, and the Public Works Director.

ARTICLE 5. The Contractor's attention is directed to the provisions of Section 2-1.02, "Required Listing of Proposed Subcontractors," of the Special Provisions and the requirements contained therein.

Additionally, the Contractor's attention is directed to the provisions of the "Subletting and Subcontracting Fair Practices Act" set forth in Sections 4100-4114 of the Public Contract Code.

ARTICLE 6. The Contractor agrees that the Public Works Director shall decide as to the meaning of the Standard Specifications, Standard Plans, and Special Provisions for the work, including without limitation the Project Plans incorporated therein, where the same may be found to be obscure or in dispute and the decision shall be final. The Public Works Director shall have the right to correct any errors or omissions therein when such corrections are necessary to the proper fulfillment of the intention of the Special Provisions, Standard Specifications and Standard Plans; the action of such corrections is to take effect from the time said Public Works Director gives notice thereof to the Contractor.

ARTICLE 7. Contractor, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of Contractor's work under this Agreement and acceptance by

the County. Any failure to comply with reporting provision(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

(a) **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES**

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County.

1. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL")**

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);
\$1,000,000 for personal injury liability;
\$1,000,000 aggregate for products-completed operations; and,
\$1,000,000 general aggregate.

The general aggregate limits shall apply separately to Contractor's work under this Agreement.

2. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL")**

Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than one-million (\$1,000,000) dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles.

3. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL")**

This policy shall include at least the following coverages and policy limits:

- i. Workers' Compensation insurance as required by the laws of the State of California; and
- ii. Employer's Liability Insurance Coverage B with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

(b) **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Contractor and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Contractor shall either reduce or eliminate such deductibles or self-insured retentions as respect to the County, its officers, employees, volunteers, and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

(c) **ENDORSEMENTS**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

- i. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);
- ii. The County of San Luis Obispo, its officers, employees, volunteers, and agents shall be added as additional insureds with respect to all liabilities arising out of Contractor's performance of any and all work under this Agreement (CGL & BAL);
- iii. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL);
- iv. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL & BAL);
- v. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to the Department of Public Works, Room 207, County Government Center, San Luis Obispo, CA 93408, Attention Design Engineer, Contract No. 300129 / 300142 (All Policies);
- vi. Contractor and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers, and agents for any loss arising under this Agreement (CGL); and
- vii. Deductibles and self-insured retentions must be declared (All Policies)

(d) **ABSENCE OF INSURANCE COVERAGE**

County may direct Contractor to immediately cease all activities with respect to this Agreement if it determines that Contractor fails to carry, in full force and affect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Contractor.

(e) **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION**

The following requirements apply to all insurance to be provided by Contractor.

- i. Upon written request by the County, Contractor shall provide all required certificates of insurance coverage to the County within ten (10) working days. All certificates of insurance shall be furnished to County at the time of the execution of this Contract. Failure to provide the required certificates of insurance shall be deemed a non-waivable, material breach of this Contract which shall relieve the County of any obligation to make any payment(s) to the Contractor related to any performance made pursuant to this Contract. Such breach cannot be waived by the County's execution of this Contract, or by any other conduct of the County.
- ii. After the execution of this Contract, Contractor shall annually provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages.
- iii. All of the insurance companies providing insurance for Contractor shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to the Department of Public Works, Room 207, County Government Center, CA 93408, Attention Design Engineer, Contract No. 300129 / 300142.
- iv. The furnishing of the required certificates of the insurance to the County shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from any liability of the Contractor related to this Contract.
- v. If Contractor fails or refuses to procure or to maintain the insurance required by this Article, or fails or refuses to furnish, within the time limitations specified in the Contract Documents, the required certificates of insurance, or the insurance policies, if demanded, County shall have the right to forthwith terminate this Contract.

- vi. The minimum limits of insurance liability specified herein shall supersede and replace those minimum limits set forth in Section 7-1.12B of the Standard Specifications.
 - vii. Contractor shall not allow any subcontractor to commence work until the insurance required of the subcontractor has been obtained.
- (f) The parties expressly agree that the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.
- (g) Additional Insurance Provisions if Additive Bid Item 2 is Awarded.
If the County awards Additive Bid Item 2, the Contractor shall also insure the Nipomo Community Services District ("District") pursuant to all of the preceding language of this Article 7 by inserting the word "District" at each place the word "County" appears in this Article. In other words, if the County awards Additive Bid Item 2, in addition to being bound to provide insurance with respect to the County pursuant to the language of this Article, the Contractor shall also be bound to provide insurance with respect to the District pursuant to the language of this Article.

ARTICLE 8. Contractor shall defend, indemnify, and hold harmless the County, its officers, and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities, or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Contractor, or its agents, employees, or other independent contractors directly responsible to Contractor, including, but not limited to the following:

1. Violation of statute.
2. Professional malpractice.
3. Willful, intentional or other wrongful acts, or failures to act.
4. Negligence or recklessness.
5. Furnishing of defective or dangerous products.
6. Broad Form Property Damage (Including Completed Operations).
7. Premises Liability.

8. Strict Liability.
9. Inverse condemnation.
10. Violation of civil rights.
11. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board, or any other California entity responsible for collecting payroll taxes, when the Contractor is not an independent contractor.

Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the County, against any responsibility or liability in contravention of Civil Code 2782.

It is the intent of the parties to provide the County the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

If the County awards Additive Bid Item 2, the Contractor shall also indemnify the District and shall be bound to defend, indemnify, and hold harmless the District pursuant to all of the preceding language of this Article 8 by inserting the word "District" at each place the word "County" appears in this Article. Such an insertion shall be in addition to, and not in replacement of, the Contractor's obligation to defend, indemnify, and hold harmless the County pursuant to the terms of this Article. In other words, if the County awards Additive Bid Item 2 in addition to being bound to defend, indemnify, and hold harmless the County pursuant to the language of this Article, the Contractor shall also be bound to defend, indemnify, and hold harmless the District pursuant to the language of this Article.

ARTICLE 9. It is further stipulated and agreed that the Contractor shall keep himself/herself fully informed of all laws, ordinances, and regulations which do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereupon and all such orders of bodies and tribunals having any jurisdiction over the same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation the Contractor shall immediately report same to the Public Works Director in writing. The Contractor shall at all times observe and comply with and shall cause all his/her agents, employees, and independent contractors hired by the Contractor to observe and comply with all such existing and future laws, ordinances, regulations, or decrees.

ARTICLE 10. It is mutually agreed between the parties hereto, that no certificate given or payments made under this contract, except the final payment, shall be evidence of the performance of this contract, either wholly or in part, against any claim of the Contractor. Final payment for the work performed under this contract shall not be made until the lapse of thirty-five (35) calendar days after the notice of completion of said work has been filed for record and no payment shall be construed to be an acceptance of any defective work or

improper materials. The Contractor further agrees that acceptance by the Contractor of the final payment due under this contract, and the adjustment and payment of his/her bill rendered for any work done in accordance with any amendments of this Contract, shall be and shall operate as a release to the County of San Luis Obispo from any and all claims or liabilities on account of work performed under this Contract except claims or liabilities for which written notice of claim or protest has been filed with the Public Works Director. Besides guarantees required elsewhere, the Contractor shall and does hereby guarantee all workmanship and material for a period of one year from and after both the date of acceptance of the work and the recordation of the notice of completion by the County and shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the County is or becomes defective during the period of said guarantee without expense whatsoever to the County.

ARTICLE 11. The Contractor hereby declares that he/she has read the Contract Documents pertaining to the work to be accomplished hereunder, has carefully examined the plans and detail drawings of the work to be performed and fully understands the intent and meaning of the same.

ARTICLE 12. Attention is directed to the provisions in Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor.

The Contractor and any subcontractor shall comply with the requirements of Section 1777.5, 1777.6, and 1777.7 of the Labor Code in the employment of apprentices.

To insure compliance and complete understanding of the law relating to apprentices, and specifically the required ratio thereunder, each contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of work on this contract. Responsibility for compliance with said Labor Code Sections lies with the prime contractor.

ARTICLE 13. Attention is directed to the provisions in Section 1776 of the Labor Code concerning Contractor and subcontractor payroll records.

The Contractor and any subcontractor shall comply with the requirements of Section 1776 of the Labor Code.

ARTICLE 14. During the performance of this contract, Contractor agrees to comply with all of the Equal Employment Opportunity provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), including the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed,

and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department of Public Works setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Department of Public Works, advising the said labor union or worker's representative of the Contractor's commitments under this Article 14 and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the County of San Luis Obispo and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the provisions of this Article 14 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding

upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Public Works Director or the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 15 Safety: All work conducted by the Contractor and/or subcontractors in the execution of this contract shall be in accordance with current CAL OSHA requirements. Full compensation for compliance with the provisions of this Article 15 shall be considered as included in the other items of work and no additional compensation will be allowed therefor.

ARTICLE 16. Copeland Anti-Kickback Act: During performance of this contract, Contractor agrees to comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in the Department of Labor regulations (29 CFR Part 3). This act provides that the Contractor shall be prohibited from inducing any person employed in the construction, completion, or repair of public facilities to give up any part of the compensation which they are otherwise entitled.

ARTICLE 17. Clean Air Act and Federal Water Pollution Control Act: During the performance of this contract, Contractor and/or subcontractor agrees to comply with all of the standards, orders, and requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

ARTICLE 18. At the same time the Contractor submits this signed Agreement to the County, the Contractor shall also submit the documentation described in this paragraph. If the County awards Additive Bid Item 2, the Contractor shall provide the County written evidence of any increased or additional insurance premiums incurred by the Contractors as a result of adding the Nipomo Community Services District ("District") to the provisions of Article 7 and 8 of this Agreement. If the County awards Additive Bid Item 2, the Contractor shall also provide the County written evidence of any increases or additional bond premiums incurred by the Contractor for adding the additive bid work to the performance bond, payment bond, and maintenance bond required under the Contract Documents. The sole purpose of providing the County with the documentation described in this article is to facilitate the County's recovery of costs related to Additive Bid Item 2 from the District. The Contractor shall not be entitled to any additional compensation from the County for any additional premiums paid by the Contractor relating to Additive Bid Item 2.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written, being authorized thereto.

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors
County of San Luis Obispo

ATTEST:

Clerk of the Board of Supervisors
of the County of San Luis Obispo

By: _____
Deputy Clerk

APPROVAL RECOMMENDED
PAAVO OGREN

By: Pearce Ogren
Director of Public Works

Date 9/21, 2010

APPROVED AS TO FORM AND
LEGAL EFFECT:
WARREN R. JENSEN
County Counsel

By: Warren R. Jensen

Date 9/23/2010

CONTRACTOR

By: _____

(Printed Name and Title)

Date Signed: _____, 20__

By: _____

(Printed Name and Title)

Date Signed: _____, 20__

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS: That

WHEREAS, the Board of Supervisors of the County of San Luis Obispo, State of California, has awarded to _____

_____ (hereinafter designated as "Principal") a contract for _____

_____ ; and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract;

NOW, THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the County of San Luis Obispo, (hereinafter called "County"), in the penal sum of _____

(\$ _____), 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 and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded 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 perform the covenants, conditions and agreements

Performance Bond

in the said contract and any alteration thereof made as therein provided, on his/her 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 save harmless County, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force virtue and effect.

And the said 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 manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or additions to the terms of the contract or to the work or to the specifications.

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

Death of the Principal shall not relieve Surety of its obligations hereunder.

Performance Bond

IN WITNESS WHEREOF, one identical counterpart of this instrument, which shall for all purposes be deemed an original thereof, has been duly executed by Principal and Surety above named, on the _____ day of _____, 20____.

_____ (Seal)

_____ (Seal)

_____ (Seal)

Principal

_____ (Seal)

_____ (Seal)

_____ (Seal)

Surety

Address

NOTE:

Signatures of those executing for Surety must be properly acknowledged.

Performance Bond

PAYMENT BOND

KNOW ALL BY THESE PRESENTS:

WHEREAS, the Board of Supervisors of the County of San Luis Obispo, State of California, and _____

_____ (hereinafter designated as "Principal") have entered into an agreement for _____

which said Agreement, and all of the Contract Documents attached to or forming a part of said Agreement, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law, the Principal is required before entering upon the performance of the Work, to file a good and sufficient bond with the body by whom the contract is awarded, to secure claims to which reference is made in Sections 3247 through 3252, inclusive, of the Civil Code of California, and Sections 3181, 3110, 3111 and 3112 of the Civil Code of California,

NOW, THEREFORE, said Principal and the undersigned _____

_____ as corporate surety, are held and firmly bound unto the County of San Luis Obispo, and unto all laborers, materialmen, and other persons referred to in said statutes in the sum of

_____ (\$_____), lawful money of the United States for the payment of which sum well

Payment Bond

and truly made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally by these presents.

The condition of this obligation is such that if the said Principal, his/her or its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and his/her subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay 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 Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force, virtue, and effect.

Payment Bond

And the said 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 manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or additions to the terms of the contract or to the work or to the specifications.

Death of the Principal shall not relieve Surety of its obligations hereunder.

IN WITNESS WHEREOF one identical counterpart of this instrument, which shall for all purposes be deemed an original thereof, has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

_____ (Seal)

_____ (Seal)

_____ (Seal)

Principal

_____ (Seal)

_____ (Seal)

_____ (Seal)

Surety

Address

NOTE:
Signatures of those executing for Surety must be properly acknowledged.

Payment Bond

MAINTENANCE BOND

(Only applicable if Additive Bid Item 2 is awarded.)

**NIPOMO COMMUNITY SERVICES DISTRICT
ONE-YEAR MAINTENANCE GUARANTY**

This Maintenance Guaranty by _____, (herein referred to as "Contractor") in favor of the NIPOMO COMMUNITY SERVICES DISTRICT (herein referred to as "District") is made with reference to the following recitals.

RECITALS:

A. Pursuant to an _____ Contract (incorporated herein by this reference) between the County of San Luis Obispo and Contractor (herein referred to as the "Contract"), Contractor will construct the Willow Road Phase 2 Extension Project in Nipomo, CA (herein referred to as the "Willow Road Extension Project").

B. As part of the Willow Road Extension Project, Contractor will construct certain District water transmission pipelines and appurtenances (herein collectively referred to as "District Facilities") within the Willow Road extension.

C. Pursuant to the Contract, Contractor is required to provide District a separate Maintenance Guaranty with regard to District Facilities.

NOW, THEREFORE, Contractor covenants and agrees as follows:

1. Warranty

Contractor hereby warrants and guarantees that the construction of the District Facilities will be free from faulty materials and from improper workmanship.

2. Maintenance Guaranty

For a one (1) year period from the date of District's acceptance of the District Facilities, Contractor and its surety shall repair or replace to the satisfaction of the District any or all such District Facilities or portions of said District Facilities that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing. This guaranty does not excuse the Contractor from defects that are discovered more than one (1) years after the District's acceptance.

3. Security for Maintenance Guaranty

Prior to District's acceptance of the District Facilities, Contractor shall deliver to District an irrevocable letter of credit or maintenance bond, or other securities acceptable to the District in the amount equal to ten percent (10%) of the cost of the construction of the District Facilities as security for Contractor's obligation under this Maintenance Guaranty. Said securities shall reference this Maintenance Guarantee.

4. Remedies

In the event of Contractor or its surety's failure to comply with the obligations stated in paragraph 2 of this Maintenance Guaranty within a reasonable amount of time, from District's written notice of the failure, the District is authorized to have the defect repaired and made good.

The Contractor and/or its surety shall be jointly and severally liable to the District for such costs of repair, including, but not limited to, management, administrative costs, engineering costs, legal costs, and other costs incurred relating to the repair. The District shall provide an invoice to Contract and Contractor's surety for such costs, which shall be paid within thirty (30) days from the date of mailing. Interest shall accrue on any late payment at the legal rate of interest.

5. Remedies Not Exclusive

The use by District of any remedy specified herein for the enforcement of this Maintenance Guaranty is not exclusive and shall not deprive the District of using such remedy, or limit the application of, any other remedy provided by law.

6. Notices

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Maintenance Guaranty shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District

Nipomo Community Services District
148 S. Wilson
Nipomo, CA 93444
Phone: (805) 929-1133
Fax: (805) 929-1932
Attn: General Manager

Contractor *(to be completed by Contractor)*

7. Amendments

Any amendments to this Maintenance Guaranty shall be of no force and effect unless it is in writing and signed by the District.

8. Headings

The paragraph headings used in this Maintenance Guaranty are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Maintenance Guaranty.

9. Agreement

This Maintenance Guaranty is in addition to, and does not supersede, any other agreement or agreements entered into by and between the Contractor and the District.

10. Severability

If any provision of this Maintenance Guaranty is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Maintenance Guaranty shall remain in full force and effect unimpaired by the court ruling.

11. Venue

This Maintenance Guaranty has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Maintenance Guaranty shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Maintenance Guaranty.

12. Attorney Fees and Expenses

Contractor agrees to pay all costs, including, without limitation, attorney fees and expenses, incurred by District in enforcing the terms of this Maintenance Guaranty, whether or not suit is filed. Contractor agrees to indemnify and hold District harmless from all liability, loss, damage, or expense (including, without limitation, attorney fees) that it may incur under this Maintenance Guaranty.

13. Recitals

The recitals at page 1 of this Maintenance Guaranty are incorporated herein by this reference and made a part hereof.

14. Authority to Execute Maintenance Guaranty

Contractor hereby represents that the person executing this Maintenance Guaranty is expressly authorized to do so on behalf of the Contractor.

IN WITNESS WHEREOF, the Contractor has executed and delivered this Maintenance Guaranty to District on _____, 2010.

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

