

Garden Grove Sanitary District

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept.: General Manager
Subject: RECOMMENDATION TO AWARD CONTRACT TO NIKOLA CORPORATION FOR PROJECT NO. 7818 - TWINTREE LANE/HASTER STREET SEWER IMPROVEMENTS PROJECT

From: William E. Murray
Dept.: Public Works
Date: August 23, 2011

OBJECTIVE

To recommend that the Garden Grove Sanitary District (District) Board award a contract for the construction of Project No. 7818 - Twintree Lane/Haster Street Sewer Improvements Project.

BACKGROUND

The Twintree Lane/Haster Street Sewer Improvements Project is one of many projects designed to minimize sewer capacity issues throughout the City. The improvements also comply with the Regional Water Quality Control Board's Waste Discharge Requirements. The District System Evaluation and Capacity Assurance Plan of July 27, 2005 (updated April 2009), identified the Twintree Lane/Haster Street Sewer Improvements project as one of the high priority projects. A location map is attached identifying this project.

This project will relieve capacity deficiencies in the existing Twintree Lane Sewer from Haster Street to Volkwood Street and Haster Street Sewer from Twintree Lane to Allard Avenue and from Garden Grove Boulevard to Blue Spruce Avenue. The sewer improvements consist of approximately 3,850 feet of 8-inch to 15-inch diameter extra strength Vitrified Clay Pipe (VCP). It also includes the construction of sixteen (16) new manholes and the modification of one (1) existing manholes. Construction of a sewer main in Haster Street includes replacement of traffic loop detectors at Garden Grove Boulevard and the 22 Freeway on/off ramp.

ANALYSIS

Fourteen (14) bids were received and opened by the City Clerk's Office on July 6, 2011, at 3:00 p.m. (see Bid Summary Sheet). The lowest responsive bidder is Nikola Corporation, with a total bid of \$963,906. 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:

RECOMMENDATION TO AWARD CONTRACT TO NIKOLA CORPORATION FOR
PROJECT NO. 7818 - TWINTREE LANE/HASTER STREET SEWER IMPROVEMENTS
PROJECT

August 23, 2011

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<i>Award contract</i>	<i>August 23, 2011</i>
<i>Begin construction</i>	<i>October 10, 2011</i>
<i>Complete construction</i>	<i>March 2, 2012</i>

FINANCIAL IMPACT

There is no impact to the General Fund. This project is included in the 2011-12 Capital Improvement Budget, and will be financed with Sewer Funds.

RECOMMENDATION

It is recommended that the District Board:

- Award contract to Nikola Corporation for \$963,906 for the construction of Project No. 7818 - Twintree Lane/Haster Street Sewer Improvements Project.
- Authorize the General Manager to execute the agreement on behalf of the District.



William E. Murray, P.E.
Public Works Director/City Engineer



By: Myung Chun
Associate Engineer

Attachments: 1) Bid Summary Sheet
 2) Project Location Map
 3) Construction Agreement

Recommended for Approval



Matthew Fertal
General Manager

**CITY OF GARDEN GROVE
PUBLIC WORKS DEPARTMENT
WATER SERVICES DIVISION**

BID SUMMARY SHEET

PROJECT: Twintree Lane/Haster Street Sewer
Improvements Project No. 7818

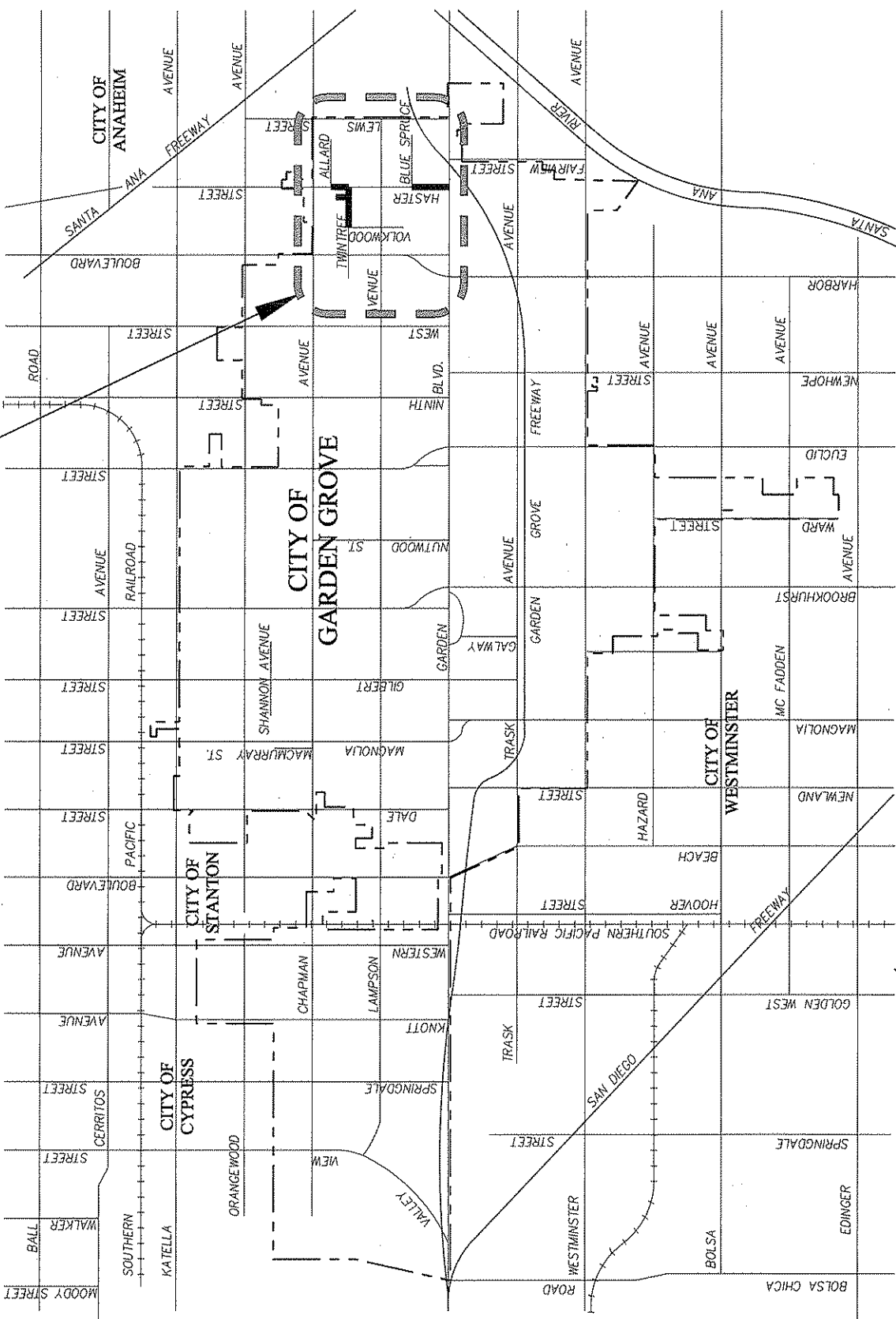
BID OPENING
DATE: **July 6, 2011**
TIME: **3:00 PM**

<u>Facility Name</u>	<u>Engineer's Estimate</u>	<u>Contract Amount</u>
Twintree Lane/Haster Street Sewer Improvements Project No. 7818	\$1,100,000	\$963,906

<u>Bidder's Name</u>	<u>Total Bid</u>	<u>%Under /Over Engineers Estimate</u>
1. Nikola Corporation	\$ 963,906	- 12.4%
2. Mike Bubalo Construction Co., Inc.	\$ 977,287	- 11.2%
3. Paulus Engineering, Inc.	\$ 996,502	- 9.4%
4. Ramona, Inc.	\$ 1,058,243	- 3.8%
5. Mike Prlich & Sons, Inc.	\$ 1,076,300	- 2.2%
6. Vasilj, Inc. DBA Ivanco	\$ 1,173,830	6.8%
7. Dominguez General Engineering, Inc.	\$ 1,244,156	13.1%
8. Garcia Juarez Construction, Inc.	\$ 1,254,072	14.0%
9. MNR Construction, Inc.	\$ 1,297,110	17.9%
10. Mladen Buntich Construction Co., Inc.	\$ 1,305,842	18.7%
11. Kana Pipeline, Inc.	\$ 1,353,000	23.0%
12. PAPAC	\$ 1,368,831	24.4%
13. TL Pavlich Construction	\$ 1,450,000	31.8%
14. Palp, Inc. dba Excel Paving Company	\$ 1,659,999	50.9%

PROJECT LOCATION

ATTACHMENT NO. 2



PROJECT LOCATION MAP

CHECKED BY: S.K.	SCALE: N.T.S.	PROJECT NO. 7818	DRAWING NO.
PREPARED BY: M.C.	GARDEN GROVE SD PROJ. #7818		
DRAWN BY: M.C.	TWNTRREE LANE - HASTER STREET SEWER IMPROVEMENTS		



City of Garden Grove
Department Of Public Works



SECTION 5 - AGREEMENT**CONSTRUCTION AGREEMENT**

THIS AGREEMENT is made this 23rd day of August, 2011, by the **GARDEN GROVE SANITARY DISTRICT**, a California Special District ("DISTRICT"), and **NIKOLA CORPORATION**, hereinafter referred to as ("CONTRACTOR")

RECITALS:

The following recitals are a substantive part of this Agreement:

This Agreement is entered into pursuant to Garden Grove Sanitary District Board of Directors Authorization dated **August 23, 2011**.

2. DISTRICT desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **Twintree Lane - Haster Street Sewer Improvements Project - Project No. 7818**.

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 (Continued)

- 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: **Twintree Lane - Haster Street Sewer Improvements Project - Project No. 7818.**
- 5.4 **Plans and Specifications.** The work to be done is shown in a set of detailed Plans and Specifications entitled: **Twintree Lane - Haster Street Sewer Improvements Project - Project No. 7818.**

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 **ninety (90) working days (50 working days for Phase I and 40 working days for Phase II)** excluding delays caused or authorized by the DISTRICT as set forth in Sections 5.7, 5.8 and 5.9 hereof.

- 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

SECTION 5 - AGREEMENT (Continued)

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 2006 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 (Continued)

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 ant 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

SECTION 5 - AGREEMENT (Continued)

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 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 DISTRICT 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 **nine hundred sixty three thousand nine hundred six dollars and 00/100 (\$963,906.00)** 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

SECTION 5 - AGREEMENT (Continued)

percent (90%) 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 ten percent (10%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

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 from the State of California Director of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of the same are on file in the Office of the City Engineer. The CONTRACTOR agrees that not less than said prevailing rates shall be paid to workers employed on this public works contract as required by Labor Code Section 1774 of the State of California.

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.

SECTION 5 - AGREEMENT (Continued)

- 5.14.3 **Travel and Subsistence Pay.** Section 1773.8 of the Labor Code of the State of California, regarding the payment of travel and subsistence payments, is applicable to this Contract and CONTRACTOR shall comply therewith.
- 5.14.4 **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.
- 5.14.5 **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.
- 5.14.6 **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. 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

SECTION 5 - AGREEMENT (Continued)

addition, no progress payment shall be made until the copies of certified payroll reports and cancelled checks are submitted.

5.15 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 the DISTRICT, its Officers, Agents, Employees, Engineers, and Consultants. Any insurance or self-insurance maintained by the DISTRICT, its Officers, Agents, Employees, Engineers, and Consultants 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:

SECTION 5 - AGREEMENT (Continued)

- Certificates of insurance evidencing the foregoing insurance coverage and such certificates shall provide the name and policy number of each carrier and policy.
- Additional insured endorsements evidencing DISTRICT, its Officers, Agents, Employees, Engineers, and Consultants, are additional insured on CONTRACTOR's general liability and auto policies and an additional insured endorsement giving the DISTRICT thirty (30) days written notice of cancellation of such policies.

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 DISTRICT 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 operations, products and completed operations)	\$5,000,000 per occurrence for bodily injury, personal injury and property damage.
Automobile Liability, including non-owned and hired vehicles	\$1,000,000 per accident for bodily injury and property damage.
Course of Construction	Completed value of the project with no coinsurance penalty provisions.

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.

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 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 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

SECTION 5 - AGREEMENT (Continued)

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.
- 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.

SECTION 5 - AGREEMENT (Continued)

- 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: Samuel Kim, P.E.
13802 Newhope Street
Garden Grove, CA 92843
(714) 741-5534
(714) 638-9906 Fax

TO CONTRACTOR:

NIKOLA CORPORATION
18012 COLMAN, SUITE 290
IRVINE CA 92614
(949) 752-1900
(949) 752-1910

SIGNATURE ON NEXT PAGE

SECTION 5 - AGREEMENT (Continued)

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

"DISTRICT"
GARDEN GROVE SANITARY DISTRICT

Date: _____

By: _____

Matthew J. Fertal
General Manager

ATTEST:

District Secretary

Date: _____

"CONTRACTOR"

NIKOLA CORPORATION

CONTRACTOR'S State License No. 813357

(Expiration Date: 10/31/2012)

By: _____

Title: President

Date: 8/1/2011

APPROVED AS TO FORM:

James H. Segant for
Garden Grove Sanitary District
General Counsel

Date: 8-11-2011

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