



AGENDA

Garden Grove Sanitary District
Board of Directors

Tuesday, January 23, 2024

6:30 PM

Community Meeting Center 11300
Stanford Avenue Garden Grove
California 92840

John R. O'Neill
President

Cindy Tran
Vice President

George S. Brietigam
Member

Joe Dovinh
Member

**Stephanie
Klopfenstein**
Member

**Kim B. Nguyen-
Penaloza**
Member

Steve Jones
Member

Meeting Assistance: Any person requiring auxiliary aids and services, due to a disability, to address the City Council, should contact the City Clerk's Office 72 hours prior to the meeting to arrange for accommodations. Phone: (714) 741-5040.

Agenda Item Descriptions: Are intended to give a brief, general description of the item. The City Council may take legislative action deemed appropriate with respect to the item and is not limited to the recommended action indicated in staff reports or the agenda.

Documents/Writings: Any revised or additional documents/writings related to an item on the agenda distributed to all or a majority of the Council Members within 72 hours of a meeting, are made available for public inspection at the same time (1) in the City Clerk's Office at 11222 Acacia Parkway, Garden Grove, CA 92840, during normal business hours; (2) on the City's website as an attachment to the City Council meeting agenda; and (3) at the Council Chamber at the time of the meeting.

Public Comments: Members of the public who attend the meeting in-person and would like to address the City Council are requested to complete a pink speaker card indicating their name and address, and identifying the subject matter they wish to address. This card should be given to the City Clerk before the meeting begins. General comments are made during "Oral Communications" and should be limited to matters under consideration and/or what the City Council has jurisdiction over. Persons wishing to address the City Council regarding a Public Hearing matter will be called to the podium at the time the matter is being considered.

Manner of Addressing the City Council: After being called by the Mayor, you may approach the podium, it is requested that you state your name for the record, and proceed to address the City Council. All remarks and questions should be addressed to the City Council as a whole and not to individual Council Members or staff members. Any person making impertinent, slanderous, or profane remarks or who becomes boisterous while addressing the City Council shall be called to order by the Mayor. If such conduct continues, the Mayor may order the person barred from addressing the City Council any further during that meeting.

Time Limitation: When any group of persons wishes to address the City Council on the same subject matter, the Mayor may request a spokesperson be chosen to represent the group, so as to avoid unnecessary repetition. At the City Council's discretion, a limit on the total amount of time for public comments during Oral Communications and/or a further limit on the time allotted to each speaker during Oral Communications may be set.

PLEASE SILENCE YOUR CELL PHONES DURING THE MEETING.

AGENDA

Open Session

6:30 PM

ROLL CALL: MEMBER BRIETIGAM, MEMBER DOVINH, MEMBER KLOPFENSTEIN, MEMBER NGUYEN-PENALOZA, MEMBER JONES, VICE PRESIDENT TRAN, PRESIDENT O'NEILL

1. ORAL COMMUNICATIONS (to be held simultaneously with other legislative bodies)

2. REORGANIZATION

2.a. Selection of President and Vice President. *(Action Item)*

3. CONSENT ITEMS

(Consent Items will be acted on simultaneously with one motion unless separate discussion and/or action is requested by a Sanitary District Member.)

3.a. Authorization for the General Manager to execute Quitclaim Deed of obsolete sewer easement on the future Public Safety Facility and Parking Structure Property. *(Action Item)*

3.b. Receive and file minutes from the meeting held on November 28, 2023. *(Action Item)*

4. ITEMS FOR CONSIDERATION

4.a. Award a contract to Ramona, Inc. for Project CP1329000 – Sewer System Rehabilitation Plan Phase I Sewer Main Replacement Project No. 4. (Cost: \$2,687,569) *(Action Item)*

5. MATTERS FROM THE PRESIDENT, BOARD MEMBERS AND GENERAL MANAGER

6. ADJOURNMENT

The next Regular Sanitary District meeting is scheduled for Tuesday, February 27, 2024, at 5:30 p.m. in the Community Meeting Center, 11300 Stanford Avenue, Garden Grove, California 92840.

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Lisa L. Kim	From:	Ursula Luna-Reynosa
Dept.:	General Manager	Dept.:	Economic Development and Housing
Subject:	Authorization for the General Manager to execute Quitclaim Deed of obsolete sewer easement on the future Public Safety Facility and Parking Structure Property. (<i>Action Item</i>)		
		Date:	1/23/2024

OBJECTIVE

To obtain Board authorization for the General Manager to execute a quitclaim deed releasing an obsolete sewer easement.

BACKGROUND

The Garden Grove Sanitary District was reserved a 10-foot easement for sanitary sewers and appurtenant structures per City Council Resolution 3430-67 recorded on December 26, 1967 in Book 8475, Page 581 of Official Records. The Easement was reserved to the District in conjunction with the vacation of former 4th Street, which runs north to south parallel to Euclid Street over the western portion Civic Center Park, where the new police headquarters will be built.

DISCUSSION

The Easement interferes with the development of the new police headquarters facility and must be removed to allow for timely construction. The easement is obsolete and unused. Therefore, quitclaiming it is appropriate.

FINANCIAL IMPACT

None.

RECOMMENDATION

It is recommended that the Board:

- Authorize the General Manager to execute the attached Quitclaim deed releasing

the obsolete sewer easement.

ATTACHMENTS:

Description	Upload Date	Type	File Name
Quitclaim Deed	1/18/2024	Backup Material	Quitclaim_Deed_for_4th_St_Sewer_Easement.docx
Easement Location (#8)	1/16/2024	Backup Material	4th_Street_Easement_Sketch.pdf

RECORDING REQUESTED BY:
Garden Grove Sanitary District

**AND WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:**

City of Garden Grove City Clerk
11222 Acacia Parkway
Garden Grove, CA 92840

APN NO: _____ SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt Under Government Code Sections 6103 and 27383

QUITCLAIM DEED

THE UNDERSIGNED GRANTORS DECLARE:

DOCUMENTARY TRANSFER TAX is None.

____ Computed on the consideration or value of property conveyed; OR

____ Computed on the consideration or value less liens or encumbrances remaining at time of sale.

The land, tenements or realty is located in: ____ unincorporated area X City of Garden Grove

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, **GARDEN GROVE SANITARY DISTRICT**, a public entity ("Grantor") hereby REMISES, RELEASES AND FOREVER QUITCLAIMS TO **CITY OF GARDEN GROVE**, a municipal corporation ("Grantee"), all of its right, title and interest in and to the following described real property in the City of Garden Grove, County of Orange, State of California:

THE EASEMENT FOR SANITARY SEWERS AND APPURTENANT STRUCTURES OVER THE WESTERLY 10 FEET OF THE EASTERLY 25 FEET OF THE PORTION OF FOURTH STREET VACATED PER CITY OF GARDEN GROVE CITY COUNCIL RESOLUTION NO. 3430-67 RECORDED ON DECEMBER 26, 1967 IN BOOK 8475, PAGE 581 OF OFFICIAL RECORDS OF THE OFFICE OF THE RECORDER OF THE COUNTY OF ORANGE.

GARDEN GROVE SANITARY DISTRICT, a public entity

Lisa L. Kim, General Manager

Dated

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

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

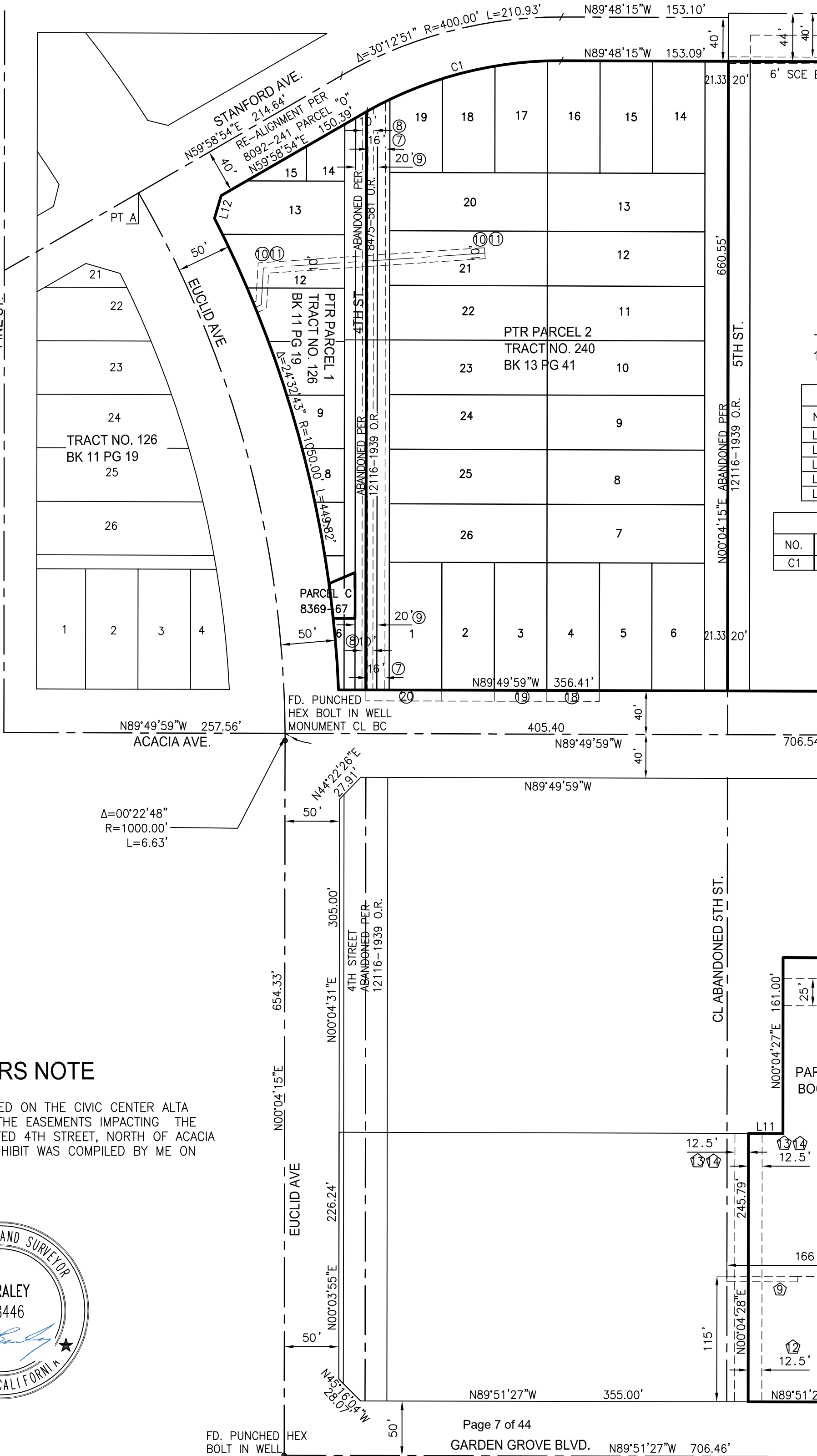
On _____, 2024, before me, _____, Notary Public, personally appeared **Lisa L. Kim**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(seal)



1" = 80'

SURVEYORS NOTE

THIS SKETCH BASED ON THE CIVIC CENTER ALTA PROJECT SHOWS THE EASEMENTS IMPACTING THE PREVIOUSLY VACATED 4TH STREET, NORTH OF ACACIA PARKWAY. THIS EXHIBIT WAS COMPILED BY ME ON 11-16-2023.



FD. PUNCHED HEX BOLT IN WELL MONUMENT

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Lisa L. Kim From: Teresa Pomeroy
Dept.: General Manager Dept.: Secretary
Subject: Receive and file minutes from the meeting held on November 28, 2023. (*Action Item*) Date: 1/23/2024

Attached are the minutes from the meeting held on November 28, 2023, recommended to be received and filed as submitted or amended.

ATTACHMENTS:

Description	Upload Date	Type	File Name
Minutes	1/18/2024	Minutes	sd-min_11_28_2023.pdf

MINUTES

GARDEN GROVE SANITARY DISTRICT BOARD OF DIRECTORS

Regular Meeting

Tuesday, November 28, 2023

Community Meeting Center
11300 Stanford Avenue, Garden Grove, CA 92840

CONVENE MEETING

At 6:42 p.m., President O'Neill convened the meeting in the Council Chamber.

ROLL CALL PRESENT: (7) Members Brietigam, DoVinh, Jones,
Klopfenstein, Nguyen-Penaloza, Vice
President Tran, President O'Neill

ABSENT: (0) None

ORAL COMMUNICATIONS

Speakers: Leland Sisk, Nicholas Dibs, Mike Truong, Jen Tackney

RECESS

At 6:54 p.m. President O'Neill recessed the meeting.

RECONVENE

At 7:00 p.m., President O'Neill reconvened the meeting with all Members present.

ACCEPTANCE OF PROJECT NO. CP1310000 – LAMPSON AVENUE/ SPRINGDALE
STREET SEWER IMPROVEMENT PROJECT AS COMPLETE (F: 96.PROJECT-
CP1310000)

It was moved by Member Brietigam, seconded by Member Nguyen-Penaloza that:

Project No. CP1310000 – Lampson Avenue/Springdale Street Sewer Improvements
Project be accepted as complete;

The General Manager be authorized to execute the Notice of Completion of Public
Improvement and Work; and

The Finance Director be authorized to release the retention payment when
appropriate to do so.

The motion carried by a 7-0 vote as follows:

Ayes: (7) Brietigam, Jones, DoVinh, Klopfenstein, Nguyen-Penaloza, Tran, O'Neill
Noes: (0) None

RECEIVE AND FILE MINUTES FROM THE MEETING HELD ON OCTOBER 24, 2023
(F: Vault)

It was moved by Member Brietigam, seconded by Member Nguyen-Penaloza that:

The Minutes from the meeting held on October 24, 2023, be received and filed.

The motion carried by a 7-0 vote as follows:

Ayes: (7) Brietigam, Jones, DoVinh, Klopfenstein, Nguyen-Penaloza, Tran, O'Neill
Noes: (0) None

AWARD A CONTRACT TO TUNNELWORKS SERVICES INC. FOR PROJECT CP1330000 – SEWER SYSTEM REHABILITATION PLAN PHASE I SEWER MAIN LINING AND SPOT REPAIR PROJECTS 5 & 6 (F: 96-PROJECT-CP1330000)

Following staff introduction, it was moved by Member Brietigam, seconded by Member DoVinh that:

A contract be awarded to Tunnelworks Services Inc. for the construction of Project CP1330000 – Sewer System Rehabilitation Plan Phase I, Sewer Main Lining and Spot Repair Projects 5 & 6, in the amount of \$1,784,125; and

The General Manager be authorized to execute the contract on behalf of the Sanitary District.

The motion carried by a 7-0 vote as follows:

Ayes: (7) Brietigam, Jones, DoVinh, Klopfenstein, Nguyen-Penaloza, Tran, O'Neill
Noes: (0) None

MATTERS FROM THE PRESIDENT, BOARD MEMBERS AND GENERAL MANAGER

Member Brietigam noted that in regards to Project No. CP131000 – Lampson Avenue/Springdale Sewer Improvement Project, there is a manhole that is loose, and as the project has a one year warranty he asked staff to have the contractor make the repair.

ADJOURNMENT

At 7:04 p.m., President O'Neill adjourned the meeting. The next Regular Sanitary District Meeting is scheduled for Tuesday, January 23, 2024, at 5:30 p.m. in the Community Meeting Center, 11300 Stanford Avenue, Garden Grove, California.

Teresa Pomeroy
Secretary

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Lisa L. Kim From: William E. Murray

Dept.: General Manager Dept.: Public Works

Subject: Award a contract to Ramona, Inc. for Project CP1329000 – Sewer System Rehabilitation Plan Phase I Sewer Main Replacement Project No. 4. (Cost: \$2,687,569) (*Action Item*) Date: 1/23/2024

OBJECTIVE

To recommend that the Garden Grove Sanitary District (GGSD) Board award a contract to Ramona Inc., for the construction of CP1329000 – Sewer System Rehabilitation Plan Phase I Sewer Main Replacement Project No.4.

BACKGROUND

GGSD completed the Sewer System Rehabilitation Plan Phase 1 in 2018, a study that identified structural deficiencies of the sewer system that is in the central portion of the service area. A list of four (4) replacement projects and six (6) lining projects with spot repairs were identified in the study. This project is the last replacement project from the list. The project area is generally located south of Garden Grove Blvd, west of Nutwood Street, north of Trask Avenue, and east of Brookhurst St. A project location map is attached.

The project consists of replacing and upsizing approximately 5,250 feet of existing 6-inch and 8-inch vitrified clay pipe (VCP) with 6-inch, 8-inch and 10-inch extra strength VCP. It also includes construction of 26 new manholes, removal of 21 existing manholes and four (4) cleanouts.

DISCUSSION

Ten (10) bids were received and opened by the Secretary/City Clerk's Office on December 19, 2023, at 11:00 a.m. (see Bid Summary Sheet). The apparent low bidder was Ramona Inc. with a total bid amount of \$2,687,569. GGSD received a bid protest from the apparent second lowest bidder, Everlevel Holdings Inc., on December 21, 2023. Staff and General Counsel of GGSD reviewed Ramona Inc.'s bid package, the bid protest and the protest response from Ramona Inc., and Ramona

Inc. is deemed to be the lowest responsive bidder. Everlevel raises technical issues that do not affect the responsiveness of Ramona Inc.'s bid package and compliance with the Bid requirements and specifications. This bid is within the current project budget. The licenses and references of the contractor have been reviewed and verified by staff, and all other documentation is in order.

The anticipated contract schedule is as follows:

Award Contract January 23, 2024
Begin Construction March 4, 2024
Complete Construction October 25, 2024

FINANCIAL IMPACT

There is no impact to the General Fund. This project is included in the 2023/24 Capital Improvement Budget, and will be financed with Sewer Funds in the amount of \$2,687,569.

RECOMMENDATION

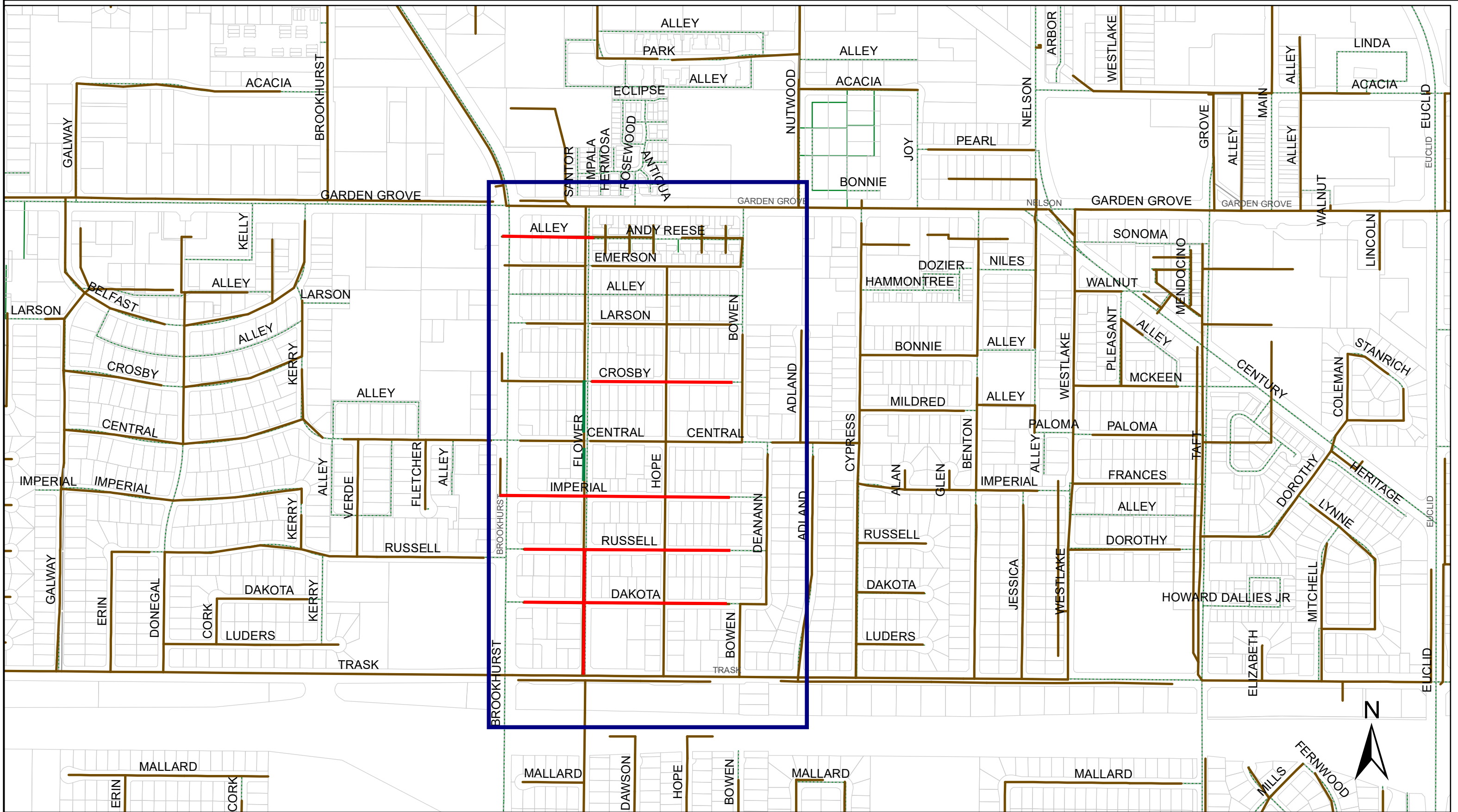
It is recommended that the Sanitary District Board:

- Reject the bid protest from Everlevel Holdings, LLC;
- Award of contract to Ramona Inc., for the construction of Project CP1329000 – Sewer System Rehabilitation Plan Phase I, Sewer Main Replacement Project No.4, in the amount of \$2,687,569; and
- Authorize the General Manager to execute the agreement on behalf of the Sanitary District.

By: Liyan Jin, Associate Engineer

ATTACHMENTS:

Description	Upload Date	Type	File Name
1. Location Map	1/10/2024	Exhibit	1.LocationMap_Landscape.pdf
2. Bid Summary Sheet	1/10/2024	Backup Material	2._Bid_Summary_Sheet.pdf
3. Construction Agreement	1/10/2024	Agreement	3._Construction_Agreement_CP1329000.pdf
4. Everlevel Protest Letter	1/10/2024	Letter	4._EVERLEVEL_Protest_Letter12-21-23.pdf
5. Ramona Response to Everlevel Protest	1/17/2024	Letter	2023-12-28_KL_Response_to_EverLevel_Bid_Protest.pdf



City of Garden Grove
Department of Public Works

Project Info:
Replace approximately 5,100 ft of VCP sewer mains at various locations

EXHIBIT A: LOCATION MAP
SSRPP1 - SEWER MAIN REPLACEMENT PROJECT NO. 4
(CP 1329000)

CITY OF GARDEN GROVE PUBLIC WORKS DEPARTMENT

BID SUMMARY SHEET

PROJECT: Sewer System Rehabilitation Plan
Phase I, Sewer Main Replacement Projects No.4
#CP1329000

BID OPENING
DATE: December 19, 2023
TIME: 11:00 AM

<u>Facility Name</u>		<u>Engineer's Estimate</u>	<u>Contract Amount</u>
Sewer System Rehabilitation Plan Phase I, Sewer Main Replacement Project No.4 #CP1329000		\$2,931,000.00	\$2,687,569.00
<u>Bidder's Name</u>	<u>Total Bid</u>	<u>%Under /Over Engineers Estimate</u>	
1. Ramona Inc.	\$2,687,569.00	-8%	
2. Everlevel Holdings, LLC	\$2,864,610.00	-2%	
3. All Cities Engineering, Inc.	\$2,964,216.00	1%	
4. Mike Prlich \$ Son, Inc.	\$3,266,882.00	11%	
5. Big Ben Engineering	\$3,326,221.00	13%	
6. Bonadiman Water, Inc.	\$3,309,479.00	13%	
7. Vasilj, Inc.	\$3,359,086.00	15%	
8. MNR Construction, Inc.	\$3,665,051.00	25%	
9. TE Roberts, Inc.	\$4,071,941.00	39%	
10. Mike Bubalo Construction Co, Inc.	\$4,421,000.00	51%	

SECTION 5 - AGREEMENT

C O N S T R U C T I O N A G R E E M E N T

THIS AGREEMENT is made this 23rd day of January, 2024, by the **GARDEN GROVE SANITARY DISTRICT**, a California Special District ("**DISTRICT**"), and **Ramona Inc.**, hereinafter referred to as ("**CONTRACTOR**")

RECITALS:

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Sanitary District Board of Directors Authorization dated **January 23, 2024.**
2. DISTRICT desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **SEWER SYSTEM REHABILITATION PLAN PHASE 1, SEWER MAIN REPLACEMENT PROJECT NO. 4, PROJECT NO. CP 1329000 – DRAWING NO. W-636.**
3. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 5.1 General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of DISTRICT. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, Plans, Specifications and CONTRACTOR's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

"Project" as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to DISTRICT'S Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

SECTION 5 - AGREEMENT

- 5.2 Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the DISTRICT, to construct and complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, DISTRICT may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, DISTRICT may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event DISTRICT receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, DISTRICT shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.
- 5.3 Project.** The PROJECT is described as: **SEWER SYSTEM REHABILITATION PLAN PHASE 1, SEWER MAIN REPLACEMENT PROJECT NO. 4, PROJECT NO. CP 1329000 – DRAWING NO. W-636.**
- 5.4 Plans and Specifications.** The work to be done is shown in a set of detailed Plans and Specifications entitled: **SEWER SYSTEM REHABILITATION PLAN PHASE 1, SEWER MAIN REPLACEMENT PROJECT NO. 4, PROJECT NO. CP 1329000– DRAWING NO. W-636.**

Said Plans and Specifications and any revision, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of the DISTRICT, which are also incorporated herein and referred to by, reference.

- 5.5 Time of Commencement and Completion.** CONTRACTOR shall have **twenty-one (21) calendar days from the award of the Contract** to execute the Contract and supply DISTRICT with all of the documents and information required by the Instruction to Bidders and the other Contract Documents, including but not limited to, the necessary bonds and insurance certificates and endorsements. Once the District receives the executed Contract and all of the other properly drafted and executed documents and information, it may issue a Notice to Proceed to the Contractor. If CONTRACTOR refuses or fails to execute the Contract or refuses or fails to provide the required documents and information within the twenty-one (21) calendar days, the DISTRICT may then rescind the award of the Contract and then award the Contract to the next lowest responsive and responsible bidder.

Upon receipt of the Notice to Proceed, CONTRACTOR agrees to submit shop drawings and traffic control plans **within fourteen (14) calendar days**. Further, upon receipt of the Notice to Proceed the CONTRACTOR shall diligently prosecute the work to completion within **one hundred and sixty (160) total working days** excluding delays caused or authorized by the DISTRICT as set forth in Sections 5.7, 5.8 and 5.9 hereof.

SECTION 5 - AGREEMENT

5.6 Time is of the Essence. Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other CONTRACTORS, subcontractors and of the DISTRICT, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 5.5 herein. DISTRICT shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

5.7 Excusable Delays. CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; any act of negligence or default of DISTRICT; failure of DISTRICT to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by DISTRICT; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by DISTRICT; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

DISTRICT shall extend the time fixed in Section 5.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to DISTRICT for such time extension within fifteen (15) days of the commencement of such delay and DISTRICT finds that the delay is justified. DISTRICT'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies DISTRICT that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities would be determined in accordance with SPECIAL PROVISIONS and Section 3-3 of the Standard Specifications for Public Works Construction 2012 Edition (GREEN BOOK). The DISTRICT'S decision will be conclusive on all parties to this Contract.

5.8 Extra Work. The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of DISTRICT specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 5.9 hereof.

DISTRICT shall extend the time fixed in Section 5.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by DISTRICT'S Engineer. The decision of the Engineer shall be final.

SECTION 5 - AGREEMENT

5.9 Changes in Project.

- 5.9.1 DISTRICT may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:
- a. In the Specifications (including drawings and designs);
 - b. In the time, method or manner of performance of the work;
 - c. In the DISTRICT -furnished facilities, equipment, materials, services or site;
or
 - d. Directing acceleration in the performance of the work.

If CONTRACTOR believes that the written order issued as part of this Section 5.9.1 has caused an increase in costs or time, the CONTRACTOR shall submit a written request for equitable adjustment to the DISTRICT that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the DISTRICT to analyze the request. Said notice shall be submitted via certified mail within twenty (20) days of the CONTRACTOR'S receipt of the written order. CONTRACTOR'S failure to submit the written request for equitable adjustment within the required twenty (20) days shall constitute a waiver of any potential change order or claim for said alleged change. The DISTRICT shall review CONTRACTOR'S request and shall provide a written response within thirty (30) days of receipt of the request either approving or denying the request.

- 5.9.2 A change may also be any other conflict, difficulty or issue which the CONTRACTOR believes caused any change to the CONTRACTOR'S costs or project schedule, provided CONTRACTOR gives the DISTRICT written notice and a request for equitable adjustment that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the DISTRICT to analyze the request. The notice shall also state the date the CONTRACTOR became aware of the issue, circumstances and source of the issue and that CONTRACTOR regards the issue as a change order. Said written notice shall be delivered to the DISTRICT via certified mail within twenty (20) days of CONTRACTOR'S first notice of the issue. CONTRACTOR'S failure to submit the notice, which includes the written request for equitable adjustment within the required twenty (20) days shall constitute a waiver of any potential change order or claim for said alleged change. The DISTRICT shall review CONTRACTOR'S request and shall provide a written response within thirty (30) days of receipt of the request either approving or denying the request.
- 5.9.3 Except as provided in this Section 5.9, no order, statement or conduct of the DISTRICT or its representatives shall be treated as a change under this Section 5.9 or entitle CONTRACTOR to an equitable adjustment.
- 5.9.4 Except for claims based on defective specifications, no claim for any change under paragraph 5.9.1 or 5.9.2 above shall be allowed for any work performed more than 20 days before the CONTRACTOR gives written notice as required in paragraphs 5.9.1 and 5.9.2. In the case of defective specifications for which the DISTRICT is responsible, the equitable adjustment shall include any increased direct cost

SECTION 5 - AGREEMENT

CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.

- 5.9.5 If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 5.9, it must, within thirty (30) days after receipt of a denial of a request for equitable adjustment under paragraphs 5.9.1 and 5.9.2, submit a written statement to the DISTRICT setting forth the general nature and monetary extent of such claim. The DISTRICT may extend the 30 day period. CONTRACTOR'S failure to submit the notice of a claim, within the required thirty (30) days shall constitute a waiver of the claim by the CONTRACTOR.
- 5.9.6 No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.
- 5.9.7 CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that DISTRICT may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change there from is authorized in writing by the DISTRICT. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deductions, without the written order of the DISTRICT and the DISTRICT shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the DISTRICT. CONTRACTOR shall submit immediately to the DISTRICT written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the DISTRICT and the proper cost or credit breakdowns therefore shall be submitted without delay by CONTRACTOR to DISTRICT.
- 5.10 **Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 5.5 herein, plus the allowance made for delays or extensions authorized under Sections 5.7, 5.8, and 5.9 herein, the DISTRICT will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to DISTRICT the sum of **One Thousand Five Hundred dollars (\$1,500.00) per day** for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any monies due or that may become due CONTRACTOR under the Contract.
- 5.11 **Contract Price and Method of Payment.** DISTRICT agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum of **two million six hundred eighty seven thousand five hundred sixty nine dollars and 00/100 (\$2,687,569.00)** as itemized in the bid proposal.

Progress payments shall be made to the CONTRACTOR on a monthly basis for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety – five percent (95%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The DISTRICT will retain five percent (5%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

SECTION 5 - AGREEMENT

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the DISTRICT'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

5.12 Substitution of Securities in Lieu of Retention of Funds. Pursuant to California Public Works Contract Code § 22300, the CONTRACTOR will be entitled to post approved securities with the DISTRICT or an approved financial institution in order to have the DISTRICT release funds retained by the DISTRICT to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

5.13 Completion. Within 10 days after the contract completion date of the Project, CONTRACTOR shall file with the DISTRICT'S Engineer its affidavit stating that all workers and persons employed, all firms supplying materials, and all subcontractors upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California. DISTRICT may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier.

5.14 CONTRACTOR's Employees Compensation

5.14.1 General Prevailing Rate. DISTRICT has ascertained that State prevailing wage requirements of the California Labor Code including Sections 1770, 1771.5, 1773, 1777.5, and 1776 are required to execute this Contract. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the CONTRACTOR and the SUBCONTRACTORS shall pay not less than the higher wage rate. The CITY will not accept the lower State wage rates. This includes "helper" (or other classifications based on hours of experience) or any other classification. A copy of the prevailing rate of per diem wages shall be posted at the job site.

5.14.2 Forfeiture for Violation. CONTRACTOR shall, as a penalty to the DISTRICT, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

5.14.3 Apprentices. Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days, or more; or if contracts of specialty CONTRACTORS not bidding for work through the general or prime CONTRACTOR are two thousand dollars (\$2,000.00) or more for five (5) working days or more.

SECTION 5 - AGREEMENT

- 5.14.4 Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (5.14.2) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California and shall forfeit to the DISTRICT as a penalty, the sum of twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.
- 5.14.5 Record of Wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable CONTRACTOR or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. CONTRACTOR shall comply with all the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code Section 1771.4(a)(3). The CONTRACTOR shall submit copies of certified payroll reports **and cancelled checks** for labors, every two weeks to the Engineer. Certified payroll and cancelled checks submittals are due one month after start of construction and every two weeks thereafter. *If the certified payroll and cancelled checks are not submitted, the CONTRACTOR will be notified that compliance is required within five (5) working days or contract work must cease. The DISTRICT will not be responsible for any delay or acceleration charges or any incurred costs or damages as a result of the work stoppage due to CONTRACTOR's failure to comply.* Work shall be cease in an orderly, safe fashion with all vehicle access restored, should this not occur, DISTRICT will correct the deficiencies and deduct the cost from funds due to the Contractor. In addition, no progress payment shall be made until the copies of certified payroll reports and cancelled checks are submitted.
- 5.14.6 Contractor Registration.** CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the CITY.
- 5.14.7 Posting of Job Site Notices.** CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2).

SECTION 5 - AGREEMENT

5.14.8 Notice of DIR Compliance Monitoring and Enforcement. Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

15.5 Surety Bonds. CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the DISTRICT.

5.16 Insurance.

5.16.1 CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.

5.16.2 CONTRACTOR and all subcontractors shall carry workers' compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the DISTRICT, its officers, agents and employees and shall issue a certificate to the policy evidencing same.

5.16.3 CONTRACTOR shall at all times carry, on all operations hereunder, bodily injury, including death, and property damage liability insurance, including automotive operations bodily injury and property damage coverage; and builders' all risk insurance. All insurance coverage shall be in amounts specified by the DISTRICT in the Insurance Requirements and shall be evidenced by the issuance of a certificate and additional insured endorsement in forms prescribed by the DISTRICT and shall be underwritten by insurance companies satisfactory to the DISTRICT for all operations, subcontract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the CONTRACTOR, excepting workers' compensation coverage, shall name the DISTRICT, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the DISTRICT, as additional insured on said policies. Additional insured status shall be evidenced in the form of an Additional insured Endorsement (CG 20 10 1185). A sample is included in the appendix of the specifications for reference.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects City of Garden Grove, Garden Grove Sanitary District and their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the Garden Grove Sanitary District. Any insurance or self-insurance maintained by the City of Garden Grove, Garden Grove Sanitary District, and/or their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as

SECTION 5 - AGREEMENT

determined by the Garden Grove Sanitary District shall be excess of the Contractor's insurance and not contribute with it.

- 5.16.4 Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish:

COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by Garden Grove Sanitary District. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify Garden Grove Sanitary District of any material change, cancellation, or termination at least thirty (30) days in advance. Contractor shall also provide a **wavier of subrogaton for each policy.**

INSURANCE AMOUNTS. CONTRACTOR shall maintain all of the foregoing insurance coverage in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of Garden Grove Sanitary District and/or City of Garden Grove by CONTRACTOR under Section 5.17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company admitted and licensed in California and having a Best's Guide Rating of A-Class VII or better (**Claims made and modified occurrence policies are not acceptable**):

Workers' Compensation	As required by the State of California.
Employer's Liability	\$1,000,000 per accident for bodily injury or disease.
Commercial General Liability (including ongoing, products and completed operations, and not excluding XCU)	\$5,000,000 per occurrence for bodily injury, personal injury and property damage.
Automobile Liability, including non-owned and hired vehicles	\$2,000,000 combined single limit for bodily injury and property damage. Coverage shall include mobile equipment.
Contractors' Pollution Legal Liability	\$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

An Additional Insured Endorsement, **ongoing and products-completed operations**, for the Commercial General Liability policy shall designate Garden Grove Sanitary District, City of Garden Grove and their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the Garden Grove Sanitary District as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to Garden Grove Sanitary District proof of insurance and

SECTION 5 - AGREEMENT

endorsement forms that conform to Garden Grove Sanitary District's requirements, as approved by the Garden Grove Sanitary District.

An Additional Insured Endorsement for Automobile Liability policy, including mobile equipment, shall designate Garden Grove Sanitary District, City of Garden Grove, and their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the Garden Grove Sanitary District as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to Garden Grove Sanitary District proof of insurance and endorsement forms that conform to Garden Grove Sanitary District's requirements, as approved by the Garden Grove Sanitary District.

An Additional Insured Endorsement for Contractors' Pollution Legal Liability policy shall designate Garden Grove Sanitary District, City of Garden Grove, and their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the Garden Grove Sanitary District as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR.

CONTRACTOR shall provide to Garden Grove Sanitary District proof of insurance and endorsement forms that conform to Garden Grove Sanitary District's requirements, as approved by the Garden Grove Sanitary District.

In the event any of CONTRACTOR'S underlying policies do not meet policy limits within the insurance requirements, CONTRACTOR shall provide coverage under an excess liability policy. The policy must be a follows form excess/umbrella policy. CONTRACTOR shall provide the **schedule of underlying policies** for an excess/umbrella liability policy, state that the excess/umbrella policy **follows form** on the insurance certificate, and provide an **additional insured endorsement** for the excess/umbrella liability policy designating Garden Grove Sanitary District, City of Garden Grove, and their respective Officers, Officials, Agents, Employees, Engineers, Volunteers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the Garden Grove Sanitary District as additional insureds.

A primary/non-contributory endorsement shall be provided to Garden Grove Sanitary District for each policy except the excess liability policy. For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects Garden Grove Sanitary District, City of Garden Grove, and their respective officers, officials, agents, employees, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees as determined by Garden Grove Sanitary District. Any insurance or self-insurance maintained by Garden Grove Sanitary District, City of Garden Grove, and/or their respective officers, officials, agents, employees, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and

SECTION 5 - AGREEMENT

employees, as determined by Garden Grove Sanitary District shall be excess of the CONTRACTOR's insurance and shall not contribute with it. CONTRACTOR shall provide to Garden Grove Sanitary District proof of insurance and endorsement forms that conform to Garden Grove Sanitary District's requirements, as approved by the Garden Grove Sanitary District.

Garden Grove Sanitary District or its representatives shall at all times have the right to inspect and receive the original or a certified copy of all said policies of insurance, including certificates. CONTRACTOR shall pay the premiums on the insurance hereinabove required.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5.17 Risk and Indemnification. All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep the Garden Grove Sanitary District, City of Garden Grove, and their respective Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the sole negligence or sole willful misconduct of DISTRICT and will make good to reimburse DISTRICT for any expenditures, including reasonable attorneys' fees DISTRICT may incur by reason of such matters, and if requested by DISTRICT, will defend any such suits at the sole cost and expense of CONTRACTOR.

5.18 Termination.

5.18.1 This Contract may be terminated in whole or in part in writing by the DISTRICT for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

5.18.2 If termination for default or convenience is effected by the DISTRICT, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the DISTRICT because of the CONTRACTOR'S default.

5.18.3 Upon receipt of a termination action under paragraph (5.18.1) or (5.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the DISTRICT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.

SECTION 5 - AGREEMENT

5.18.4 Upon termination under paragraphs (5.18.1) and (5.18.2) above, the DISTRICT may take over the work and may award another party an agreement to complete the work under this Contract.

5.19 Warranty. The CONTRACTOR agrees to perform all work under this Contract in accordance with the DISTRICT 's designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The DISTRICT shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the DISTRICT may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances of this Contract or state law and in no way diminish any other rights that the DISTRICT may have against the CONTRACTOR for faulty materials, equipment or work.

5.20 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each shall bear its own attorneys' fees, costs and necessary disbursements. Notwithstanding the foregoing, if any action is brought against the CONTRACTOR or any subcontractor to enforce a Stop Notice or Notice to Withhold, which named the DISTRICT as a party to said action, the DISTRICT shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the DISTRICT. The DISTRICT shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

5.21 Notices. Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To DISTRICT:

Garden Grove Sanitary District
Public Works Department
Attention: Liyan Jin
13802 Newhope Street
Garden Grove, CA 92843
(714) 741-5977
(714) 638-9906 Fax

TO CONTRACTOR:

SIGNATURE ON NEXT PAGE

SECTION 5 - AGREEMENT

IN WITNESS THEREOF, these parties have executed this Construction Agreement on the day and year shown below.

**"DISTRICT"
GARDEN GROVE SANITARY DISTRICT**

Date: _____

By: _____

**Lisa L. Kim
General Manager**

ATTEST:

District Secretary

Date: _____

"CONTRACTOR"

CONTRACTOR'S State License No. _____
(Expiration Date: _____)

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Garden Grove Sanitary District
General Counsel

Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required.

SECTION 5 - AGREEMENT



December 21, 2023

**Re: Sewer System Rehabilitation Plan Phase 1
Sewer Main Replacement Project No. 4
Project No. CP 1329000
BID PROTEST BY EVERLEVEL HOLDINGS LLC**

Dear City Engineer of Public Works (Garden Grove):

Please accept this correspondence as EverLevel Holdings LLC's ("EverLevel") formal protest of the apparent low bid submitted by Ramona Inc. ("Ramona") on the City of Garden Grove's ("City") Sewer System Rehabilitation Plan Phase 1, Sewer Main Replacement Project No. 4, Project No. CP 1329000 (the "Project"). As a brief summary of the facts involved, bids for the Project were received by the City on December 19, 2023. Ramona was the apparent low bidder with a bid of \$2,687,569, and EverLevel was the second lowest bidder with a bid of \$2,864,610. Upon a review of Ramona's bid submission, EverLevel identified a significant deficiency with Ramona's bid which renders the Ramona bid non-responsive. This deficiency is discussed below in detail and serves as the basis for EverLevel's bid protest.

1. Summary of California Law

Under California's competitive bidding statutes, a contract must be awarded to the lowest "responsive and responsible" bidder. To be responsive, a bid must conform to the material terms of the bid package. (*City of Inglewood v. Los Angeles County Civic Center Authority* (1972) 7 Cal.3d 861; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175; *Konica Business Machines USA, Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 456-457; *Associated Builders & Contractors, Inc. v. Metropolitan Water Dist.* (1997) 59 Cal.App.4th 1503, 1507.)

A bid that differs materially from the bid specifications must be rejected. (*Stimson v. Hanley* (1907) 151 Cal. 379.) Typically, the material terms of a bid are those that affect price, quantity, quality, or delivery and those terms that the bid package clearly identifies as mandatory. (*Pozar v. Department of Transp.* (1983) 145 Cal.App.3d 269.) A bid also fails to comply materially with the bid package if it gives the bidder an unfair competitive advantage over other bidders. (*Ghilotti Construction Company v. City of Richmond*, (1996) 45 Cal.App.4th 897, 900.)



2. **Ramona's Bid Is Non-Responsive Because It Failed To Provide The Mandatory Jurat Certificate For the Non-Collusion Affidavit**

The two most common notarizations requested are acknowledgments and Jurat certificates. The purpose of an acknowledgment is for a signer, whose identity has been verified, to declare to a Notary that he or she has willingly signed a document. (*United States v. Jaramillo* (9th Cir. 1995) 69 F.3d 388, 392 ("Under California law, a notarial acknowledgement certifies only the *identity* of the signer.")). In contrast, the purpose of a Jurat certificate is for a signer to *swear to or affirm the truthfulness of the contents of a document*. Because acknowledgements and Jurats are different notarizations with different purposes, each requires its own certificate wording. Specifically, California Civil Code section 1189 prescribes the required form of a notarized acknowledgement and Civil Code section 8202 prescribes the required form of a Jurat certificate. For reference, samples of each are provided below.

Civil Code § 1189: Acknowledgement

ACKNOWLEDGMENT	
<div>A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.</div>	
State of California County of _____)	
On _____ before me, _____ (insert name and title of the officer)	
personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.	
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.	
WITNESS my hand and official seal.	
Signature _____	(Seal)



Civil Code § 8202: Jurat Certificate

<p>A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.</p>	
<p>State of California County of _____</p>	
<p>Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____</p>	
<p>_____ , proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.</p>	
<p>(Seal)</p>	<p>Signature _____</p>

In light of the foregoing and given the different purposes for each, it is not proper to use a Jurat certificate for an acknowledgment, or vice versa.

With regards to the Project, the Instruction to Bidders explicitly requires the bidder's completion and submission of the Non-Collusion Affidavit that is *in compliance with the relevant forms provided in the Contractor's Proposal section 4 of the Contract Documents*. Importantly, the relevant form requires notarization, and specifically that a Notary Public confirm that the affiant "subscribed" and "swore to" the contents of the affidavit. The form language in the required form in the Bid Proposal section of the Contract Documents is provided below.

Subscribed and sworn to before me

This _____ day of _____, 20____.

Notary Public in and for the County of _____, State of _____

Signature: _____



Based on the language required, the Non-Collusion Affidavit required a notarized Jurat certificate, not a notarized acknowledgement form. Despite this requirement, in its bid submission, RAMONA provided only a notarized acknowledgment with the Non-Collusion Affidavit, not the required Jurat certificate.

ACKNOWLEDGMENT

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

State of California
County of Los Angeles

On December 19, 2023 before me, Debora Elizabeth Echeverria
(insert name and title of the officer)

personally appeared Michael Grbavac
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

Ramona correctly assessed the need to submit an additional certificate with legal California Notary Law language however they failed to execute the correct certificate.

In other words, RAMONA objectively failed to *swear to or affirm the truthfulness of the contents* of the Non-Collusion Affidavit, as is legally required. Given RAMONA's failure to comply with the legal requirements for the Contractor's Proposal, RAMONA's Project proposal was incomplete and must be considered non-responsive.

In April of 2022, on the City of Santa Ana Project No.: 22-1341, First Street Slope Stabilization Project; Doja Inc. failed to submit a Jurate certificate and instead submitted an acknowledgement with their non-collusion Affidavit. The City of Santa Ana found Doja Inc non-responsive on this project.



3. The City Cannot Waive RAMONA's Bid Violations

RAMONA's violations of the City's mandatory bid requirements, and its failure to submit a bid that conformed to the material terms and requirements of the City's bid package represent material defects that cannot be waived by the City. (*Menefee v. County of Fresno, supra*; *Stimson v. Hanley, supra*.) Under California law, if a bid irregularity gives a bidder a competitive advantage over other bidders, or **fails to include mandatory information**, the irregularity cannot be waived by the public entity, and the bid must be rejected. (*Valley Crest Landscape, Inc. v. Authority Council of the Authority of Davis* (1996) 41 Cal.App.4th 1432.)

4. Conclusion

The intent of any bid protest process is to keep the public bidding process free of favoritism and corruption by creating a fair and even playing field for all bidders. As quoted in one case, "overall, the bid protest process is a critical tool in ensuring public contracting is done in a fair and reasonable manner, as the agency has to keep in mind that contractors are keeping a close eye on the process and will not tolerate behavior that does not ensure all bidders are treated fairly and in strict accordance with the rules that apply to each specific acquisition." (*Advanced Real Estate Servs. Inc. v. Superior Court*, (2011) 196 Cal. App. 4th 338, 353-54.)

The above noted discrepancies have been identified with the information currently available. We did not receive a copy of Ramona's bid bond with the scanned/emailed proposal documents received on 12/20/23. Through this correspondence EverLevel formally requests copies of all hard copy documents submitted by RAMONA in connection with its bid on the Project to determine whether additional discrepancies and errors exist.

For all of the above reasons, EverLevel respectfully requests that the City reject RAMONA's bid as non-responsive, and award the contract to EverLevel, the lowest responsive and responsible bidder. Should you require any additional information to assist you in making this determination, please do not hesitate to call me.

Sincerely,

Craig Roth
President/COO

5877 Pine Ave. Ste 240, Chino Hills, CA 91709
craig@everlevelcorp.com
951-966-9153 cell

EXHIBIT 'A'

SECTION 4 – AFFIDAVIT TO ACCOMPANY PROPOSAL

USE THIS FORM WHEN BIDDER IS AN INDIVIDUAL

State of California)
) ss.
County of Orange)

(Name) _____, Affiant,
being first duly sworn, deposes and says:

That it is the bidder who makes the accompanying proposal; that such proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named, and that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure for itself an advantage over any other bidder.

Subscribed and sworn to before me _____

This _____ day of _____, 20____.

Signature: _____

Notary Public in and for the County of _____, State of _____

USE THIS FORM WHEN BIDDER IS A CORPORATION

State of California)
 Los Angeles) ss.
County of Orange)

Michael Grbavac affiant, the Vice President
Pres., Sec., or Mgr. Ofcr
of Ramona, Inc.
Name of Corporation

The corporation who makes the accompanying proposal, having first been duly sworn, deposes and says: That such proposal is genuine and not sham or collusive, nor made in the interest or in behalf of any person not herein named, and that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure for itself an advantage over any other bidder.

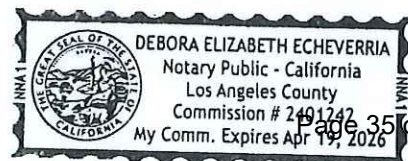
[Signature]
Signature
President, Secretary or Managing Officer

Subscribed and sworn to before me

This 19 day of December, 2023.

Notary Public in and for the County of Los Angeles, State of California

Signature: [Signature]



Not a legal notary form, missing required California language. See Notary Handbook sheets included in protest.

Incorrect form used.
Missing required
subscribed and sworn
language found on
Jurat certificates.

ACKNOWLEDGMENT

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

State of California
County of Los Angeles)

On December 19, 2023 before me, Debora Elizabeth Echeverria
(insert name and title of the officer)

personally appeared Michael Grbavac,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



EXHIBIT 'B'

SECTION 4 – AFFIDAVIT TO ACCOMPANY PROPOSAL

USE THIS FORM WHEN BIDDER IS AN INDIVIDUAL

State of California)
) ss.
County of Orange)

(Name) _____, Affiant,
being first duly sworn, deposes and says:

That it is the bidder who makes the accompanying proposal; that such proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named, and that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure for itself an advantage over any other bidder.

Subscribed and sworn to before me _____

This _____ day of _____, 20____.

Signature: _____

Notary Public in and for the County of _____, State of _____

EverLevel crossed out
City form and attached
a legally executed
California Jurat
certificate.

USE THIS FORM WHEN BIDDER IS A CORPORATION

State of California)
County of Orange) ss.

_____ Craig Roth _____ affiant, the _____ President / COO
Pres., Sec., or Mgr. Ofcr
of _____ EverLevel Holdings, LLC _____
Name of Corporation

The corporation who makes the accompanying proposal, having first been duly sworn, deposes and says: That such proposal is genuine and not sham or collusive, nor made in the interest or in behalf of any person not herein named, and that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure for itself an advantage over any other bidder.

Signature PRESIDENT / COO
President, Secretary or Managing Officer

Subscribed and sworn to before me

This _____ day of _____, 20____.

Notary Public in and for the County of _____, State of _____

Signature: _____

See Attached

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

Language required
in California.

State of California
County of San Bernardino

Subscribed and sworn to (or affirmed) before me on this 18th
day of December, 2023, by ----- Craig Roth -----

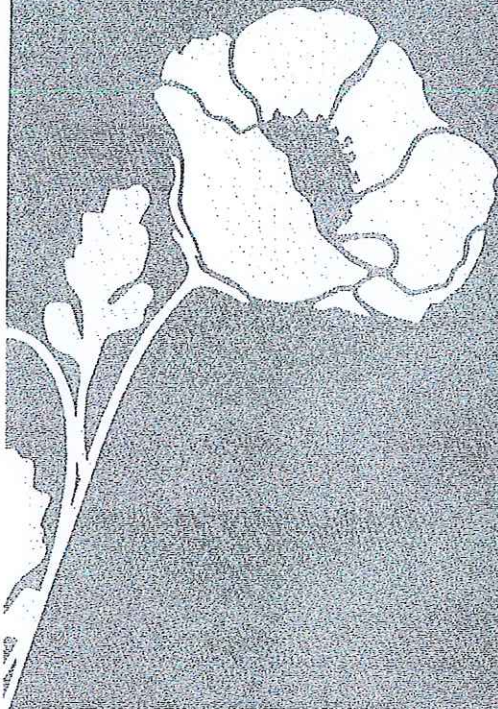
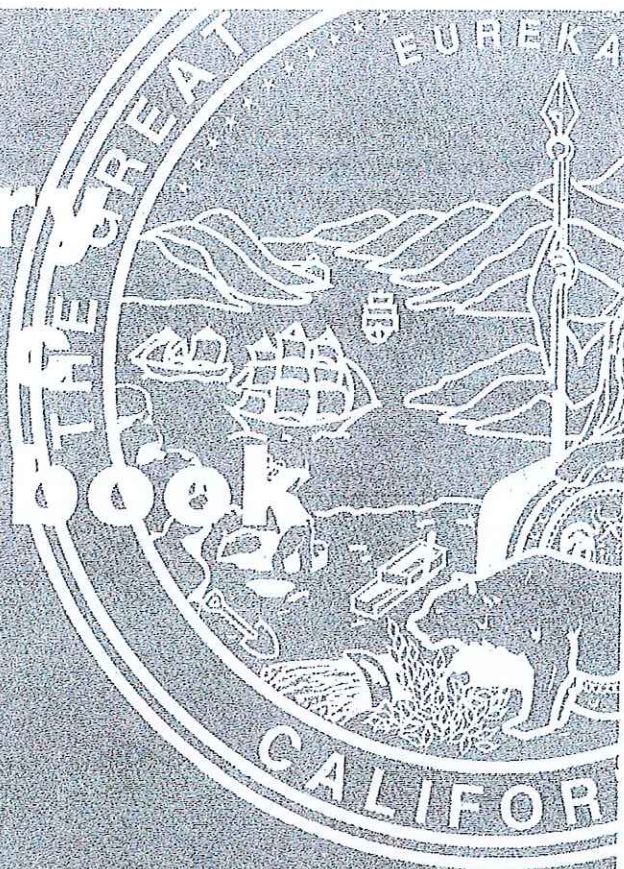
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature Maria Elda Flores

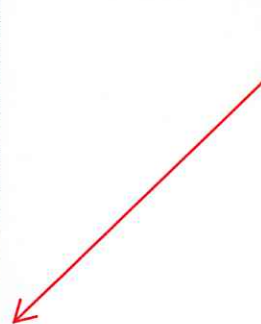
Notary Public Handbook



Published by
Dr. Shirley N. Weber
Secretary of State
Notary Public Section
2023

EXHIBIT 'C'

2023 State of
California Notary
Public Handbook



Note: California notarial law does not provide a provision requiring a California notary public to cross out, or not cross out, pronouns such as he/she/they, on a notarial certificate. An acknowledgment cannot be affixed to a document mailed or otherwise delivered to a notary public whereby the signer did not personally appear before the notary public, even if the signer is known by the notary public. Also, a notary public seal and signature cannot be affixed to a document without the correct notarial wording.

Jurat

The second form most frequently completed by a notary public is the jurat (Government Code section 8202). The jurat is identified by the wording "Subscribed and sworn to (or affirmed)" contained in the form. In the jurat, the notary public certifies:

- That the signer personally appeared before the notary public on the date indicated and in the county indicated;
- That the signer signed the document in the presence of the notary public;
- That the notary public administered the oath or affirmation*; and
- To the identity of the signer.

Any jurat taken within this state shall be in the following form:

Jurat certificate
language legally
required in California

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

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 20__, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature

Notary Public Seal

Note: A jurat cannot be affixed to a document mailed or otherwise delivered to a notary public whereby the signer did not personally appear, take an oath, and sign in the presence of the notary public, even if the signer is known by the notary public. Also, a notary public seal and signature cannot be affixed to a document without the correct notarial wording.

**There is no prescribed wording for the oath, but an acceptable oath would be "Do you swear or affirm that the statements in this document are true?" When administering the oath, the signer and notary public traditionally each raise their right hand but this is not a legal requirement.*

Proof of Execution by a Subscribing Witness

If a person, called the principal, has signed a document but does not personally appear before a notary public, another person can appear on the principal's behalf to prove the principal signed (or "executed") the document. That person is called a subscribing witness. (Code of Civil Procedure section 1935)

A proof of execution by a subscribing witness cannot be used in conjunction with any power of attorney, quitclaim deed, grant deed (other than a trustee's deed resulting from a decree of foreclosure, or a nonjudicial foreclosure pursuant to Civil Code section 2924, or to a deed of reconveyance), mortgage, deed of trust, security agreement, any instrument affecting real property, or any instrument requiring a notary public to obtain a thumbprint from the party

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December 28, 2023

BY EMAIL

LJIN@CI.GARDEN-GROVE.CA.US

City of Garden Grove
Garden Grove Sanitary District
Department of Public Works
13802 Newhope Street
Garden Grove, CA 92843

ATTN: Liyan Jin, P.E., Associate Engineer

Re: Specification No. 783 - Project No. C 1329000
Sewer System Rehabilitation Plan Phase 1
Sewer Main Replacement Project No. 4

Response by RAMONA to
Bid Protest by EVERLEVEL to Award of Specification 783

Gentlemen:

We represent RAMONA on the contract referred to above. This letter is intended to be:

- (1) A protest against any award of that contract to any bidder other than Ramona.
- (2) A request under Gov. Code § 54954.1 for mailed notice of all meetings of the awarding authority at which any issues pertaining to the award of that contract are on the agenda for the meeting. If there is any fee for this service, please telephone that information to us immediately, so we can promptly pay the fee.
- (3) A request to be informed (by telephone or fax) as soon as any staff reports or recommendations concerning any issues pertaining to the award of that contract are available to the public, so we can immediately inspect those reports or recommendations.
- (4) A request to address the awarding authority before or during consideration of any issues pertaining to the award of that contract, which opportunity is guaranteed by Gov. Code § 54954.3(a).

City of Garden Grove
Garden Grove Sanitary District
Department of Public Works
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If this letter is not sufficient to accomplish any of these four purposes, please let us know immediately what else is required, so we can comply. If we do not hear from you, we will proceed on the basis that this letter is sufficient.

Grounds for Bid Protest

An award of the contract to any bidder besides RAMONA would violate the competitive bidding laws, standards and practices applicable to California public works contracts, for the following reasons:

EVERLEVEL challenges the award of the referenced contract to RAMONA on the grounds that that RAMONA's bid is non-responsive to the invitation to bid. EVERLEVEL claims that RAMONA failed to provide a mandatory Jurat Certificate for the Non-Collusion Affidavit.

EVERLEVEL's allegation is baseless for the following reasons:

1. EVERLEVEL has misconstrued Section 4 of the bid documents which provides:

AFFIDAVID TO ACCOMPANY PROPOSAL
USE THIS FORM WHEN BIDDER IS A CORPORATION

The corporation who makes the accompanying proposal, having first been duly sworn, deposes and says: That such proposal is genuine and not sham or collusive, not made in the interest of or in behalf of any person not herein named, and the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure itself for an advantage over any other bidder.

The foregoing paragraph is not a non-collusion affidavit, nor did the Garden Grove Sanitary District intend that it should be construed as such. Section 1-Notice to Contractors/Section A- Information For Bidders, Paragraph 13-Non-Collusion Affidavit provides:

The DISTRICT reserves the right, before any award of the contract is made, to require any bidder to whom it may make an award of the principal contract to execute a Non-Collusion Affidavit.

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The form of the Non-Collusion Affidavit pursuant to Public Contract Code §7106 does not require a jurat, nor an acknowledgement, only a declaration under penalty of perjury. Thus to the extent that the Affidavit to Accompany Proposal is a Non-Collusion Affidavit, no jurat is required by the Public Contract Code. Since the bid documents require that the bidder execute a non-collusion affidavit prior to award and Public Contract Code §7106 specifically mandates the form of the affidavit, it is clear that Section 4 was not intended to be a non-collusion affidavit. RAMONA has complied with the requirements of the bid documents.

Moreover, nothing in the Bid documents instructs the bidder on the type of confirmation for the form on page 24, notwithstanding the assertion by EVERLEVEL that Section 4 of the Instructions to Bidders specifies the type of notarization, whether Jurat or Acknowledgement. EVERLEVEL is inserting requirements not mandated by the Bid documents. RAMONA complied with the Bid documents with an Acknowledgement. In so doing, the Bid of RAMONA was completely responsive to the Invitation to Bid.

Furthermore, EVERLEVEL' s demand that RAMONA provide a jurat in lieu of an acknowledgement is inconsistent with Public Contract Code §7106 which in mandating the form of the non-collusion affidavit has no jurat requirement nor affidavit requirement. Here affidavit is superfluous at best. Since the jurat is not mandated, the lack of jurat is not a defect in RAMONA' s Bid and should be ignored.

2. One bases for a test of whether a bid is responsive to the request for invitation for bids is whether a bidder has the ability to disavow a bid without forfeiture of a bid bond based upon the irregularity, giving that bidder an unfair competitive advantage not enjoyed by other bidders.

In *Valley Crest Landscape, Inc. v. City Council* (1996) 41 CA 4th 1432, 1442-1443. The *Valley Crest* court found that waiving a mistake concerning the percentage of subcontracting, violated the invitation to bid. Such a material deviation was an irregularity that provided an unfair advantage because the low bidder could have claimed a mistake and withdrawn its bid without consequence. The fact that the low bidder did not seek such relief was not dispositive; "[t]he key point is that such relief was available." (*ibid.*) In voiding the award to the low bidder, the court held that the mistake made the low bidder non-responsive and that the city could not waive the mistake as an irregularity. Allowing the city to waive such an irregularity would have given the low bidder an unfair advantage and benefit..


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The purported irregularity raised by EVERLEVEL, is, at best, just that, an irregularity, not an unfair competitive advantage. [*MCM Construction, Inc. v. City and County of San Francisco* (1988) 66 Cal.App.4th 359, 375]. RAMONA did not garner an unfair competitive advantage because its bid bond would not be forfeited [*Ghilotti Construction Company v. City of Richmond* (1996) 45 CA4th 897, 912, *Jtn. 6*]. Thus, to the extent that the lack of a jurat is an irregularity in the RAMONA Bid, it is clearly a waivable defect.¹

For the foregoing reasons, EVERLEVEL's bid protest should be summarily rejected and the contract awarded to RAMONA.

If you need any further information, please contact me.

Very truly yours,
KAMINE LAW, PC



MARCIA HABER KAMINE

¹ EVERLEVEL's reference to an action taken by the City of Santa Ana is completely irrelevant because not all the facts surrounding the decision are known,