



MEMORANDUM

TO: SLDMWA Finance & Administration Committee Members, Alternates
SLDMWA Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer

DATE: July 11, 2024

RE: Ratification of Change Order for \$16,674.10, Resulting in Total Expenditure of \$214,074.10 for Dive Services Utilizing Emergency Reserve Funds

BACKGROUND

On April 22, 2024 the Water Authority executed a construction agreement with DRS Marine for dive services utilizing Emergency Reserve Funds to repair the Delta-Mendota Canal concrete lining at MP41.49. The contract was based on estimated time and materials, with a not to exceed amount of \$197,400. In addition to the original estimates, two additional work days and some additional equipment were required to complete the work, which resulted in a change order of \$16,674.10. Due to the critical nature of the work, DRS Marine continued working to complete the liner repairs to the Delta-Mendota Canal. With the \$16,674.10 change order, the total contract expenditure equals \$214,074.10. Because the change order caused the contract to exceed the Water Authority's \$200,000 delegation of authority threshold, Board authorization is required.

ISSUE FOR DECISION

Whether the Finance & Administration Committee should recommend, and the Board of Directors should ratify the change order for \$16,674.10, resulting in a total expenditure of \$214,074.10 for dive services utilizing Emergency Reserve Funds.

RECOMMENDATION

Staff recommends ratification.

ANALYSIS

Articles 1.1(b) and 4.5 of the Water Authority's Consolidated Procurement Policy require Board authorization for contracts over \$200,000. In this instance, staff is seeking ratification of a \$16,674.10 change order that resulted in a contract exceeding \$200,000, as it was necessary to act quickly to complete the critical repairs to the Delta-Mendota Canal while pumping orders from Central Valley Operations were minimal.

July 11, 2024

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BUDGET

The required funds utilized the Emergency Reserve Funds, and were within the approved amount.

ATTACHMENTS

1. Draft Change Order
2. Executed Agreement



CHANGE ORDER

Change Order No.: 1

Date: 7/11/2024

Name of Project: **MP 41.49 Liner Repair**
Specification No.: **F25-DMC-008**
Owner: **San Luis & Delta-Mendota Water Authority**
Contractor: **D R S Marine, Inc.**

Part: 1 Description of Change Order

Due to conditions during the liner repair, unanticipated additional costs were required to complete the job. The work was done prior to an board-approved change order because the work could not be placed on a stop work notice due to water demands and the need to complete the repairing existing liner to its original condition.

Part 2: Time & Materials

| # | Item Description | Item Cost | Units | Total |
|---------------------------|---------------------------------------|-------------|----------|--------------------|
| 1 | Certified Cargo Basket | \$250.00 | 3 days | \$750.00 |
| 2 | Additional labor / Equipment Required | \$17,166.10 | Lump Sum | \$15,924.10 |
| TOTAL FOR PART 2 = | | | | \$16,674.10 |

Cost Summary

| | |
|---|---------------------|
| Original Contract Amount: | <u>\$197,400.00</u> |
| Total Prior Changes: | <u>N/A</u> |
| Total Amount of this Change: | <u>\$16,674.10</u> |
| Total Contract Amount with All Changes: | <u>\$214,074.10</u> |

Schedule Summary

| | |
|---|-----------------|
| Original Estimate Completion Date: | <u>5/9/2024</u> |
| New Estimated Completion Date with all Change Orders: | <u>5/9/2024</u> |

Recommended By: _____ Date: _____
(Project Manager), SLDMWA

Accepted By: _____ Date: _____
Contractor Representative.

Approved By: _____ Date: _____
(Manager/Director/COO), SLDMWA

AGREEMENT FOR CONSTRUCTION
For
MP 41.49 Liner Repair

This Agreement is made and entered into this 22 day of April, 2024, by and between the San Luis & Delta-Mendota Water Authority, a California Joint Powers Authority, (hereinafter called "SLDMWA"), acting by and through its Governing Board and DRS Marine, Inc., a California corporation ("Contractor"). SLDMWA and Contractor may be referenced herein individually as "Party" or collectively as the "Parties."

WITNESSETH, that for and in consideration of the mutual promises, covenants, agreements, and conditions herein contained, the Parties agree as follows:

1. **THE WORK:** The Work constitutes a public work of improvement. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents and any applicable code or statute, whether or not specifically described herein, as long as same is reasonably inferable there from as being necessary to produce the intended results. Contractor agrees to perform and complete in a good and workmanlike manner the work of MP 41.49 Liner Repair ("Work"). The Work is subject to the approval of SLDMWA's Chief Operating Officer.

In no case shall SLDMWA have any responsibility for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work.

Contractor shall give all notices and shall observe and comply with all laws, ordinances, rules, regulations, permits, rights-of-way, or orders of any public authority bearing on the performance of the Work. All Work shall be performed in accordance with Title 24, Parts 1 through 5 and 9, of the California Code of Regulations. Contractor shall conduct the Work so that all laws and ordinances for the protection of the public and the workers shall be obeyed fully by Contractor and all subcontractors.

Contractor shall comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. Contractor shall be responsible for initiating, maintaining and supervising all safety measures in connection with the Work, for maintaining all safety conditions on the Site, and for ensuring against and/or correcting any hazardous conditions on the Site. Contractor shall at all times maintain adequate protection against injury to persons, including employees, or damage to property, on or near the project, or adjacent to the Site.

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times.

Contractor shall take all necessary precautions to protect SLDMWA's structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage, loss, or theft resulting from the operations, equipment or workers of the Contractor during the course of the construction, and shall provide adequate security measures. Contractor shall repair or replace any damage and remove any damaged or defaced material and/or equipment from the

Site at no cost to SLDMWA. Contractor shall be strictly liable for failure to adequately protect any existing improvements and/or facilities.

Any change to the Work increasing or decreasing the Contract Price must be approved in writing by the Chief Operating Officer or Project Manager. In no event shall any change to the Work be approved which would cause the total amount to be paid under this Agreement to exceed our approved delegated threshold.

Contractor will remove all dirt, debris, and waste from the Site, and insure upon completion that the grounds and any adjacent sidewalks and streets are left clear and in the condition the Contractor originally found them.

2. **LICENSE AND REGISTRATION:** By executing this Agreement, Contractor represents that it is currently licensed by the California Contractors State License Board, Class A, License number 508905, and that Contractor is registered with the California Department of Industrial Relations as required by California Labor Code section 1725.5, Registration number 1000008704.
3. **BONDS AND INSURANCE:** If the Contract Price is twenty-five thousand dollars (\$25,000.00) or more, then Contractor shall provide to SLDMWA payment and performance bonds in an amount not less than 100 percent of the total amount payable by the terms of the contract before commencement of any contract Work.

Before beginning work, Contractor shall furnish to SLDMWA, certificates of insurance and policy endorsements satisfactory to SLDMWA, evidencing general liability coverage, of not less than \$1,000,000 per occurrence (\$2,000,000 general aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability of \$1,000,000 (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to SLDMWA. Such insurance is to state or be endorsed to state "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by the San Luis & Delta-Mendota Water Authority, its directors, officers, employees, and authorized volunteers shall not contribute to it". The general liability coverage shall give SLDMWA, its directors, officers, employees and authorized volunteers insured status using ISO endorsement CG2010, CG2033, CG2037 or their equivalent. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A:VII, or equivalent, or as otherwise approved by SLDMWA.

The insurer(s) issuing the required policies shall, by separate endorsement, agree to waive all rights of subrogation against the "Additional Insureds" for losses arising in any manner from the products or work provided or performed by or on behalf of Contractor for SLDMWA, but this provision applies regardless of whether or not SLDMWA has received the waiver of subrogation. In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this Contract, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above. All such insurance shall be maintained in full force and effect throughout the duration of the Contract.

4. **LOCATION OF WORK:** The Work is to be performed at the following location: SLDMWA, Delta-Mendota Canal, MP 41.49 bridge, Patterson, CA 95363. ("Site").

5. TIME FOR COMPLETION: The Parties hereby agree that the Work shall be completed within 30 working days after the date of the Notice to Proceed (“Contract Time”).
6. CONTRACT DOCUMENTS: The Contract Documents referred to herein are incorporated herein by reference as if set forth in full in this Agreement and include Exhibits, the Notice Inviting Informal Bids, the General Conditions, the Special Provisions, all addendums issued, this agreement, any special provisions, the bid, payment and performance bonds (if required), the plans, the specifications, the drawings, the vendors/Contractor’s quote, construction change directives, and any change orders (“Contract Documents”) and comprise the complete and integrated contract between Parties, superseding all prior negotiations, representations or agreements, either written or oral. All Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict, SLDMWA’s Contract Terms and Conditions prevail over Contractor’s quote and terms & conditions associated with such quote, detail drawings shall govern over small-scale drawings, the specifications shall govern over the drawings, special provisions (if any) shall govern over the drawings, and change orders shall govern over the original documents, unless a different order of precedence is noted.
7. SUBCONTRACTORS: Contractor shall not use any subcontractors to perform any Work hereunder unless those subcontractors have been identified in Contractor’s bid to SLDMWA. All subcontractors shall be registered with the California Department of Industrial Relations as required by California Labor Code section 1725.5, and shall comply with Paragraphs 8 and 10 below.
8. PREVAILING WAGES AND RECORDS: This Section shall apply to all projects over \$1,000. Contractor and all subcontractors shall comply with and adhere to the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of Industrial Relations pursuant to Division 2, Part 7, Chapter 1, of the California Labor Code. Schedules of the prevailing rate of per diem wages are available for public inspection at the SLDMWA or can be found at <https://www.dir.ca.gov/oprl/DPreWageDetermination.htm> and are incorporated herein by reference. Contractor shall obtain and post copies of the applicable prevailing wage rates in a prominent place at the job site, in accordance with the regulations of the Department of Industrial Relations. Failure to comply with wage and hour requirements may result in the Contractor being assessed penalties in accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, including without limitation Sections 1775, 1776, 1777.7 and 1813.

The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (“DIR”). Contractor shall keep, and shall cause all subcontractors on the Project to keep certified payroll records of the hours and wages of all employees employed on the Project, and those records shall be open at all times for inspection by SLDMWA and/or the Division of Labor Statistics and Enforcement, in accordance with Sections 1776 and 1812 of the Labor Code. The certified payroll records shall contain at least the following information: the name, address, social security number, work classification, dates of payroll period, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each subcontractor in connection with the Work.

Payroll records shall be furnished electronically to the Labor Commissioner of the DIR monthly, unless more frequent submission is required herein, and shall be furnished within 10 days of any

separate request by the DIR or DLSE. Payroll records shall be furnished in a format prescribed by the DIR and uploaded into the electronic certified payroll reporting (eCPR) system.

The DIR may confirm the accuracy of payroll reports, including without limitation through worker interviews, examination of time and pay records, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other legal and reasonable method of corroboration. The DIR also may conduct in-person inspection(s) at the Site, including visual inspection of required job site notices, inspections of records, observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the DIR to ensure compliance with prevailing wage requirements.

In accordance with Title 8, Section 16463 of the California Code of Regulations, SLDMWA may, on its own or if required by the Labor Commissioner, withhold funds due to Contractor when payroll records are delinquent or inadequate. Contractor shall cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency.

9. GUARANTEE: In addition to any guarantees required elsewhere by the Contract Documents, the Contractor shall guarantee the Work for a minimum of one (1) year from and after the recordation of the Notice of Completion and formal acceptance by SLDMWA. The guarantee period for corrected defective work shall continue for a duration equivalent to the original guarantee period, beginning when the correction is complete.
10. COMPLIANCE WITH WORKERS' COMPENSATION LAW: By executing this contract, Contractor certifies that it is aware of the provisions of Section 3700 of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the statutory requirements, and Contractor will comply with such provisions before commencing the performance of the Work.
11. CONTRACT PRICE AND PAYMENT: As compensation for the Work, and its satisfactory construction, erection and completion, SLDMWA shall pay or cause to be paid to Contractor the actual cost of time and materials for a total not to exceed One Hundred Ninety-Seven Thousand Four Hundred dollars (\$197,400.00), subject to additions and deductions as provided by change order ("Contract Price"). Payment will be made as follows (check one):

Option 1: Payment will not be made until all Work is completed to the satisfaction of SLDMWA.

Option 2: Applications for payment shall be made on a monthly basis for work completed. The progress payment will be based on the estimated percentage complete, subject to review and approval by SLDMWA. The Contractor shall submit with its application all documents necessary to substantiate its estimate of percentage completion. For each monthly application for payment, the Contractor shall submit a conditional lien release warranting that title to all work, labor, materials and equipment covered by the application is free and clear of all liens, claims, security interests or encumbrances. Additionally, the Contractor shall submit unconditional lien releases for all work through the prior progress payment. For final payment, the Contractor and all of its Subcontractors and material suppliers shall submit final conditional and final unconditional lien releases. No progress payment will be released until SLDMWA has received the required lien releases.

Retention

Under Option 2 above, SLDMWA shall reserve from monies earned by the Contractor a sum equal to five percent (5%) of the estimates.

If requested in writing by the Contractor within five (5) days after receipt of Notice of Intent to Award, the Contractor may exercise its right to deposit into escrow securities in lieu of retention, or have retention deposited into escrow, in accordance with Public Contract Code section 22300. Upon satisfactory completion of the Contract, the securities or retention plus interest earned shall be returned to the Contractor. If the Contractor exercises its option hereunder, it must notify its Subcontractors in writing, within ten (10) days of the Contractor exercising its option, of their equivalent right to do so.

Payment Disputes: SLDMWA may dispute any payment application or portion thereof which is not properly documented and in accordance with the Agreement. SLDMWA also may withhold sums from any payment application for any of the following:

- A. Third party claims filed or reasonable evidence indicating probable filing of such claims;
- B. Defective work not remedied;
- C. Failure of the Contractor to make proper payments to any of its Subcontractors or suppliers, including without limitation in response to a stop payment notice;
- D. The occurrence of reasonable doubt that the Contract can be completed for the balance of payments then unpaid to the Contractor, or in the time remaining;
- E. Failure of the Contractor to comply with any lawful or proper direction concerning the Work;
- F. Claims and/or penalties which state law assesses against the Contractor for violation of such law;
- G. Any claim or penalty asserted against SLDMWA by virtue of the Contractor's failure to comply with the provisions of all governing laws, ordinances, regulations, rules, and orders;
- H. Any liquidated damages which may accrue; or
- I. Any reason specified elsewhere in the Contract Documents as grounds for retention or that would legally entitle SLDMWA to a set-off.

The basic standard to determine the amount to be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the amounts claimed or the value of the work not done or defectively done; provided, however, that SLDMWA reserves the authority to retain greater sums should such sums be necessary in SLDMWA's discretion to adequately protect it.

For any disputed payment, SLDMWA shall provide written notice describing its dispute to the Contractor.

12. CONTRACT CLOSEOUT AND FINAL PAYMENT: When the Contractor determines that all of its Work is complete and all items on the punch list have been satisfied, the Contractor shall

submit to SLDMWA a certificate of completion and an application for final payment, accompanied by any submittals required in the Contract. Upon receipt of the Contractor's final payment application, SLDMWA shall review the submittals required and verify that all of the Work is complete, including all punch list items. Upon such verification, SLDMWA will process the final payment and release of retention in accordance with the approved final payment application. The payment of undisputed sums due for the final payment, and excluding any sums withheld for Stop Payment Notices, shall be made within thirty-five (35) days of SLDMWA's approval of the final payment application or within sixty (60) days after the recording of the Notice of Completion, whichever is later.

13. CLAIMS: Claims are subject to the requirements of Public Contract Code sections 20104 *et seq.* and 9204. A summary of those provisions is set forth below. To the extent that the summary below is inconsistent with the statutes, the statutes control.

13.01. Notice of Potential Claim.

The Contractor shall promptly provide a written Notice of Potential Claim to SLDMWA upon discovery of concealed or unknown conditions or discovery of facts regarding any disagreement, direction, or occurrence that may result in a claim. Failure to timely submit a Notice of Potential Claim acknowledges that the condition, facts, disagreement, direction, or occurrence did not cause any increase in cost or time, and waives any Claim that the Contractor otherwise may have had the right to submit.

13.02. Definitions.

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

- (A) a time extension, including, without limitation, for relief from damages or penalties for delay.
- (B) payment of money or damages arising from work done by, or on behalf of, Contractor pursuant to the contract 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 SLDMWA.

"Mediation" means any nonbinding process in which an independent third party or board assists the parties in dispute resolution through negotiation or evaluation.

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

13.03. Claims Procedure.

All Claims under this Contract shall be resolved using the following procedure.

13.03.01 The Claim shall be in writing and include the documents necessary to substantiate the Claim. The evaluation of the Claim will be based on SLDMWA's records and the Claim documentation submitted by the claimant, which shall include but not be limited to the following: an explanation of the Contractor's position; supporting

documentation; analysis of delay for any claimed additional time; a calculation of amounts claimed, if any; and the certification required by Section 12.04 below. Claims must be filed on or before the date of final payment.

13.03.02 The Contractor may present a Claim on behalf of a Subcontractor. A first-tier Subcontractor may request in writing, for itself or a lower tier Subcontractor, that the Contractor present a Claim. The Subcontractor 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 and, if not, the reasons for not having done so.

13.03.03 SLDMWA shall review the Claim. Within 30 days of receipt of the Claim, SLDMWA may request, in writing, additional documentation from the claimant. Where additional information is requested, the time in which SLDMWA must respond to a Claim shall be tolled until all requested information is provided.

13.03.04 Within 45 days of receipt of the Claim, as that time may be tolled as provided in Section 12.03.03 above, SLDMWA shall provide Contractor with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. SLDMWA and the Contractor may agree to extend the time period for a response. Failure by SLDMWA to respond within the specified time results in the Claim being deemed rejected in its entirety.

13.03.05 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after SLDMWA issues its written statement.

13.03.06 Within 15 days of receipt of SLDMWA's response or within 15 days of SLDMWA's failure to respond, the Contractor may demand, in writing, an informal conference to meet and confer for settlement of the issues in dispute. SLDMWA shall schedule a meet and confer conference within 30 days after receipt of such demand for settlement of the dispute.

13.03.07 Within 10 business days following a meet and confer conference, SLDMWA shall provide the Contractor a written statement identifying any portion of the Claim that remains in dispute and any portion that is undisputed. Failure by SLDMWA to provide the written statement within the specified time results in the remaining Claim issues being deemed rejected in their entirety. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after SLDMWA issues its written statement.

13.03.08 Any remaining disputed portion of the Claim following the meet and confer conference shall be submitted to nonbinding mediation, in accordance with Public Contract Code section 9204(d)(2)(B). SLDMWA and Contractor shall share the associated costs equally. The mediation excuses any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced. This Section does not preclude arbitration if mediation under this Section does not resolve the parties' dispute.

13.03.09 If mediation is unsuccessful, then the Contractor may file a claim as provided in Government Code sections 900 *et seq.* with respect to the parts of the Claim remaining in dispute. The time within which a Government Code claim must be filed is

tolled from the time the Contractor submits the written Claim until mediation of disputed portions of that Claim is completed.

13.03.10 Amounts not timely paid under this Section bear interest at seven percent (7%) per year.

13.03.11 The following procedures apply to litigation filed to resolve Claims:

(a) The case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure sections 1141.10 *et seq.*, notwithstanding Section 1141.11 of that code.

(b) The arbitrator shall be experienced in construction law. The parties shall split equally the arbitrator’s fees and expenses, except where the arbitrator, for good cause, determines a different division.

(c) 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, pay the attorneys’ fees of the other party arising out of trial *de novo*.

(d) The court may, upon request by any party, order any witnesses to participate in arbitration process.

In any suit filed under Public Contract Code Section 20104.4, SLDMWA 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.

Section 13.04. Claim Certification.

Every party with an interest in a Claim, including Contractor and any Subcontractor or material supplier, shall include the following “Claim Certification” with every Claim. A Claim without the required certification is incomplete and will not be accepted.

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq.* (“Act”), I certify that I have read and am familiar with the provisions of the Act; that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the SLDMWA does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: _____ Company _____

Signature _____

Print Name/Title: _____

14. UNFAIR COMPETITION: Pursuant to Public Contract Code section 7103.5, Contractor offers and agrees to assign to SLDMWA all rights, title, and interest in and to all causes of action Contractor 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 Contract. This assignment shall be made and become effective at the time SLDMWA tenders final payment to Contractor, without further acknowledgment by the parties. Contractor agrees to require all subcontractors to similarly assign such rights to SLDMWA.

15. **TERMINATION:** SLDMWA may, at any time and for any reason, terminate, in whole or in part, this contract for SLDMWA's convenience. Termination shall be by written notice to Contractor. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Contractor's work. Upon such termination, Contractor shall be entitled to payment of: a) Contractor's direct, actual cost of the Work completed in conformity with the Contract, not to exceed the Contract Price allocable to that portion of the Work; plus b) an allowance of ten percent (10%) of those costs for Contractor's overhead and profit.

SLDMWA also may terminate this contract for cause if a) Contractor is insolvent or has made a general assignment for the benefit of creditors or b) Contractor or any subcontractor materially breaches this contract. Termination shall be by written notice to Contractor, after five (5) days' written notice of and opportunity to cure any material breach. In the event of such termination, SLDMWA may, without liability, take possession of and utilize in completing the Work, Contractor's materials that are necessary for completion. In the event of a termination for cause, Contractor shall not be entitled to receive payment until the Work is finished. At that time, Contractor shall be entitled to payment of the Contract Price, less the cost to secure a replacement contractor and complete the Work, less any liquidated damages, which shall continue to accrue until the Date of Completion, *except that* Contractor shall not be entitled to be paid more than it would be entitled to be paid under a termination for convenience.

If this Contract is terminated for cause and if it is later determined that SLDMWA was not entitled to terminate for cause, such termination automatically shall be converted to and treated as a termination for convenience.

16. **INDEMNITY:** Contractor shall defend with counsel acceptable to SLDMWA, indemnify and save harmless SLDMWA and any of its officers, agents, employees, and other contractors from and against any and all losses, claims, demands, damages, costs, expenses, attorney's fees, or liability arising out of or in any way connected with Contractor's performance of the Work or with this contract, arising from any wrongful act, or any negligent act or omission to act, whether active or passive, on the part of the Contractor or any of its agents, employees, subcontractors or suppliers. Without limiting the foregoing, the defense and indemnity applies to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by Contractor (or any of its agents, employees, subcontractors or suppliers) and SLDMWA (or any of its officers, agents, employees, and other contractors). Contractor has no obligation to indemnify SLDMWA in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful misconduct of SLDMWA. The defense and indemnification requirements extend to claims occurring after this contract is terminated or the Work is completed.

17. OMITTED

EXHIBIT A – SCOPE OF WORK

The contractor will provide a 4-man dive team in compliance with USBR regulations to assist with void repair at Delta Mendota Canal Mile Post 41.49-R, conducting debris dredging in the affected area. Additionally, at a later date, the contractor will offer support to SLDMWA for embankment fill operations and the installation of up to 5000 SF of 4-inch Unimat Fabriform revetment, inclusive of anchoring.

All quantities are unknown. Post construction video inspection will be conducted. Deliverables are written report with video/pictures, if water clarity allows.

Work Schedule:

- Dredging Dirt/Rock
- Embankment Fill assistance
- Fabriform Installation

Contractor will provide U/W burn gear/rods w/welder, pneumatic rock drill, Core Drill, drill bits to match wedge anchors.

Note: Pages 13-98 of Exhibit B, General Conditions, have been removed for simplicity.

EXHIBIT B - GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

SECTION 1.01. GENERAL.

The Contract Documents are written to the Bidder before award and the Contractor after award. Before award, interpret sentences written in the imperative mode as starting with "The Bidder must" and interpret "you" as "the Bidder" and "your" as "the Bidder's." After award, interpret sentences written in the imperative mode as starting with "The Contractor must" and "you" as "the Contractor" and "your" as "the Contractor's".

Where a location is not specified with the words "shown," "specified," or "described", interpret:

1. "Shown" as "shown on the plans."
2. "Specified" as "specified in the Specifications."
3. "Described" as "described in the Contract Documents." "Described" means "shown, specified or both."

Whenever the following terms, titles, or abbreviations are used in the Contract Documents, the intent and meaning shall be as herein defined. Working titles having a masculine gender, such as "workman" and "journeyman" and the pronoun "he", are utilized in the Contract Documents for the sake of brevity, and are intended to refer to persons of either gender.

SECTION 1.02. ABBREVIATIONS

| | |
|-------------|--|
| AASHTO | American Association of State Highway and Transportation Officials |
| AC | Asphalt Concrete |
| ACI | American Concrete Institute |
| ADA | Americans with Disabilities Act |
| AISC | American Institute of Steel Construction |
| AISI | American Iron and Steel Institute |
| APA | American Plywood Association |
| ARB | California Air Resources Board |
| ASA | American Standards Association |
| ASME | American Society of Mechanical Engineers |
| ASTM | American Society for Testing and Materials |
| AT&T | American Telephone and Telegraph |
| AWG | American Wire Gage |
| AWS | American Welding Society |
| AWWA | American Water Works Association |
| BMP | Best Management Practice |
| California- | |
| MUTCD | California Manual of Uniform Traffic Control Devices |
| Cal-OSHA | California Occupational Safety and Health Administration |
| Caltrans | California Department of Transportation |
| CDFW | California Department of Fish and Wildlife |
| CEQA | California Environmental Quality Act of 1970 |

EXHIBIT C – COST PROPOSAL**Mobilization**

| | | | |
|----------|---|-----------|-------------|
| Item 1 | Labor – Shop, Site, Subsistence | Lump Sum | \$24,200.00 |
| Item 1.1 | Equipment – HD Dually with GN 25 (2ea), panels, Hydraulic Dredge Pump, Hoses, HPU, Lift Equipment, Utility 1 Ton Work Truck | Lump Sum | \$23,400.00 |
| Item 1.2 | Supplies & Expenses – Containment Supplies, Fuel, Panel Supplies, misc. | Lump Sum | \$11,180.00 |
| | | Sub Total | \$58,780.00 |

Demobilization

| | | | |
|----------|---|-----------|-------------|
| Item 2 | Labor – Shop, Site, Subsistence | Lump Sum | \$24,200.00 |
| Item 2.1 | Equipment – HD Dually with GN 25 (2ea), panels, Hydraulic Dredge Pump, Hoses, HPU, Lift Equipment, Utility 1 Ton Work Truck | Lump Sum | \$23,400.00 |
| Item 2.2 | Supplies & Expenses – Containment Supplies, Fuel, Panel Supplies, misc. | Lump Sum | \$11,180.00 |
| | | Sub Total | \$58,780.00 |

Labor Rates

| | | | |
|--------|--|------------------|------------|
| Item 1 | 4-man dive team w/dive gear | Per 8 hr s/t day | \$5,965.00 |
| Item 2 | 4-man dive team – Overtime | Per hr @ 1.5x | \$891.00 |
| Item 3 | 4-man dive team – Premium time | Per hr @ 2x | \$1,212.00 |
| Item 4 | Zone Pay | Per Day / Man | \$100.00 |
| Item 5 | Labor Rate – Foreman as needed | Per hr | \$163.00 |
| Item 6 | Additional Diver & Tender – as needed | Per 8 hr s/t day | \$3,512.00 |
| Item 7 | Additional Diver & Tender – Overtime | Per hr @ 1.5x | \$608.00 |
| Item 8 | Additional Diver & Tender – Premium Time | Per hr @ 2x | \$779.00 |
| Item 9 | Reports & Submittals | Each | \$500.00 |

Equipment

| | | | |
|--------|-------------------------------------|---------|----------|
| Item 1 | Pneumatic Rock Drill | Per Day | \$235.00 |
| Item 2 | Core Drill and Hydraulic Power Unit | Per Day | \$675.00 |
| Item 3 | 4" Hydraulic Dredge Pump System | Per Day | \$945.00 |
| Item 4 | Utility Work Truck | Per Day | \$386.00 |

Consumables & Expenses

| | | | |
|--------|---|------|------------|
| Item 1 | Drill bits, u/w burn rods, Contract Bonds, Etc. | Each | Cost + 10% |
|--------|---|------|------------|

Total Contract Not to Exceed: \$197,400.00 including taxes and bonds