

**SPECIAL MEETING  
OF THE  
CACHUMA OPERATION AND MAINTENANCE BOARD**  
at Cachuma Operation and Maintenance Board Office  
**3301 Laurel Canyon Road  
Santa Barbara, California 93105**

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**Thursday, September 14, 2017**

*Start Time*  
**2:00 P.M.**

**AGENDA**

*Note: This is a special meeting of the Governing Board called in accordance with Government Code Section 54956. Other than the listed agenda items, no other business will be conducted by the Governing Board.*

1. **COMB CALL TO ORDER, ROLL CALL**
2. **PUBLIC COMMENT** (In accordance with Government Code Section 54954.3, every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.)
3. **RESOLUTION NO. 646 - FISH PASSAGE IMPROVEMENT PROJECT AT QUIOTA CREEK CROSSING 5**  
For discussion and possible action by motion and roll call vote of the Board
  - a. Notice of Award
  - b. Execution of Construction Contract with the Lowest Responsive, Responsible Bidder
4. **[CLOSED SESSION]: CONFERENCE WITH LEGAL COUNSEL: EXISTING AND POTENTIAL LITIGATION**
  - a. [Government Code Section 54956.9(d)(4)]  
Name of matter: Protest of Member Agency re: Payment of Quarterly Assessments
5. **RECONVENE INTO OPEN SESSION**  
[Government Code Section 54957.7]  
Disclosure of actions taken in closed session, as applicable  
[Government Code Section 54957.1]
  - a. Protest of Member Agency re: Payment of Quarterly Assessments
6. **MEETING SCHEDULE**
  - **September 25, 2017 Regular Board Meeting at 2:00 P.M., COMB Office**
  - **Board Packages Available on COMB Website**  
[www.cachuma-board.org](http://www.cachuma-board.org)
7. **COMB ADJOURNMENT**

#### NOTICE TO PUBLIC

**Posting of Agenda:** This agenda was posted at COMB's offices, located at 3301 Laurel Canyon Road, Santa Barbara, California, 93105 and on COMB's website, in accordance with Government Code Section 54954.2. The agenda contains a brief general description of each item to be considered by the Governing Board. The Board reserves the right to modify the order in which agenda items are heard. Copies of staff reports or other written documents relating to each item of business are on file at the COMB offices and are available for public inspection during normal business hours. A person with a question concerning any of the agenda items may call COMB's General Manager at (805) 687-4011.

**Written materials:** In accordance with Government Code Section 54957.5, written materials relating to an item on this agenda which are distributed to the Governing Board less than 72 hours (for a regular meeting) or 24 hours (for a special meeting) will be made available for public inspection at the COMB offices during normal business hours. The written materials may also be posted on COMB's website subject to staff's ability to post the documents before the scheduled meeting.

**Public Comment:** Any member of the public may address the Board on any subject within the jurisdiction of the Board that is not scheduled for as an agenda item before the Board. The total time for this item will be limited by the President of the Board. The Board is not responsible for the content or accuracy of statements made by members of the public. No action will be taken by the Board on any Public Comment item.

**Americans with Disabilities Act:** in compliance with the Americans with Disabilities Act, if you need special assistance to review agenda materials or participate in this meeting, please contact the Cachuma Operation and Maintenance Board office at (805) 687-4011 at least 48 hours prior to the meeting to enable the Board to make reasonable arrangements.

**Note:** If you challenge in court any of the Board's decisions related to the listed agenda items you may be limited to raising only those issues you or someone else raised at any public hearing described in this notice or in written correspondence to the Governing Board prior to the public hearing.

# CACHUMA OPERATION & MAINTENANCE BOARD

## BOARD MEMORANDUM

Date:	September 14, 2017
Submitted by:	Tim Robinson
Approved by:	Janet Gingras

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**SUBJECT:** Quiota Creek Crossing 5 Fish Passage Improvement Project

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**SUMMARY:**

The Quiota Creek Crossing 5 Fish Passage Improvement Project open competitive bidding was solicited on August 30, 2017 with the bid site visit taking place on Tuesday, September 5<sup>th</sup> and the Bid opening conducted on Wednesday, September 13, 2017. At the August 28<sup>th</sup> Board meeting, the Board approved purchase of the ConTech Bridge system and payment for the Santa Barbara County encroachment permit.

The intention is to commence construction on the project starting near the end of September. The following is a description of the project and the needed approvals to move forward with implementing the project. All permits will be acquired before the selected construction contractor initiates the project.

***Project description***

A 59-foot prefabricated bottomless arched culvert is planned to replace the current concrete low flow crossing at Quiota Creek Crossing 5. The project is being designed to the minimum design standards set by all regulatory agencies. Pending final design approval by Santa Barbara County (County), the project will begin by the end of September and be completed in December of 2017. Final drawings have been submitted to NMFS/CDFW and the County. All funding for this project has been secured from a CDFW-FRGP grant (\$893,287) and a COMB construction match (\$50,000). The funding and project were accepted through Resolution No. 632 by the COMB Board on May 22, 2017. Final design approval and the Notice to Proceed (NTP) from CDFW-NMFS are anticipated soon. Design approval from the County is expected shortly and full payment of the County Encroachment Permit Fee will be needed before this last pending permit will be issued. COMB's resident engineer for the project will be Gino Filippin of Filippin Engineering who has been approved by the County. The temporary construction Right-of-Entry Agreements from the two landowners within the project boundary have been obtained.

***Construction Contractor***

Two sealed bids were submitted for this project. The apparent lowest responsive, responsible bidder was Peter Lapidus Construction, Inc. The submitted bid was \$626,820 which is below the Engineer's estimate of \$666,161 for construction. Staff recommends issuing a Notice of Award and execution of the construction contract with the lowest responsive, responsible bidder, Peter Lapidus Construction, Inc.

**FINANCIAL IMPACT:**

The current fiscal year operating budget contains funding for this project. A summary of ongoing project financials will be presented monthly in the COMB Board packet.

**LEGAL CONCURRENCE:**

All documents have been or will be reviewed by COMB legal counsel.

**ENVIRONMENTAL COMPLIANCE:**

All conditions outlined in the permits for the project(s) will be followed.

**COMMITTEE STATUS:**

The Fisheries Committee reviewed the project and financial commitment during the Committee meeting of August 22, 2017 with the recommendation to forward to the Board a resolution to issue a Notice of Award and authorize the General Manager to execute a construction contract with the lowest responsive, responsible bidder.

**RECOMMENDATION:**

The Board adopt Resolution No. 646 (Exhibit 1) which approves issuing a Notice of Award (Exhibit 2) and authorizes the General Manager to execute a construction contract (Exhibit 3) with the lowest responsive, responsible bidder, Peter Lapidus Construction, Inc. for the construction of the Quiota Creek Crossing 5 Project for \$626,820.

**LIST OF EXHIBITS:**

1. COMB Board Resolution No. 646.
2. Notice of Award for construction of the Quiota Creek Crossing 5 Project.
3. Contract Agreement for the Fish Passage Improvement on Crossing 5, Quiota Creek.

**RESOLUTION NO. 646**

**RESOLUTION OF THE GOVERNING BOARD OF THE  
CACHUMA OPERATION & MAINTENANCE BOARD APPROVING  
ISSUANCE OF A NOTICE OF AWARD AND AUTHORIZING CONTRACT  
EXECUTION WITH PETER LAPIDUS CONSTRUCTION, INC. FOR  
CONSTRUCTION OF THE FISH PASSAGE IMPROVEMENT PROJECT  
AT QUIOTA CREEK CROSSING 5**

**WHEREAS**, the Cachuma Operation & Maintenance Board (“COMB”) is a joint powers authority and public entity, organized and existing in the County of Santa Barbara in accordance with Government Code Section 6500 et seq., and operating pursuant to the 1996 Amended and Restated Agreement for the Establishment of a Board of Control to Operate and Maintain the Cachuma Project - Cachuma Operation And Maintenance Board, dated May 23, 1996 (“Amended and Restated Agreement”), as amended by an Amendment to the Amended and Restated Agreement made effective September 16, 2003 (collectively the “Joint Powers Agreement”); and

**WHEREAS**, the Member Agencies of COMB consist of the City of Santa Barbara, the Goleta Water District, the Montecito Water District, the Carpinteria Valley Water District (collectively herein the “South Coast Member Agencies”), and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No. 1”); and

**WHEREAS**, in August, 1997, the National Marine Fisheries Service (“NMFS”) listed anadromous steelhead in the Southern California Evolutionarily Significant Unit, including the Santa Ynez River downstream of Bradbury Dam, as an endangered species under the federal Endangered Species Act, and completed and issued on September 11, 2000, a Biological Opinion relative to Cachuma Project operations as they relate to steelhead; and

**WHEREAS**, COMB is committed to implement and cooperate in operations and other management actions designed to protect and enhance habitat conditions for steelhead in the Santa Ynez River and its tributaries downstream of Bradbury Dam; and

**WHEREAS**, the fish passage improvements at Crossing Number 5 on Quiota Creek, a tributary to the Lower Santa Ynez River, will provide improved access to the perennial reaches of Quiota Creek and restore habitat to enhance conditions for steelhead (the “Project”). The Project will replace an existing “at-grade” Arizona-type concrete crossing with a 59-foot prefabricated concrete bottom-less arched culvert (or bridge), which will remain owned, operated and maintained by the County of Santa Barbara. The new bridge system will consist of an internal span of 59 feet and rise approximately 12 feet. A single 18-foot wide lane road surface will be constructed over the top of the arch of the bridge connecting to the existing County road surface; and

**WHEREAS**, COMB has prepared a detailed Scope of Work with specific tasks to be performed, a schedule of completion and a detailed budget that was used for selection of a construction contractor and construction management of the Project; and

**WHEREAS**, a competitive bidding process was performed and sealed bids were opened on September 13, 2017 with Peter Lapidus Construction, Inc. prevailing as the lowest responsive, responsible bidder; and

**WHEREAS**, it is in the best interest of COMB to enter into said contract, including for the reasons provided in the COMB Five-Year Habitat Improvement Plan and the related staff report;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF COMB AS FOLLOWS:**

1. The Governing Board finds and determines that the facts set forth in the above recitals and in the documents referenced herein are true and correct.
2. The Governing Board authorizes a Notice of Award be issued and approves a contract to be executed with Peter Lapidus Construction, Inc. for the construction of the Fish Passage Improvement Project at Quiota Creek Crossing 5 in an amount not to exceed \$626,820.
3. The Governing Board further authorizes COMB's officers and staff, including the General Manager, to continue to do all things necessary and appropriate, including, but not limited to, execution and delivery of necessary documents, the obtaining of applicable permits, and any other actions to construct and implement the Project using the approved expenditures.
4. This Resolution shall take effect immediately.

**PASSED, APPROVED AND ADOPTED** by the Governing Board of the Cachuma Operation and Maintenance Board, this 14<sup>th</sup> day of September 2017, by the following roll call vote:

**Ayes:**

**Nays:**

**Abstain:**

**APPROVED:**

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President of the Governing Board

**ATTEST:**

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Secretary of the Governing Board

## NOTICE OF AWARD

**PROJECT: CACHUMA OPERATION & MAINTENANCE BOARD  
FISH PASSAGE IMPROVEMENT ON CROSSING 5, QUIOTA CREEK**

Date: 9/14/2017

To (Contractor): Peter Lapidus Construction, Inc.

Re: Notice of Award- Fish Passage Improvement on Crossing 0A and Crossing 4,  
Quiota Creek Project Construction Contract

Dear **Mr. Lapidus**,

This letter shall constitute your "Notice of Award" for a construction contract for the work on the subject project for the amount of **\$626,820.00**. This notice is effective the date of this letter. A "Notice to Proceed" will be forthcoming upon receiving all requested documentation set forth in the project Bid Packet.

Congratulations and we look forward to working with you on this project.

Sincerely,

Janet Gingras  
General Manager

CC: Gino Filippin, Resident Engineer, FE  
Timothy H. Robinson, Project Manager, COMB

**CONTRACT AGREEMENT FOR THE  
FISH PASSAGE IMPROVEMENT ON CROSSING 5, QUIOTA CREEK  
FOR THE CACHUMA OPERATION AND MAINTENANCE BOARD  
SANTA BARBARA COUNTY, CALIFORNIA**

Contract Price \$ 626,820

THIS AGREEMENT made this \_\_\_\_\_ day of September \_\_\_\_\_, 2017, by and between the Cachuma Operation and Maintenance Board, a joint powers authority and public entity, organized and existing in the County of Santa Barbara, under and by virtue of the laws of the State of California, hereinafter designated as Board, and Peter Lapidus Construction, Inc., hereinafter designated as Contractor. The Board and the Contractor, in consideration of the mutual promises, covenants and conditions hereinafter set forth, agree as follows:

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**ARTICLE 1 - THE WORK**

In consideration of payments and agreements to be made by the Board, the Contractor shall perform and complete in a prompt and workmanlike manner the work in the Board's Contract Documents entitled:

**FISH PASSAGE IMPROVEMENT ON CROSSING 5, QUIOTA CREEK**

The Work is generally described as follows:  
The project consists of removal of existing concrete low-flow type stream crossing; installation of 59-foot prefabricated concrete bridge with wingwalls; installation of 18-foot wide asphalt road with corresponding traffic barrier systems; installation of rock profile control structures; installation of rock slope protection; instream grading and contouring; improvement of existing fencing private property; and protection of environmental resources and private property.

The Contractor shall perform all work in accordance with, and meet all requirements of, the Contract Documents, and shall furnish at his/her own expense all labor, materials, equipment, tools, transportation, and services necessary therefore, except for such materials, equipment and services (if any) as may be set forth in the Contract Documents to be furnished by the Board.

The Contractor shall provide the Board with the name and qualifications of Contractor's Construction Manager ("Construction Manager") and Job Site Supervisor ("Field Supervisor") prior to the commencement of Work. The Construction Manager and Field Supervisor shall be acceptable to the Board in its sole discretion. If in its sole discretion the initially-named Construction Manager and Field Supervisor are not acceptable to the Board, the Board may require the Contractor to provide a different Construction Manager and Job Site Supervisor who are acceptable to the Board. The Contractor shall not change the Board-approved Construction Manager and Field Supervisor during the course of the Work, unless such change is specifically approved in writing by the Board in its sole discretion.

Contractor represents and warrants that it currently possesses all license(s) or other approvals currently required by California law to engage in the Work described herein. Contractor holds a current, active Class \_\_\_ license from the State of California, License No. \_\_\_\_\_.

**ARTICLE 2 - COMMENCEMENT AND COMPLETION;  
LIQUIDATED DAMAGES**

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the Board and the Work shall be fully completed by the schedule defined in Section 6-7.1.2 in Section B—General Provisions Modifications. The Board will issue a Notice to Proceed within 3 days following its acceptance of Contractor's bonds and insurance certificates, subject to the Board obtaining all applicable and required permits and approvals.

The Board and the Contractor recognize that time is of the essence of this Agreement and that the Board will suffer financial loss if the Work is not completed within the time specified herein, plus any extensions thereof allowed in accordance with Section B - General Provisions Modifications, including Paragraph 6-6.2. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Board if the Work is not completed on time. **Accordingly, instead of requiring any such proof, the Board and the Contractor agree that as liquidated damages or delay (but not as penalty) the Contractor shall pay the Board the sum of \$750.00 for each consecutive calendar day that expires after the time specified herein. The parties agree that assessment of liquidated damages is valid in accordance with California Government Code Section 53069.85. However, the parties agree that any delay caused by or resulting from the Board not obtaining any applicable and required permit or approval will not constitute any delay or loss subject to payment as liquidated damages or as any other loss or damages under this Agreement.**

**ARTICLE 3 - CONTRACT PRICE**



The Board shall pay the Contractor for the completion of the Work in accordance with the Contract Documents in current funds the lump sum Contract Price(s) as set forth above.

#### ARTICLE 4 - THE CONTRACT DOCUMENTS

The Contract Documents consist of all documents contained in Sections A through F, inclusive, of the bid specifications for this work, including but not limited to:

- Documents – Section A
  - Contract Agreement
  - Cost Schedule
  - List of Equipment and Materials Manufacturers
  - List of Subcontractors and Suppliers
  - Contractor's Statement Regarding Insurance Coverage
  - Insurance Requirements for Contractors
  - Payment (Labor and Materials) Bond (form of bond attached hereto or otherwise acceptable to Board)
  - Performance Bond (form of bond attached hereto or otherwise acceptable to Board)
  - The prevailing rate of per diem wages determined by the Director of the California Department of Industrial Relations
  - Notice to Proceed
  - Notice of Completion (form not attached hereto)
  - Standard Specifications for Public Works Construction (SSPWC, "the Greenbook") – 2009 Edition
  - Change Order (form not attached hereto)
  - Work Change Directives which may be delivered or issued after the Effective Date of the Agreement (form not attached hereto)
- General Provisions Modifications – Section B
- Special Provisions – Section C
- Design Drawings – Section D
- Project Permits and Plans – Section E

The Contract Documents and their provisions (whether or not copies are attached hereto) are incorporated by reference into this Contract Agreement as if set forth in full.

#### ARTICLE 5 - PAYMENT PROCEDURES

The Contractor shall submit applications for Payment for each calendar month in accordance with Section 9-3, Measurement and Payment as modified herein of the Standard Specifications (SSPWC). The payment application shall be submitted in spread sheet format acceptable to the Board. Applications for Payment will be processed by the Board as provided in the Standard Specifications. In accordance with Public Contract Code Section 22300, the Board will allow the substitution of securities for funds withheld to insure performance of all provisions of the Agreement.

#### ARTICLE 6 - NOTICES

Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

#### ARTICLE 7 - NO ASSIGNMENT

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Any assignment of money shall be subject to all proper withholdings in favor of Board and to all deductions provided for in the Contract Documents. All money withheld, whether assigned or not, shall be subject to being used by the Board for completion of the work, should the Contractor be in default.

The Board and the Contractor each binds itself, and its partners, officers, directors, employees, successors, assigns, and legal representatives to the other party hereto, and their partners, officers, directors, employees, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

#### ARTICLE 8 - PREVAILING WAGES/LABOR CODE COMPLIANCE

The general prevailing rates of per diem wages and general prevailing rate for holiday and overtime work in the locality in which the work is to be performed have been determined by the Board. The general prevailing rates of per diem wages are hereby incorporated herein and made a part hereof. The Contractor agrees that he, or any subcontractor under him, will pay not less than the foregoing specified prevailing rates of wages to all workmen employed in the execution of the Contract.

Any contractor, who is awarded a public works project and intends to use a craft or classification not shown on the general prevailing wage determinations, may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of the call for proposals or bids.

The Contractor further acknowledges the provisions of the California Labor Code applicable to this project.

Contractor covenants that it will comply with such provisions. These provisions include, but are not limited to, the levying of penalties for failure to pay prevailing wages (Labor Code Section 1775) or for workmen who are required or permitted to work more than eight hours in one calendar day and forty hours in one calendar week in violation of the Labor Code (Labor Code Section 1813); and the keeping and furnishing of accurate and certified payroll records (Labor Code Section 1776).

#### ARTICLE 9 - INDEMNITY OBLIGATIONS

A. Promptly upon execution of the Contract, Contractor specifically obligates itself and agrees to protect, hold free and harmless, investigate, defend and indemnify the U.S. Bureau of Reclamation ("Reclamation"), State of California, the Board, its members, and their respective officers, consultants (including the Board's Engineer and its Design Engineer, HDR Fisheries Design Center), directors, officials, employees and agents, from and against any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including without limitation attorneys' fees and expert witness fees and costs of litigation, which arise out of or are in any way connected with Contractor's or its subcontractors' or suppliers' performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. To the fullest extent legally permissible, this indemnity, defense and hold harmless obligation of Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or any subcontractor or any of subcontractor's agents, employees, and representatives, resulting in claim or liability (including but not limited to death or bodily injury to, or damage to property of, Contractor or any subcontractor, person, firm, corporation, or supplier employed by the Contractor or subcontractor upon or in connection with the Work, either directly or by indirect contact), irrespective of whether or not any acts or omissions of any of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of the indemnitees. This provision shall be construed in accordance with California Civil Code Section 2782 et seq. and notwithstanding any provision to the contrary in the Standard Specifications.

B. In any and all claims against the Board, Reclamation, and their consultants, and State of California, and each of their members, trustees, directors, officers, employees and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation of the amount or

type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation statutes, disability benefit statutes or other employee benefit statutes, or other insurance policies furnished by Contractor as required herein.

C. Contractors indemnity obligations within this Article 9 shall survive the expiration or completion of this agreement.

#### ARTICLE 10 - PAYMENTS AND PERFORMANCE BONDS

Contractor as part of its Contract Price, and prior to commencement of work, shall supply to the Board payment and performance bonds (each in the amount of 100% of the Contract Price). The payment bond shall meet all requirements of Civil Code Section 9550 and 9554 and shall be in a form satisfactory to the Board. The performance bond shall be in the form provided in these Contract Documents or as otherwise acceptable to the Board. The bonds provided by the Contractor must be issued by a California admitted surety insurer licensed to do business in the State of California (as set forth in California Code of Civil Procedure Section 995.010 et. seq.) and with a current A. M. Best's rating no less than A:VII or equivalent or as otherwise approved by Board.

#### ARTICLE 11 - EARLY TERMINATION OF CONTRACT

As referenced in Item 8 of the "Section C-Special Provisions-Technical" which are part of these specifications, the 59-foot prefabricated arch concrete bridge to be installed as part of the Work is a pre-purchased item to be delivered to the site of the Work on or before October 23, 2017 so as to provide sufficient time to timely complete the Work consistent with the time requirements of the Department of Fish & Wildlife, any other regulatory agencies with jurisdiction thereto, and with Section 6 of "Section B-General Provisions Modifications" and specifically Paragraph 6-7.1.2 thereto ("Contract Period"). The Board, in its sole discretion, (and without affecting any of its other right herein) may subsequently terminate this Contract, without penalty, due to time restrictions if the prefabricated bridge is not delivered to the site of the Work on or before October 23, 2017, or alternatively for any reason upon the Board's determination that such termination is in the Board's best interest.

If the Board elects to terminate the Contract in this circumstance, then notwithstanding any other provisions in these Contract Documents, such termination and the total compensation payable to the Contractor shall be governed by the following:

(1) The Engineer will issue Contractor a written notice specifying that the Contract is terminated. Except as otherwise directed in writing by the Engineer, the

Contractor shall:

A. Stop all work under the Contract except that specifically directed to be completed prior to acceptance. [Such work may include, but is not limited to, reestablishment of a road crossing at the site of the Work.]

B. Notify all of Contractor's subcontractors and suppliers that the Contract is being terminated and that their contracts and orders are not to be further performed unless otherwise authorized in writing by the Board.

C. Perform work the Engineer deems necessary to secure the Project for termination.

D. Remove equipment and plant from the site of the Work, as directed.

E. Take action that is necessary to protect materials from damage.

F. Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as Engineer may request.

G. Dispose of materials not yet used in the Work, as directed by Engineer. Contractor shall provide the Board with good title to all materials purchased by the Board hereunder (including materials for which partial payment has been made), and with bills of sale or other indicia of title for the materials.

H. Subject to the Engineer's prior written approval, settle all outstanding liabilities and claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the Board all the right, title and interest of the Contractor under such subcontracts or orders referenced herein.

I. Furnish the Engineer with any documentation required to be furnished by the Contractor in accordance with the Contract Documents.

J. Take any other actions required by Engineer.

(2) Termination of the Contract shall not relieve any surety of its obligations for just claims arising out of the work performed.

(3) The total compensation to be paid to Contractor shall be determined by the Engineer on the basis of the following:

A. The reasonable cost to Contractor, without profit, for all work performed under the Contract, including

mobilization, demobilization and work done to secure the Project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by sale of the materials, and for other appropriate credits against the cost of the Work. When in the Engineer's opinion the cost of a contract item of work is excessively high due to costs to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

B. A reasonable allowance for profit on the cost of the work as determined pursuant to subparagraph (A) herein, provided that the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the Contract been completed and provided further that the profit allowed shall in no event exceed four percent (4%) of the cost.

C. The reasonable cost to the contractor of handling material returned to vendor(s), delivered to the site of the Work or disposed of as directed by the Engineer.

D. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to the termination of the Contract.

(4) All records of the Contractor and its subcontractors and suppliers necessary to determine compensation in accordance with these provisions shall be retained and open to inspection or audit by representatives of the Board at all times after issuance of the notice that the Contract will be terminated and for a period of three (3) years thereafter.

(5) After its acceptance of the Work, the Board may make payments on the basis of interim estimates pending issuance of the final estimate when, in the opinion of the Engineer, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment of the final estimate, shall be subject to deductions for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

These provisions shall be included in any subcontracts.

#### ARTICLE 12 – LAWS, REGULATIONS AND PERMITS

Contractor, at its expense, shall give all notices and (unless otherwise provided herein) obtain all permits for the work required by law, and shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, orders and permit conditions pertaining to the conduct of the work, including but not limited to those regarding protection of the

environment. Contractor shall be liable for all violations of the law in connection with work furnished by Contractor. If Contractor observes that any drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the Board's authorized representative in writing and any necessary changes shall be made by written instruction or change order. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules or regulations and without giving notice to the Board's authorized representative, Contractor shall bear all costs arising therefrom.

#### ARTICLE 13 – SAFETY

Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. Contractor shall designate, in writing, a responsible representative at the worksite whose duty shall be the prevention of accidents, and the maintenance and supervision of safety precautions and programs. This person shall be Contractor's Construction Manager unless otherwise designated in writing by Contractor.

In carrying out its work, Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and shall comply with all applicable federal, state and local statutory and regulatory requirements including California Department of Industrial Relations (Cal/OSHA) regulations; and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act. Safety precautions, as applicable, shall include but shall not be limited to: adequate life protection and lifesaving equipment; first aid; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, fall protection, ladders, bridges, gang planks, confined space procedures, trenching and shoring, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of all safety measures. Contractor shall submit its Injury Illness Prevention Plan (IIPP) to the Board for approval prior to commencement of the Work.

If applicable, in accordance with Section 6705 of the California Labor Code, Contractor shall submit to COMB specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by COMB prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions

to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the Construction Safety Orders of the California Department of Industrial Relations (Cal/OSHA), the plan shall be prepared by a California registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the Cal/OSHA Construction Safety Orders, or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping or other provisions of the Safety Orders. In no event shall Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders. Submission of the plan in no way relieves Contractor of the requirement to maintain safety in all areas. If excavations or trench work requiring a Cal/OSHA permit are to be undertaken, Contractor shall submit his/her permit with the excavation/trench work safety plan to COMB before work begins.

If applicable, Contractor shall also comply with the provisions of California Public Contract Code Section 7104, which pertains to the digging of trenches or other excavations extending deeper than four feet below the surface and the discovery of hazardous waste or subsurface or unknown latent physical conditions differing materially from those ordinarily encountered. The provisions of Section 7104 are incorporated by reference herein as if set forth in full.

Pursuant to California Labor Code Section 6708, each Contractor and subcontractor shall maintain or make available adequate emergency first aid treatment for its employees, agents and representatives, sufficient to comply with the Federal Occupational Safety & Health Act (P.L. 91-596; OSHA). The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

Safety Measures and Public Convenience - Contractor shall provide for the protection of all persons and property as herein specified. Attention is called to "Construction Safety Orders: and General Safety Orders" of the California State Industrial Accident Commission to which Contractor is required by law to conform.

#### ARTICLE 14 – NO WAIVER

No failure by COMB in asserting any of its rights or remedies as to any default of Contractor shall operate as a waiver of the default, or any subsequent or other default by Contractor, or of any of the Board's rights or remedies. No such delay shall deprive COMB of its right to institute and maintain any actions or proceedings which may be necessary to protect, assert, or enforce any rights or remedies arising out of this Agreement or the performance thereof.

ARTICLE 15 - SEVERABILITY

If any provision of these Contract Documents shall be held void or unenforceable, such determination shall not affect the remaining provisions thereof, which shall continue in valid force and effect.

ARTICLE 16 - INCORPORATION OF APPLICABLE STATUTORY PROVISIONS

The parties agree that all provisions of law which apply to this Contract Agreement (even if not specifically included or referenced herein), and of the grant agreement set forth in Section 6.03.04, form a part of this Contract Agreement, are incorporated by reference herein as if set forth in full, and that Contractor shall comply with all such provisions.

ARTICLE 17 - CHANGES TO LAW

If any changes or modifications to applicable laws governing the Work are not specifically reflected in these Contract Documents, they are hereby deemed adopted and incorporated by reference herein, and shall supersede any provisions herein to the contrary.

ARTICLE 18 - VENUE

Any proceedings arising out of dispute(s) between the Board and the Contractor as to any provision(s) of this Contract Agreement shall occur within the County of Santa Barbara, State of California.

ARTICLE 19 - INCORPORATION OF GRANT PROVISIONS AND REQUIREMENTS

Contractor acknowledges that COMB will pay for a significant portion of the Work through a grant received by COMB from the California Department of Fish and Wildlife (Grant Agreement Number P1450011), or "grant agreement". Contractor agrees to comply with the provisions of this grant agreement applicable to Contractor's work. Specifically, without limiting the foregoing covenant, Contractor acknowledges and agrees to comply with the following: Grant Agreement Number P1450011—Section 6.03.04 (Tasks), including Task 4 thereto; Exhibit 1.a. Items 4 (audit) and 8 (Non-Discrimination Clause); Exhibit 2, Item 1 (Utilization of Small, Minority and Women's Businesses); Item 4 (Compliance with Federal Regulations); Item 6 (Standards for Financial Management System); Item 9 (Environmental Quality); and Item 11 (Single Audit Act); Item 12 (Federal Assurances). These provisions are incorporated herein by reference.

IN WITNESS WHEREOF, the BOARD and the CONTRACTOR have caused this Agreement to be executed the day and year first written above.

**CACHUMA OPERATION & MAINTENANCE BOARD**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

License No.: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**President of the Board of Directors**

\_\_\_\_\_

**Approved as to Form:  
Musick, Peeler and Garrett LLP**

**Agent for Service of Process:**

\_\_\_\_\_  
**Attorneys for Board**

\_\_\_\_\_

Principal:

Bond No.: \_\_\_\_\_

\_\_\_\_\_

Bond Type: \_\_\_\_\_

Bond Amount: \_\_\_\_\_