

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY**

DEPT: Parks and Recreation

BOARD AGENDA:6.B.1
AGENDA DATE: January 9, 2018

SUBJECT:

Approval to Enter into a Construction Contract with Donlee Pump Company of Ceres, California, for the Modesto Reservoir Regional Park Marina Fuel Station Upgrade Project

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2018-0026

On motion of Supervisor Chiesa , Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Olsen, Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:



PAM VILLARREAL, Assistant Clerk

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Parks and Recreation

BOARD AGENDA:6.B.1
AGENDA DATE: January 9, 2018

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval to Enter into a Construction Contract with Donlee Pump Company of Ceres, California, for the Modesto Reservoir Regional Park Marina Fuel Station Upgrade Project

STAFF RECOMMENDATION:

1. Approve the construction contract with Donlee Pump Company of Ceres, California, in the amount of \$231,293, for the Modesto Reservoir Regional Park Marina Fuel Station Upgrade Project.
2. Authorize the Director of Parks and Recreation, or designee, to execute the contract with Donlee Pump Company, and to sign any necessary documents.
3. Authorize the Director of Parks and Recreation, or designee, to execute change orders not to exceed 10% in accordance with Public Contract Code Section 20137 and 20142.
4. Upon project completion, authorize the Director of Parks and Recreation, or designee, to accept the completed improvements and perform all necessary closeout activities for the project.

DISCUSSION:

The Modesto Reservoir Regional Park Marina Fuel Station Upgrade Project (Project) is located at the Modesto Reservoir Regional Park (MRRP) Marina. The MRRP is owned and maintained by the Stanislaus County Department of Parks and Recreation (Department). Modesto Reservoir is a body of drinking water managed by the Modesto Irrigation District. The MRRP is used by the public for recreational activities such as camping, boating, fishing, and swimming.

The County's consultant, Blymyer Engineers, prepared the engineer-stamped plans, specifications, and materials list for the Project, which entails removing and replacing the Marina's existing gasoline dispensing and point-of-sale (POS) system.

The Department put this project out to bid twice in order to meet the Public Contracting Code requirements. The first attempt to bid the project resulted in only one bid received, which was significantly above the funding limit that was available for this Project at that time. To reduce construction costs, the plans and specifications were revised and the project was bid a second time. Three bids were received, all of which again exceeded

the County's project estimate. Additionally, all three bidders were deemed non-responsive. Staff concluded that there would be no advantage to the County to rebid this project a third time as interest in the project was low and rebidding would likely not produce different results.

On August 29, 2017, the Board made the determination that no responsive bids were received, and as such Public Contract Code section 20150.9 applies, allowing for negotiation with a qualified contractor, rather than re-bidding the work. The Board agreed that negotiating with a qualified contractor would be much more beneficial to the County, given the above named circumstances.

Staff negotiated a contract with Donlee Pump for the amount of \$231,293. The scope of work for this project involves all labor and equipment to remove the two existing gasoline suction pumps located on the Marina's dock, remove and replace any necessary dock planks, installation of two new fuel pumps, a new double wall Marina fuel piping system, modification of the existing electrical service to the new dispensing system, installation of one dual hose gasoline dispenser, and installation of one new POS system, with 8 hours of training for County staff on the new system.

POLICY ISSUE:

Government Code section 23005 and 25502.5 requires Board of Supervisors' approval for all contracts exceeding \$100,000.

FISCAL IMPACT:

This Project is funded by the Parks and Recreation Modesto Reservoir Patrol funds and the use of Public Facilities Fees. The Board of Supervisors has previously approved the use of Public Facilities Fees in the amount of \$90,732 for this Project. The total amount for this agreement is \$231,293, with a 10% contingency of an additional \$23,129, for a not to exceed amount of \$254,442. Funding for this Project is included in the Fiscal Year 2017-2018 Adopted Proposed Budget for Parks and Recreation.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Boards' priorities of *Delivering Efficient Public Services and Infrastructure* by upgrading and improving recreational facilities and resources at the Modesto Reservoir Regional Park.

STAFFING IMPACT:

Existing Parks staff will oversee this project.

CONTACT PERSON:

Jami Aggers, Director
Merry Mayhew, Assistant Director

Telephone: (209) 525-6770
Telephone: (209) 525-6760

ATTACHMENT(S):

1. Donlee Pump Company Agreement



DEPARTMENT OF PARKS AND RECREATION
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Phone: (209) 525-6700
Fax: (209) 525-6774

AGREEMENT
(for Public Works of Improvement)

This Agreement, made this January 9, 2018, by and between Donlee Pump Company, Inc. ("Contractor") and the COUNTY OF STANISLAUS ("County").

ARTICLE I

The Contractor will provide all the materials, tools, equipment and labor and perform all the work necessary to complete in a good workmanlike manner:

CONTRACT NO. 8065

PROJECT NAME: MODESTO RESERVOIR REGIONAL PARK MARINA FUEL STATION UPGRADE PROJECT

as set forth in the Bid of the Contractor and in accordance with the Bid, Notice to Bidders, Information for Bidders, Special Conditions, plans and specifications, bonds, addenda, Exhibit A to this Agreement and any documents particularly required or provided, all of which are attached hereto and made a part hereof. All of the foregoing documents, together with this Agreement, comprise the contract.

In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents; and
2. Exhibit A shall prevail over the Bid, Notice to Bidders, Information for Bidders, Master Specifications, or the addenda.

ARTICLE II

All of the Work included in this contract is to be performed under the direction of the County, and in conformity with the true construction and meaning of the contract, as determined solely by the County.

ARTICLE III

No alterations in the Work shall be made except upon a written change order issued by the Stanislaus County Department of Parks and Recreation. The amount to be paid by the County or to be deducted from the contract price by virtue of such alterations shall be detailed and stated in said change order and shall be approved in writing by the County and the Contractor.

Changes, additions, and alterations in the Work, may be ordered in writing by the Department of Parks and Recreation of the County of Stanislaus in the form of a written change order.

ARTICLE IV

The Contractor shall commence the Work within **five working days** after the date specified in the Notice to Proceed given to it by the Department of Parks and Recreation, and shall prosecute said Work in a prompt, diligent and workmanlike manner. The Contractor shall complete the Work no later than **April 1, 2018**, unless extension or suspension of the Work is agreed to in writing by the County. Time is of the essence in this Agreement.

ARTICLE V

County shall pay to Contractor in due course and at the usual time for payment of County obligations after the last day of each month, ninety-five percent (95%) of the cost of the Work completed and material properly stored on the job site, which cost shall be determined by the County. A final payment of five percent (5%) of the contract price shall be due the Contractor 35 days after acceptance of the Work, provided that the Contractor furnishes to the County satisfactory evidence that all obligations for labor and materials have been satisfactorily fulfilled within the said 35 day period, and further provided that no payment shall be construed to be an acceptance of defective work or improper materials.

Except as otherwise prohibited by law, Contractor may elect to receive all payments due under the contract without any retention. If Contractor so elects, it shall deposit with County securities with a value equal to the monies, which would otherwise be withheld by the County. Said securities shall be as provided in Section 22300 of the Public Contract Code and shall be approved by County as to both sufficiency and form.

ARTICLE VI

Prior to commencing the Work, the Contractor shall file a bond issued by a surety company, approved by the County, and in the form acceptable to the County in the amount of one hundred percent (100%) of the contract price for the faithful payment and satisfaction of all lawful claims of all persons for labor and materials furnished in the prosecution of the contract Work. Prior to commencing the Work, the Contractor shall file a bond issued by a surety company, approved by the County, and in the form acceptable to the County in the amount of one hundred percent (100%) of the contract price to guarantee the faithful performance of the contract.

ARTICLE VII

The Contractor shall take out and maintain during the life of the contract the insurance required and listed in Exhibit B of the contract documents.

ARTICLE VIII

When the Work is completed and ready for final inspection, the Contractor shall notify the County which shall make such final inspection within five (5) days after notice.

If the County shall approve the Work and find that the Work is complete and ready for acceptance and shall accept the same, the final payment of the contract price shall be due as provided in Article V, hereof.

ARTICLE IX

Contractor shall comply with all the provisions of state and local laws relating to contracts for the prosecution of public works. Pursuant to law, the County has ascertained the general prevailing rate of per diem wages in the locality of the work for each craft or type of workman required for performance of the contract, which rates are as stated in the Special Conditions 2.17, and the Contractor shall be required to pay not less than said prevailing rates. Contractor is required to post a copy of these prevailing wage rates at the job site.

ARTICLE X

Whenever any act is directed to be done or notice directed to be given by or to the County hereof, the same may be done or given by or to the Department of Parks and Recreation.

ARTICLE XI

The Contractor shall not assign the contract or sublet it as a whole without the written consent of the County, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written

consent of the County. Contractor shall comply with the Subcontractor Listing Law. This contract shall be binding upon the parties hereto, their heirs, successors, assigns, subcontractors, and legal representatives.

ARTICLE XII

Any alteration or alterations made in this contract, or any part hereof, shall not operate to release any surety from liability of any bond given pursuant to the provisions of this contract and the consent of such surety to such alteration or alterations is hereby given, the surety expressly waiving hereby the provisions of Section 2819 of the Civil Code.

ARTICLE XIII

Neither the final certificate nor payment, nor any provision of the related documents, shall relieve the Contractor of responsibility for faulty workmanship or materials, and less otherwise specified, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which shall appear within a period of one (1) year from the date of filing Notice of Completion. The County shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided by the Department of Parks and Recreation.

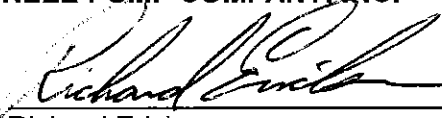
COUNTY OF STANISLAUS
Department of Parks and Recreation

By: 

Jami Aggers, Director

"County"

DONLEE PUMP COMPANY, INC.

By: 

Richard Erickson
President

"Contractor"

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: 

Amanda DeHart, Deputy County Counsel

SPECIAL CONDITIONS.

2.01 OWNER. The term "Owner", where used herein, shall mean the County of Stanislaus, a political subdivision of the State of California.

2.02 BOARD. The term "Board", where used herein, shall mean the Stanislaus County Department of Parks and Recreation of the County of Stanislaus, California.

2.03 ENGINEER. The Stanislaus County Department of Parks and Recreation shall supervise and be responsible for the Work, and whenever the word "Director" or the word "Engineer" is used herein, it shall mean the Director of the Department of Parks and Recreation of the County of Stanislaus, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

2.04 CONTRACTOR. The term "Contractor", where used herein shall mean the Contractor to whom the contract for the Work described and specified herein has been awarded to by the Board.

2.05 SUBCONTRACTOR. The term "Subcontractor", where used herein, includes only those having a direct contract with the Contractor for the Work or portion of the Work described and specified herein.

2.06 WORK. The term "Work", where used herein, includes all labor, materials and any necessary equipment required for complete performance of the contract.

2.07 CONTRACT DOCUMENTS. The term "Contract Documents", where used herein, includes the following: The Notice to Bidders, the Instructions to Bidders, the Special Conditions, the plans and specifications, the bid, the Agreement, the general bond and insurance certificates. The contract documents are complementary, and what is called for by one shall be as binding as if called for by all.

2.08 PLANS AND SPECIFICATIONS. The term "Plans and Specifications", where used herein, shall mean and include all specifications and provisions of any kind, whether general, detailed or otherwise, relating to the labor, equipment, material or work in the installation thereof, and the plans and drawings, if any, accompanying same which are made a part hereof.

2.09 AGREEMENT. The Contractor to whom the Work is awarded shall, within ten days after receipt of the contract documents as mailed by the Department of Parks and Recreation, enter into an agreement with the owner. The form of agreement is attached herein and made a part of these Special Conditions.

2.10 MATERIAL, LABOR, EQUIPMENT AND OTHER FACILITIES. Unless otherwise provided, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, lights, power, transportation and other facilities necessary for the execution and completion of the Work.

2.11 PERMITS AND LICENSES. All permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Contractor, except those secured by Owner and so noted.

2.12 INSPECTION OF WORK. A representative of the Owner shall, at all times, have access to the Work and the Contractor shall provide proper facilities for such access and for inspection. The Contractor's attention is directed to Government Code Section 1126 and Stanislaus County Department of Parks and Recreation regulations wherein the Owner's representative is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value or use of equipment or facilities, and agrees to abide by the section and regulations.

2.13 BONDS. The Contractor shall furnish and deliver to the Board a surety bond in the amount equal to one hundred percent (100%) of the contract price to guarantee the faithful performance of the contract, and a surety bond in an amount equal to one hundred percent (100%) of the contract price for the faithful payment and satisfaction of all lawful claims of all persons for labor and material furnished and the prosecution of the contract.

Such surety bonds shall be issued by a corporation duly and legally licensed to transact surety business in the State of California and approved by the Board. All participating signatures on the bonds shall be notarized.

2.14 INSURANCE.

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

2.15 DEFENSE AND INDEMNIFICATION.

2.15.1 Owner and each of its officers, employees, consultants and agents including, but not limited to, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

2.15.2 To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, Owner and each of its officers, employees, consultants and agents, including but not limited to the Board, Project Manager and each Owner's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence.

2.15.3 With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against Owner and each of its officers, employees, consultants and agents including, but not limited to Owner, the Board, Project Manager and each Owner's Representative. Owner shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.

2.15.4 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.

2.15.5 To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, Owner may in its discretion back charge Contractor for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.

2.15.6 The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to Owner or other indemnified party to the extent of its active negligence.

2.16 ASSIGNMENT OF CONTRACT. Contractor shall not assign the contract or sublet it as a whole without written consent of the owner, nor shall the Contractor assign any monies due or to become due to him hereunder without the written consent of the Owner.

2.17 PREVAILING WAGES. Pursuant to Labor Code section 1771, the work under this Agreement is subject to the provisions of Article 2 (commencing with section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, and the Contractor shall pay all workers the general prevailing rate of per diem wages applicable to the

work to be done for straight time, overtime, Saturday, Sunday and holiday work. These wage rates, which are set forth by the Director of the Department of Industrial Relations, are now on file with the Department of Public Works and are a part of this Agreement. The Contractor shall post a copy of these prevailing wage rates on the job site.

2.18 REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS. No Contractor or subcontractor may be listed on a bid proposal for a public work project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.5 [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 (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

CONTRACTOR HEREBY ATTESTS THAT CONTRACTOR AND ALL SUBCONTRACTORS ARE REGISTERED WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS ("DIR"). Senate Bill 854 requires that all contractors performing work on any public works project valued at more than \$1,000.00 must be registered with the DIR, and that all said contractors submit certified payroll reports directly to the DIR, unless excused. Failure to comply with this sections constitutes a material breach of this contract.

2.19 PAYROLL RECORDS. Pursuant to and in accordance with the provisions Labor Code section 1776, the Contractor shall keep accurate payroll records of employees performing work under this Agreement and shall make available for inspection certified copies such payroll records.

2.20 EIGHT HOUR DAY. Pursuant to and in accordance with the provisions of Labor Code sections 1810, 1811 and 1815, the time of service of any laborer, workman, or mechanic employed upon any of the work under this Agreement is limited and restricted to eight (8) hours during any one calendar day, and forty (40) hours during any one calendar week, except that work performed by employees of Contractors in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

2.21 REQUIRED LISTING OF PROPOSED SUBCONTRACTORS. Each bid shall have listed therein the name, license number and address of each subcontractor to whom the Bidder proposes to subcontract portions of the Work in the amount of 1/2 of one percent of his total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. A sheet for listing the subcontractors, as required herein, is included in the Bid. The Bidder's attention is invited to other provisions of said Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractor or by making unauthorized substitutions.

2.22 STANDARD SPECIFICATIONS AND CODES. All Work herein specified shall be performed in accordance with applicable sections of the following Standard Specifications or Codes which are herein named and hereby made a portion of these specifications. In a case of conflict between these specifications and said Standards, these specifications shall be paramount.

Stanislaus County Code Title 16, Chap. 16.05

Stanislaus County Code Title 16, Chap. 16.10

Stanislaus County Code Title 16, Chap. 16.15

Stanislaus County Code Title 16, Chap. 16.20

Standard Specifications, State of California, Department of Transportation (2010)

Stanislaus County Improvement Standards

California Building Code (California Code of Regulations, Title 24, Part 2)

2.23 TAXES. Any federal, state or city tax payable on articles furnished by the Contractor under the contract shall be included in the contract price paid by the Contractor.

2.24 TIME FOR COMPLETION. The Work to be performed under this contract shall be completed as stated within ARTICLE IV of this Agreement.

2.25 DEFECTS IN WORK. The Contractor shall be responsible for and must make good any defects through faulty, improper or inferior workmanship or materials arising or discovered in any part of this work within one (1) year after the completion and acceptance of the same.

2.26 DEVIATION FROM PLANS AND SPECIFICATIONS. No deviation shall be made from the plans and specifications. If the Contractor shall vary from the plans and specifications in the form of quality or in the Work or the amount or value of the materials herein provided for, the Owner shall have the right to order such improper work or materials removed, remade or replaced. In the event that the Work is ordered changed, any other work disturbed or damaged by such alteration shall be made good at the Contractor's expense.

2.27 BRANDS. Wherever the name or brand of a manufacturer or an article is specified herein, it is used as a measure of quality and utility or a standard. If the Contractor desires to use any other brand or manufacturer of equal quality and utility to that specified, he shall make application to the Owner in writing and submit samples, if requested. The Contractor shall have 35 days after the award of the contract for submission of data substantiating any such request for substitution of "equal" items. The Owners will then determine whether or not the name brand or article is equal in quality and utility to that specified, and its decision shall be final.

Except in those instances in which the product is designated to match others presently in use, specifications herein calling for a designated material, product, thing or service by specific brand or trade name shall be deemed to be followed by the words "or equal" so that Contractor may furnish any equal material, product, thing or service. The Contractor shall have thirty-five (35) days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item, pursuant to Section 3400 of the Public Contract Code.

2.28 NEW MATERIALS. All materials used in the Work shall be new and the best market quality, unless specified or shown otherwise. All labor used on this contract shall be competent and skilled for the Work. All Work executed under this contract shall be done in the best, most thorough substantial and workmanlike manner. All material and labor shall be subject to the approval of the Engineer as to quality and fitness, and shall be immediately removed if it does not meet with his approval.

2.29 ABANDONMENT OF WORK. Should the Contractor abandon the Work called for under the plans and specifications and contract documents, or assign his contract, or if the Contractor unnecessarily and unreasonably delays the Work, or if the Contractor willfully violates any of the conditions of the plans and specifications or contract documents, or performs the Work in bad faith, the Owner shall have the power to notify the Contractor to discontinue all work or any part thereof under this contract, and thereupon the Contractor shall cease to continue said work or such part thereof as the Owner may designate, and the Owner shall thereupon have the power to employ such persons as it may consider desirable, and to obtain by contract, purchase, hire or otherwise, such implements, tools, material or materials as the Owner may deem advisable to work at and be used to complete the Work herein described, or such part thereof as shall have not been completed, and to use such material as it may find upon the site of said Work, and to charge the expense of such labor and material, implements and tools to the Contractor, and the expense so charged shall be deducted and paid by the Owner out of such monies as may be either due, or may at any time thereafter become due to the Contractor hereunder and by virtue of the contract.

In the case such expense is less than the sum which would have been payable under the contract, if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference, and in case such expense shall exceed the last said amount, then the Contractor or his bondsman shall pay the amount of such excess to the Owner on notice to either from the Owner the excess so due.

2.30 EXTENSION OF TIME. If it appears to the Contractor that he will not complete the Work herein specified in the time agreed, he shall make written application to the Owner at least five (5) calendar days prior to the expiration of the time for completion, stating the reasons why and the amount of extension which he believes he should be granted. The Owner may then, in its discretion, grant or deny such extension.

2.31 SUSPENSION OF WORK. Should the Owner, for any cause, authorize a suspension of Work, the time of such suspension will be added to the time allowed for completion. Suspension of Work by order of the Board shall not be deemed a waiver of the claim of the Owner for damages for non-completion of the Work as above required.

2.32 JUSTIFIABLE DELAYS. The Contractor shall not be held responsible for delays in the completion of the Work caused by strikes, labor disturbances, lack or failure of transportation, war, inability to obtain materials due to war conditions, perils of the sea, insurrection, riot, acts of any government, whether foreign or domestic, federal or state, and/or any other causes similar to the foregoing which are beyond the control of and are not the fault of the Contractor, or if prevented by conditions directly resulting from the execution of contracts or the placing of orders by the Federal government or its authorized agencies or representatives, which are required by law to be given priority, but provided that whenever the Contractor shall claim that delays are due to any or all of the above named cause or causes of delay, request an extension of time in accordance with paragraph 2.30 of these Special Conditions, and if the Board finds that such cause or causes of delay exist, it shall grant him an extension of time equal to the delay resulting from such cause or causes, or the Board may at its option, rescind said contract and pay said Contractor for the reasonable value of the Work completed and let a new contract for the completion of the remainder of the Work herein specified.

2.33 PATENTS AND ROYALTIES. If any material, composition, process or any other thing called for or required by the plans and specifications heretofore adopted by the Owner is covered by letter patent, all royalties and expenses thereof, all litigation therefrom, or other things whatsoever which may develop as a cost from the use of such material, composition, process or any other thing which is covered by letter patents shall be borne by the Contractor. The Contractor shall pay all license and/or royalty fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

2.34 EXAMINATION OF SITE. The Contractor shall be held to have examined the site, compared it with the drawings and specifications, and to have satisfied himself as to the conditions under which the Work is to be performed. No allowance or claims on his behalf will be made for any expense to which he may be put as a result or failure on his part to thoroughly acquaint himself with conditions at the site.

2.35 DAMAGE TO OTHERS. The Contractor shall exercise due caution during his operations so as not to damage the property of others or Owner's property not directly involved under the plans and specifications, and shall be responsible for the protection of this property and shall replace any and all such property to its former condition as a result of his failure to provide protection or exercise due caution during his operations.

2.36 SURVEYS AND GRADES. The Engineer shall establish permanent type reference monuments or posts for the alignment and elevations of all Work. For structures he will provide said monuments for reference data only. For general engineering contracts he shall provide the usual stakes sufficient for construction. The Contractor shall be charged with the responsibility of adequately protecting said stakes and monuments. The Contractor shall be requested to set supplemental posts for detailed construction needs.

2.37 CORRECTION OF WORK AFTER FINAL PAYMENT. Neither the final certificate nor final payment, nor any provision of the contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and unless otherwise specified, he shall remedy any defects due thereto and shall pay for any damage or other work resulting therefrom which shall appear within a period of one year from the date of substantial completion. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this article shall be decided by the Board.

2.38 CHANGES IN WORK. The Owner, without invalidating the contract, may order extra work or make changes by altering, adding to or deducting from the Work, the contract sum being adjusted accordingly. All such work shall be performed under the conditions of the contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering the change. The Engineer shall have authority to make minor changes not involving extra cost and not inconsistent with the purpose of the Project.

The value of such extra Work or change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum;
- (b) By unit prices named in the contract or subsequently agreed upon;
- (c) By cost and percentage and fixed fee.

Should conditions below surface of the ground be at variance with the conditions indicated by the drawings and specifications, the contract sum shall be equitably adjusted upon claim by either party made within a reasonable time after first observation of conditions.

The amount agreed upon as the value of any extra Work resulting from any change order shall constitute full and complete compensation for all overhead, labor, material, tools, and equipment furnished in the performance of Work required by that change order. Furthermore, the amount agreed upon as the value of extra Work for any change order shall be accepted by the Contractor as full and complete compensation for any and all claims of any nature whatsoever, including, but not limited to, any actual or alleged claims for compensation by Contractor, or any subcontractor of Contractor for delays occasioned by or in any way arising out of stoppage of the Work, coordination of the Work with others, or processing of that change order.

2.39 CLEANING UP. Contractor shall at all times keep the premises free from accumulations of waste material or rubbish as a result of this operation. Upon completion of Work he shall remove all rubbish, material and his equipment from the job and shall leave the job site in a "broom clean" or equivalent condition. In case of a dispute regarding this item, the Owner may remove rubbish or material and charge the cost to the several contractors as the authorized representative shall deem just.

2.40 SUPERVISION. The Contractor shall, at all times during the working hours of the contract, have a competent foreman or superintendent on the job who shall be authorized to act as an agent of the Contractor. Such agent shall be familiar with the type of work hereunder and be aware of the hazards and the safety rules relating to this particular type of construction. Ignorance or incompetence of a foreman shall be due cause for his removal from the job and cessation of work under this contract until the intent of this paragraph is fulfilled, without recourse by the Contractor for any extension of the time of completion as a result of the removal of such unsatisfactory agent.

2.41 APPRENTICESHIP STANDARDS. This contract is subject to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor. Section 1777.5, as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five, except:

- (a) When unemployment in the area of coverage by the Joint Apprenticeship Committee has exceeded an average of fifteen percent (15%) in the three (3) months prior to the request for certificate; or
- (b) When the number of apprentices in training in the area exceeds a ratio of one to five; or
- (c) When the trade can show that it is replacing at least 1/30 of its journeymen through apprenticeship training on an annual basis statewide or locally; or
- (d) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employees registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

2.42 ASSIGNMENT OF ANTI-TRUST ACTIONS AND UNFAIR BUSINESS PRACTICE CLAIMS. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

2.43 EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status.

The Contractor will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Contractor commitments under this agreement.

The Contractor agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2716, and California Government Code Section 12990.

The Contractor agrees that it will assist and cooperate with the County of Stanislaus, the State of California and the United States Government in obtaining compliance with the equal opportunity clause, rules, regulations, and relevant orders of the State of California and United States Government issued pursuant to the Acts.

In the event of the Contractor's non-compliance with the discrimination clause, the affirmative action plan of this contract, or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part by the Owner.

2.44 DISABLED INDIVIDUALS NON-DISCRIMINATION. This Project is subject to Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) and all requirements imposed by the applicable office of Revenue Sharing Regulations (31 CFR Part 51) and all guidelines and interpretations issued thereto. In this regard, the Owner and all of its contractors and subcontractors will take all reasonable steps to ensure that

disabled individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

2.45 FAIR EMPLOYMENT AND HOUSING ACT ADDENDUM. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations. Such action shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this contract.

Remedies for willful violation include:

(a) The State or local agency may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgement having that effect from a court in an action to which Contractor was a party; or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Section 12900, et seq.

(b) For willful violation of this Fair Employment and Housing provision the State or local agency shall have the right to terminate this contract either in whole or in part, and any loss or damage sustained by the State or local agency in securing the goods or services hereunder shall be borne and paid for by the Contractor and by his surety under the performance bond, if any, and the State or local agency may deduct from any monies due or that thereafter may become due to the Contractor, the difference between the price named in the contract and the actual cost thereof to the State or local agency.

2.46 DIGGING TRENCHES OR EXCAVATIONS.

2.46.1 Trenching shall be done in accordance with the California Labor Code Section 6705, 6706, and 6707.

2.46.2 Pursuant to Public Contract Code section 7104, the Contractor is hereby notified as follows:

Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface and shall contain a clause which provides the following:

(a) That the Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions at the site differing from those indicated.
- (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the Work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

2.46.3 Digging trenches or excavations shall be in accordance with the California Government Code Section 4216, the California Business and Professions Code Section 7110 and the CalOSHA Regulation Title 8 Chapter 4 Subchapter 4 Article 6 Section 1541.

2.47 UTILITY RELOCATION. Pursuant to Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay is caused by the failure of the County of the utility owner to provide for removal or relocation of such utility facilities.

2.48 NOTICE

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus
Department of Parks and Recreation
Attention: Stephanie Musso
3800 Cornucopia Way, Suite C
Modesto, CA 95358

To Contractor: Dontee Pump Company, Inc.
Attn: Richard Hamilton
2825 Railroad Avenue
Ceres, CA 95307
rich@donleepump.com

2.49 FINAL PAYMENT.

A. FINAL PAYMENT

1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punch list, testing, record documents and Contractor maintenance after Final Acceptance, Contractor shall submit its Application for Final Payment.
2. Provided Contractor has met all conditions required for Final payment, Owner will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.

B. FINAL ACCOUNTING

1. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
2. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, an Agreement and Release of Claims.

2.50 CLAIMS UNDER \$375,000.

The provision of Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3 of the Public Contract Code, relating to the resolution of construction Claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency are hereby incorporated in this Contract and set forth below.

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

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

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

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

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

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

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause,

determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

2.51 ALL CLAIMS.

Notwithstanding section 2.50, the provisions of Chapter 9 (commencing with section 9204) of the Public Contracts Code shall apply to any Claims under this Contract; and is hereby incorporated into this contract as set forth below.

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a 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 a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project 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 public entity.

(2) "Contractor" 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 has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "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 a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies 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, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity 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, the public entity 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.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity 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, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) 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, the public entity 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 the public entity 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 public entity and the claimant sharing the associated costs equally. The public entity 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.

(C) 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.

(D) Unless otherwise agreed to by the public entity 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.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a 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 the public entity'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.

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

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

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

2.52 EXAMINATION AND AUDIT. Any contract exceeding \$10,000.00 is subject to examination and audit of the California State Auditor, at the request of the County for a period of three (3) years after the final payment under the contract (pursuant to Public Contract Code section 8546.7).

EXHIBIT A
MASTER SPECIFICATIONS AND SPECIAL CONDITIONS
FOR
MODESTO RESERVOIR REGIONAL PARK MARINA FUEL STATION UPGRADE PROJECT

The following language and documents are included as Exhibit A to this Agreement:

- **Scope of Work**
- **Contractor's Bid Pricing**

SCOPE OF WORK

Contractor shall provide all labor, equipment, and materials to remove and replace the existing gasoline dispensing and point-of-sale (POS) systems at the Modesto Reservoir Regional Park, located at 18143 Reservoir Road, Waterford, California.

Contractor shall provide the following services:

1. Prepare application for Stanislaus County Building Department Electrical Permit to install new Gasoline pumps, dispensers and POS equipment for existing ConVault above ground storage tanks (AST).
2. Provide Electrical Plans and Specifications as required for Stanislaus Building Department Permit for electrical upgrades.
3. Provide labor and equipment to disconnect electrical service and remove and dispose of two (2) existing gasoline suction pumps to facilitate removal of affected dock surfaces.
4. Provide labor and equipment to remove and replace dock surface decking as required to access electrical conduits, product piping and dispenser containments to include:
 - a. Replacing dock planks where necessary on 38' X 8' and 22' X 6' sections.
 - b. Patch framing under existing gasoline pumps.
 - c. Install new white vinyl rub-rail on dock sections.
 - d. Provide new floats to level dock sections next to 2 pillings.
5. Furnish and install two (2) Gasboy "Astra" fuel pumps on existing 1,000 gallon and 500 gallon ConVault above ground gasoline storage tanks with air eliminators, expansion relief valves and Morrison Brothers 710-0100 IV, 1" 120V normally closed solenoid valves for anti-siphon protection.
6. Furnish and install one (1) Bravo B600-FIS-B Transition box to facilitate connection of 1 ½ inch Schedule 40 steel pipe to 1 ½ inch DoubleTrac Stainless Steel Double wall flexible Marina fuel piping system.
7. Furnish and install one (1) Bravo BR-Custom Above Ground Marina Grade under dispenser containment to include:
 - a. 1 ½" OPW female top double poppet emergency valve
 - b. Bravo UDC Float Trip Assembly
8. Furnish and install new DoubleTrac piping from the transition sump to the new surface mount under dispenser containment for supply of gasoline to the new dispenser.
9. Provide materials, labor and equipment to modify existing electrical service to new dispensing system per Manufacturer's specifications and electrical code requirements to include:
 - a. Excavate, backfill and pave trenches as required.
 - b. Provide and install one (1) new sub-panel
 - c. Provide and install one (1) new shut trip breaker
 - d. Provide and install three (3) conduits from the building to the dispensers for (a) 120V power to dispensers and "hook" signals, (b) UDC monitor and (c) sales transaction data cable.
 - e. Provide two (2) conduits from the building to the transition sump for leak detection by the existing Pneumercator LC1003 Monitoring System and 120V electrical service to the new Gasboy "Astra" pumps.
 - f. Provide and install new Emergency Stop.
10. Furnish materials, labor and equipment to install one-(1) Wayne "Helix" single-product duel hose gasoline dispenser, to include:

- a. One (1) hose outlet per side
 - b. EPP key pad and EMV Hybrid Reader
 - c. Wayne connect module for Chipped key communication
 - d. Retail LED displays
 - e. Receipt printers
 - f. Stop Button
 - g. Painted doors and Valance
 - h. Totalizers and standard options
 - i. Two (2) ¾" X 20', "Low-Perm." hard wall hoses, safety-breaks and automatic nozzle assemblies
 - j. Two (2) Morrison 610X-0200 ARPB, 110" Hose Retriever Assemblies
11. Furnish and install new Verifone 'RubyCi' Point of Sale 120-key single terminal, to include:
 - a. RubyCi POS and Controller
 - b. Fourcourt Fuel Controller
 - c. Media Drawer 215, Petro Systems
 - d. Customer Pole Display for Topaz
 - e. Thermal Receipt RP310 Printer
 - f. Powevar UPS/line conditioner Model ABCEG251-11
 12. EMV/Debit Pin Pad
 - a. Power supply and cable
 - b. Annual SW maintenance per MX9xx 1 yr required
 - c. Deployment MX9xx key inj and APP load
 - d. Low profile stand MX9xx
 - e. Metrologic orbit scanner dark gray for Verifone
 13. Provide 1-year Verifone required service contracts, as follows:
 - a. Command site controller software maintenance (1st year)
 - b. Command site controller help desk (1st year)
 - c. PSP onsite 1st year for RubyCi
 14. Furnish and install product and safety decals on the existing ConVault AST's and new Wayne Gasoline dispenser as required by CFC Regulations and County's specification.
 15. Coordinate final inspections with Stanislaus County Parks and Recreation staff.
 16. Provide labor and equipment to function test and calibrate retail dispensers, as required by the State of California Department of Weights and Measures.
 17. Provide Verifone 'Ruby' start up and training
 - a. Includes up to 8-hours maximum service/training
 18. Provide 100% Performance Bond, 100% Payment Bond and "Close Out" documents as required.
 19. This proposal shall comply with applicable "Prevailing Wage" regulations and includes the State of California Sales Tax.
 20. Notes and Exceptions:
 - a. Permit fees shall be invoiced "at cost". Two thousand dollars (\$2,000.00) is included in this proposal as an estimated value. The final invoice shall reflect the credit value or additional cost.
 - b. Verifone 'Ruby' cash register/credit card terminal requires a "dedicated" phone line or internet service to process card transactions to be provided by others.
 - c. Price signs and retail ID decals required by Department of Weights and Measures shall be provided by others.

- d. Replacement of dock cleats, frame replacement/repairs and floor panels, if requested in addition to the described "Scope of Work" shall be provided on a "time-and-materials" basis in addition to proposed amount.
- e. Five Thousand Dollars (\$5,000.00) value is included in this proposal for specific replacement or repairs to the dock floats. The final invoice shall be based on actual cost plus 15% OHP
- f. All conduit and wiring shall conform to NSEC article 500, Hazardous location installations.
- g. Additional work not specifically expressed shall be provided by others or on a "time-and-materials" basis in addition to the proposed amount above.
- h. Payments made for project using credit card will incur an additional 3.5% finance charge.

Compensation: The parties hereto acknowledge the maximum amount to be paid by the County for services provided under the term of this Agreement shall not exceed **Two Hundred Thirty-One Thousand, Two Hundred Ninety-Three Dollars (\$231,293.00)**, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

Contractor shall be paid for services rendered in accordance with Article V of this Agreement and all applicable sections of the Special Conditions.

EXHIBIT B

Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, and for 3 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 policy aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Application of Excess Liability Coverage: Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL and Auto policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability and Auto liability coverage can be provided in the form of an endorsement to the Contractor's insurance (**at least** as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage **at least** as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the County as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the County, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the County's site.

Reporting

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees, agents or volunteers.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation (except for Professional Liability) 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 the County for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the County. At the option of the County, either: the contractor shall cause the insurer shall reduce or eliminate such self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

Acceptability of Insurers

Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current A.M. Best's rating of no less than A-VII, however, if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Approved Surplus Line Insurers (LASLI) maintained by the California Department of Insurance.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the County for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Verification of Coverage

Contractor shall furnish the County with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. We strongly recommend obtaining a copy of the policy declarations and endorsement page (make this a requirement in your Contract) to facilitate verification of coverages and spot any undesirable policy limitations or exclusions.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Surety Bonds

Contractor shall provide the following Surety Bonds.

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Insurance Limits

The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors. Contractor's obligation to defend, indemnify and hold the County and its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Contractor to procure and maintain a policy of insurance.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

_____ Exempt from Auto – I will not utilize a vehicle in the performance of my work with the County.

_____ Exempt from WC – I am exempt from providing workers' compensation coverage as required under section 1861 and 3700 of the California Labor Code.

I acknowledge the insurance requirements listed above.

Print Name: Richard C. Hamilton Date: 12-11-17

Signature: Richard C. Hamilton Date: 12-11-17

Vendor Name: Donlee Pump Company

For CEO-Risk Management Division use only

Exception: _____

Approved by CEO-Risk Management Division: *Julian [Signature]* Date: 11/27/17