



SUBMITTAL TO THE BOARD OF DIRECTORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



782

FROM: Regional Park & Open-Space District

SUBMITTAL DATE:
August 13, 2012

SUBJECT: Hidden Valley Nature Center Water System Expansion Project - Construction Agreement - District II/II

RECOMMENDED MOTION: That the Board of Directors approves and:

- 1. Authorizes the Chair to execute the agreement between the Riverside County Regional Park and Open-Space District and Fleming Environmental, Inc., Fullerton, California, in the amount of \$675,266 for the Hidden Valley Nature Center Water System Expansion Project; and
2. Authorizes the Chair to execute five (5) copies of the Agreement and directs the Clerk of the Board to return four (4) copies of the Agreement to the District for transmittal.

BACKGROUND: The proposed Hidden Valley Nature Center Water System Expansion is an important project for the District's Hidden Valley Wildlife Area, as well as a key 4.5 mile segment of the Riverside County portion of the Santa Ana Trail. The project allows for the expansion of the nature center facilities and programs, as well the installation of trail amenities such as watering stations and restroom(s) at the midpoint of the trail through Riverside County. (continued on page 2)

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
DATE:
Departmental Concurrence

Scott Bangle, General Manager

2013-009D SL

Table with 4 columns: FINANCIAL DATA, Current F.Y. Total Cost, Current F.Y. Net County Cost, Annual Net County Cost, In Current Year Budget, Budget Adjustment, For Fiscal Year. Values include \$675,266, \$0, \$0, Yes, No, 2012-13.

SOURCE OF FUNDS: (previously approved commitment)
Development Impact Fees Western County Parks 80%
Development Impact Fees Western County Trails - Santa Ana River Trail 20%
Positions To Be Deleted Per A-30
Requires 4/5 Vote

C.E.O. RECOMMENDATION: APPROVE
BY: Alex Gann
Alex Gann
County Executive Office Signature

- Policy
Consent
Policy
Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: 3/30/09, MO 3.52; 3/20/12, MO 13.1; 6/05/12, MO 13.1
District: II/II
Agenda Number:

DISTRICT
13.1

ROED HUGLBY 12 PM 1:27

RECEIVED RIVERSIDE COUNTY
CLERK / CLERK OF SUPERVISORS
2012 AUG 21 AM 8:29

101

SUBJECT: Hidden Valley Nature Center Water System Expansion Project –
Construction Agreement – District II/II

BACKGROUND: On June 5, 2012 (per Board Minute Order 13.1), the Board of Directors approved the plans and specifications for the construction of the Hidden Valley Nature Center Water System Expansion Project. The Clerk of the Board advertised for bids. Bids were received and publicly opened by the Clerk on August 1, 2012, with the Clerk receiving four (4) bids. District staff reviewed the bids and found the lowest responsive, responsible bid was submitted by Fleming Environmental, Inc., Fullerton, California in the amount of \$675,266.

AGREEMENT

Hidden Valley Nature Center Water System Expansion Project PKARC – 120

This Agreement is entered into at Riverside, California on August 28, 2012, and is between the **Riverside County Regional Park and Open-Space District**, hereafter called “**DISTRICT**” and Fleming Environmental Incorporated, Fullerton, California, hereinafter called “**CONTRACTOR**”.

1. CONTRACTOR has submitted to the DISTRICT its bid for the **Hidden Valley Nature Center Water System Expansion Project**, hereafter called “Project,” and all appurtenant work in strict accordance with the Contract Documents identified below and the DISTRICT has accepted said bid.

2. CONTRACTOR has re-examined and carefully studied its bid and found it to be correct; ascertained that its subcontractors are properly licensed and possess the requisite skill and forces and will enter into agreements containing contractual terms identical to those of this Agreement; examined the site and fully understands all of the Contract Documents; and can do the work in accordance with the Contract Documents for the price set forth in its bid.

3. Contract Documents: The entire contract consists of the following: (a) this Agreement; (b) the Notice Inviting Bids; (c) the Instructions to Bidders; (d) the Bid Form; (e) the Bid Bond; (f) the Payment Bond; (g) the Performance Bond; (h) all applicable State and Federal requirements; (i) the General Provisions; (j) the Special Provisions (Technical Specifications); (k) Plans and Drawings; (l) any addenda issued for the project; (m) any change orders issued for the project; (n) any additional or supplemental specifications or drawings issued in accordance with the provisions of the Contract Documents; (o) meeting minutes and any field orders. All of these documents are by this reference incorporated herein with like effect as if here set forth in full; and upon the proper issuance of other documents they shall likewise be deemed incorporated.

4. The Work: CONTRACTOR shall do all things necessary to accomplish the work described in the Contract Documents; and shall commence work within fifteen (15) calendar days after receipt of a Notice to Proceed and shall complete the work within one hundred twenty (120) calendar days after its receipt of said Notice.

5. Compensation:

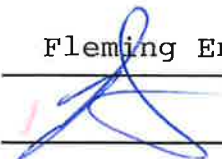
CONTRACTOR shall be paid the following total amount, in the manner set forth in the Contract Documents, the lump sum of:

\$675,266

(Six Hundred Seventy-Five Thousand Two Hundred Sixty Six Dollars and 0/100)

The parties have executed this Agreement as of the date set forth on Page 1 of this Agreement.


CONTRACTOR:

COMPANY NAME: Fleming Environmental Inc.
BY: 
NAME: Terry L. Fleming Jr.
TITLE: President

OWNER:

RIVERSIDE COUNTY REGIONAL PARK AND OPEN-SPACE DISTRICT

BY: _____
John Benoit
Chairperson, District Board of Directors

FORM APPROVED COUNTY COUNSEL
BY: 
NEAL R. KIPNIS DATE

ATTEST:

CLERK OF THE BOARD
Kecia Harper-Ihem

BY: _____

Bond #7631289

PAYMENT BOND

The makers of this bond are Fleming Environmental, Inc., as Principal and CONTRACTOR, and Fidelity and Deposit Company of Maryland, a corporation authorized to issue surety bonds in California, as Surety. This bond is issued in conjunction with that certain public works contract dated August 10, 2012, between Principal and the Riverside County Regional Park and Open-Space District for the total amount payable pursuant to the contract. THE AMOUNT OF THIS BOND IS ONE HUNDRED PERCENT 100% OF THE TOTAL SUM OF THE CONTRACT. The contract is for the public work generally consisting of the Hidden Valley Nature Center Water System Expansion Project. The beneficiaries of this bond are as stated in Section 3248 of the Civil Code; and the requirements and conditions of this bond are as set forth in Section 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements or amount of compensation, or prepayment under said contract.

SIGNATURES MUST BE NOTARIZED - Attach Acknowledgments

SURETY

CONTRACTOR

BY: <u>Fidelity and Deposit Company of Maryland</u>	BY: <u>Fleming Environmental, Inc.</u>
NAME: <u><i>Lynn A. Beimer</i></u>	NAME: <u><i>Terry L. Fleming, Jr.</i></u>
TITLE: <u>Lynn A. Beimer, Attorney-in-Fact</u>	TITLE: <u>President</u>
DATE: <u>August 10, 2012</u>	DATE: <u>August 15, 2012</u>

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Lynn A. BEIMER, of Brea, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 21st day of December, A.D. 2007.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Eric D. Barnes Assistant Secretary

Theodore G. Martinez

By:

Theodore G. Martinez

State of Maryland }
Baltimore County } ss:

On this 21st day of December, A.D. 2007, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Dennis R. Hayden

Dennis R. Hayden

Notary Public

My Commission Expires: February 15, 2013

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE


I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 10th day of August, 2012.


Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }
County of Orange }

On 8/15/12 before me, Jennifer Martin, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Terry L. Fleming Jr.
Name(s) of Signer(s)

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 signatures(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.



Place Notary Seal Above

Signature J. Martin
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Terry L. Fleming Jr.

- Individual
- Corporate Officer – Title(s): President
- Partner
 - Limited
 - General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____
Fleming Environmental Inc.

Signer's Name: _____

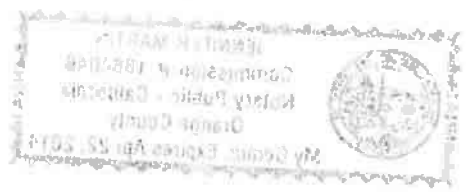
- Individual
- Corporate Officer – Title(s): _____
- Partner
 - Limited
 - General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

Faint, illegible text at the top of the page, possibly a header or introductory paragraph.

Attest: _____
Notary Public for the State of Georgia
My Comm. Expires _____



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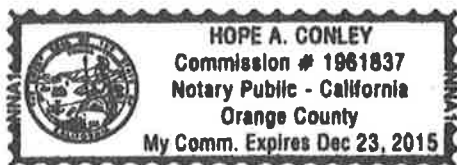
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }
County of Orange }

On August 10, 2012 before me, Hope A. Conley, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Lynn A. Beimer
Name(s) of Signer(s)

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 signatures(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 *Hope A. Conley*
Signature of Notary Public

Place Notary Seal Above

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 - Limited
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- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



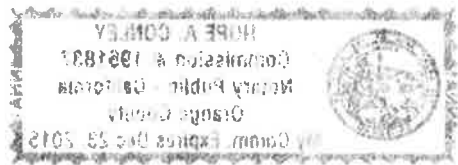
Signer is Representing: _____

Signer's Name: _____

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- Corporate Officer – Title(s): _____
- Partner
 - Limited
 - General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____



PERFORMANCE BOND

The makers of this bond, Fleming Environmental, Inc., as Principal and CONTRACTOR, and Fidelity and Deposit Company of Maryland, a corporation authorized to issue surety bonds in California, as Surety, are held and firmly bound unto the Riverside County Regional Park and Open-Space District, hereafter called "DISTRICT", in the sum of \$675,266.00 ** (100% estimated total contract price) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the Principal entered into a certain contract with the DISTRICT dated August 10, 2012, for the construction of the Hidden Valley Nature Center Water System Expansion Project, in accordance with the Contract Document.

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms conditions and agreements of said contract during the original term of said contract and any extension thereof that may be granted by the DISTRICT, with or without notice to the surety, and during the life of any guarantee required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms of conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation to be void, otherwise to remain in full force and effect. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said contract.

**Six Hundred Seventy Five Thousand Two Hundred Sixty Six Dollars and no cents

SIGNATURES MUST BE NOTARIZED - Attach Acknowledgments

SURETY

CONTRACTOR

Fidelity and Deposit Company of Maryland	Fleming Environmental, Inc.
BY: _____	BY: _____
NAME: <u>Lynn A. Beimer</u>	NAME: <u>Terry L. Fleming, Jr.</u>
TITLE: <u>Lynn A. Beimer, Attorney-in-Fact</u>	TITLE: <u>President</u>
DATE: <u>August 10, 2012</u>	DATE: <u>August 15, 2012</u>

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Lynn A. BEIMER, of Brea, California**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 21st day of December, A.D. 2007.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Eric D. Barnes

Theodore G. Martinez

By:

Eric D. Barnes *Assistant Secretary* *Theodore G. Martinez*

State of Maryland }
Baltimore County } ss:

On this 21st day of December, A.D. 2007, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Dennis R. Hayden

Dennis R. Hayden *Notary Public*
My Commission Expires: February 15, 2013

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 10th day of August, 2012.


Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }
County of Orange

On 8/15/12 before me, Jennifer Martin, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Terry L. Fleming Jr.
Name(s) of Signer(s)

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 signatures(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 J Martin
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

- Signer's Name: Terry L. Fleming Jr.
- Individual
 - Corporate Officer – Title(s): President
 - Partner
 - Limited
 - General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer is Representing: _____
Fleming Environmental Inc.

- Signer's Name: _____
- Individual
 - Corporate Officer – Title(s): _____
 - Partner
 - Limited
 - General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California }
County of Orange }

On August 10, 2012 before me, Hope A. Conley, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Lynn A. Beimer
Name(s) of Signer(s)

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 *Hope A. Conley*
Signature of Notary Public

Place Notary Seal Above

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Signer is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner
 - Limited
 - General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

NOPE A. COMLEY
Commission # 1861837
Notary Public - California
Orange County
My Comm. Expires Dec 31, 2018



DESCRIPTIONS (Continued from Page 1)

noncontributory with any other insurance of the additional insured; and waiver of subrogation applies as respects workers compensation as required by written contract, per endorsements attached.

Should any policy be cancelled before the expiration date, BB&T Insurance Services will mail 30 (thirty) days written notice to the certificate holders which require such action per written contract or agreement, except 10 days notice of cancellation for non-payment of premium.

ENDORSEMENT NO. 13

This endorsement, effective 12:01 AM, September 1, 2011

Forms a part of Policy No: PROP 2018813

Issued to: FLEMING ENVIRONMENTAL INC

By: CHARTIS SPECIALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED / PRIMARY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY AND
PROFESSIONAL LIABILITY POLICY**

In consideration of an additional premium of \$INCLUDED it is hereby agreed that the following is included as an Additional Insured as respects Coverage A and B but only as respects liability arising out of **your work** for the Additional Insured by or for you.

Additional Insured:

BLANKET WHERE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

This does not apply to **bodily injury** or **property damage** arising out of the sole negligence or willful misconduct of, or for defects in design furnished by, the Additional Insured.

As respects the coverage afforded the Additional Insured, this insurance is primary and non-contributory, and our obligations are not affected by any other insurance carried by such Additional Insured whether primary, excess, contingent, or on any other basis.

This endorsement does not increase the Company's limits of liability as specified in the Declarations of this policy.

All other terms, conditions, and exclusions shall remain the same.



AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

EXTENDED CANCELLATION CONDITION

Paragraph **2.b.** of the CANCELLATION Common Policy Condition is replaced by the following:

- b.** 60 days before the effective date of cancellation if we cancel for any other reason.

TEMPORARY SUBSTITUTE AUTO — PHYSICAL DAMAGE COVERAGE

Under paragraph **C.** — CERTAIN TRAILERS, MOBILE EQUIPMENT AND TEMPORARY SUBSTITUTE AUTOS of SECTION 1 — COVERED AUTOS, the following is added:

If Physical Damage coverage is provided by this Coverage Form, then you have coverage for:

Any “auto” you do not own while used with the permission of its owner as a temporary substitute for a covered “auto” you own that is out of service because of its breakdown, repair, servicing, “loss” or destruction.

BROAD FORM NAMED INSURED

SECTION II — LIABILITY COVERAGE — **A.1. WHO IS AN INSURED** provision is amended by the addition of the following:

- d.** Any business entity newly acquired or formed by you during the policy period provided you own 50% or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of 180 days following acquisition or formation of the business entity. Coverage under this provision is afforded only until the end of the policy period.

BLANKET ADDITIONAL INSURED

SECTION II — LIABILITY COVERAGE — **A.1. WHO IS AN INSURED** provision is amended by the addition of the following:

- e.** Any person or organization for whom you are required by an “insured contract” to provide insurance is an “insured”, subject to the following additional provisions:
 - (1)** The “insured contract” must be in effect during the policy period shown in the Declarations, and must have been executed prior to the “bodily injury” or “property damage”.
 - (2)** This person or organization is an “insured” only to the extent you are liable due to your ongoing operations for that insured, whether the work is performed by you or for you, and only to the extent you are held liable for an “accident” occurring while a covered “auto” is being driven by you or one of your employees.
 - (3)** There is no coverage provided to this person or organization for “bodily injury” to its employees, nor for “property damage” to its property.
 - (4)** Coverage for this person or organization shall be limited to the extent of your negligence or fault according to the applicable principles of comparative negligence or fault.
 - (5)** The defense of any claim or “suit” must be tendered by this person or organization as soon as practicable to all other insurers which potentially provide insurance for such claim or “suit”.

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- (6) The coverage provided will not exceed the lesser of:
- (a) The coverage and/or limits of this policy; or
 - (b) The coverage and/or limits required by the "insured contract".
- (7) A person's or organization's status as an "insured" under this subparagraph d ends when your operations for that "insured" are completed.

EMPLOYEE AS INSURED

Under Paragraph A. of Section II — LIABILITY COVERAGE item f. is added as follows:

Your "employee" while using his owned "auto", or an "auto" owned by a member of his or her household, in your business or your personal affairs, provided you do not own, hire or borrow that "auto". This coverage is excess to any other collectible insurance coverage.

FELLOW EMPLOYEE COVERAGE

Exclusion 5. FELLOW EMPLOYEE of SECTION II — LIABILITY COVERAGE — B. EXCLUSIONS is amended by the addition of the following:

However, this exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire, and provided that any coverage under this provision only applies in excess over any other collectible insurance.

BLANKET WAIVER OF SUBROGATION

We waive the right of recovery we may have for payments made for "bodily injury" or "property damage" on behalf of the persons or organizations added as "insureds" under Section II — LIABILITY COVERAGE — A.1.D. BROAD FORM NAMED INSURED and A.1.e. BLANKET ADDITIONAL INSURED.

PHYSICAL DAMAGE — ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

The first sentence of paragraph A.4. of SECTION III — PHYSICAL DAMAGE COVERAGE is amended as follows:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

PERSONAL EFFECTS COVERAGE

A. SECTION III — PHYSICAL DAMAGE COVERAGE, A.4. COVERAGE EXTENSIONS, is amended by adding the following:

c. Personal Effects Coverage

For any Owned "auto" that is involved in a covered "loss", we will pay up to \$500 for "personal effects" that are lost or damaged as a result of the covered "loss", without applying a deductible.

EXTRA EXPENSE — BROADENED COVERAGE

Paragraph A. — COVERAGE of SECTION III — PHYSICAL DAMAGE COVERAGE is amended to add:

- 5. We will pay for the expense of returning a stolen covered "auto" to you.

AIRBAG COVERAGE

Under paragraph B. — EXCLUSIONS of SECTION III — PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

NEW VEHICLE REPLACEMENT COST

Under Paragraph C — LIMIT OF INSURANCE of Section III — PHYSICAL DAMAGE COVERAGE section 2 is amended as follows:

- 2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss. However, in the event of a total loss to your "new vehicle" to which this coverage applies, as shown in the declarations, we will pay at your option:
 - a. The verifiable "new vehicle" purchase price you paid for your damaged vehicle, not including any insurance or warranties purchased;
 - b. The purchase price, as negotiated by us, of a new vehicle of the same make, model and equipment, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership. If the same model is not available pay the purchase price of the most similar model available;

- c. The market value of your damaged vehicle, not including any furnishings, parts or equipment not installed by the manufacturer or manufacturer's dealership.

This coverage applies only to a covered "auto" of the private passenger, light truck or medium truck type (20,000 lbs or less gross vehicle weight) and does not apply to initiation or set up costs associated with loans or leases.

TWO OR MORE DEDUCTIBLES

Under SECTION III — PHYSICAL DAMAGE COVERAGE, if two or more "company" policies or coverage forms apply to the same accident, the following applies to paragraph D. Deductible:

- a. If the applicable Business Auto deductible is the smaller (or smallest) deductible it will be waived; or
- b. If the applicable Business Auto deductible is not the smaller (or smallest) deductible it will be reduced by the amount of the smaller (or smallest) deductible; or
- c. If the loss involves two or more Business Auto coverage forms or policies the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement "company" means:

- a. Safeco Insurance Company of America
- b. American States Insurance Company
- c. General Insurance Company of America
- d. American Economy Insurance Company
- e. First National Insurance Company of America
- f. American States Insurance Company of Texas
- g. American States Preferred Insurance Company
- h. Safeco Insurance Company of Illinois

LOAN/LEASE GAP COVERAGE

Under paragraph C — LIMIT OF INSURANCE of SECTION III — PHYSICAL DAMAGE COVERAGE, the following is added:

- 4. The most we will pay for a total "loss" in any one "accident" is the greater of the following, subject to a \$1,500 maximum limit:

- a. Actual cash value of the damaged or stolen property as of the time of the "loss", less an adjustment for depreciation and physical condition; or
- b. Balance due under the terms of the loan or lease that the damaged covered "auto" is subject to at the time of the "loss", less any one or all of the following adjustments:

- (1) Overdue payment and financial penalties associated with those payments as of the date of the "loss".
- (2) Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear.
- (3) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease.
- (4) Transfer or rollover balances from previous loans or leases.
- (5) Final payment due under a "Balloon Loan".
- (6) The dollar amount of any un-repaired damage that occurred prior to the "total loss" of a covered "auto".
- (7) Security deposits not refunded by a lessor.
- (8) All refunds payable or paid to you as a result of the early termination of a lease agreement or any warranty or extended service agreement on a covered "auto".
- (9) Any amount representing taxes.
- (10) Loan or lease termination fees

GLASS REPAIR — WAIVER OF DEDUCTIBLE

Under paragraph D. — DEDUCTIBLE of SECTION III — PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITION 2.a. — DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS — of SECTION IV — BUSINESS AUTO CONDITIONS that you must notify us of an

“accident” applies only when the “accident” is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV — BUSINESS AUTO CONDITIONS — B.2. is amended by the addition of the following:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

HIRED AUTO — LIMITED WORLD WIDE COVERAGE

Under Section IV — Business Conditions, Paragraph B.7.b.e(1) is replaced by the following:

- (1) The “accident” or “loss” results from the use of an “auto” hired for 30 days or less.

RESULTANT MENTAL ANGUISH COVERAGE

SECTION V — DEFINITIONS — C. is replaced by the following:

“Bodily injury” means bodily injury, sickness or disease sustained by a person including mental anguish or death resulting from any of these.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired “autos” are covered “autos” for Liability coverage and if Comprehensive, Specified Causes of Loss or Collision coverages are provided under this Coverage Form for any “auto” you own, then the Physical Damage Coverages provided are extended to “autos” you hire or borrow.

The most we will pay for loss to any hired “auto” is \$50,000 or Actual Cash Value or Cost of Repair, whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned “auto” of the private passenger or light truck type for that coverage. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit,

deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered “auto” you own.

HIRED AUTO PHYSICAL DAMAGE COVERAGE — LOSS OF USE

SECTION III — PHYSICAL DAMAGE A.4.b. Form does not apply.

Subject to a maximum of \$1,000 per accident, we will cover loss of use of a hired “auto” if it results from an accident, you are legally liable and the lessor incurs an actual financial loss.

RENTAL REIMBURSEMENT COVERAGE

- A. We will pay for rental reimbursement expenses incurred by you for the rental of an “auto” because of a covered “loss” to a covered “auto”. Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered “auto”. No deductibles apply to this coverage.
- B. We will pay only for those expenses incurred during the policy period beginning 24 hours after the “loss” and ending, regardless of the policy’s expiration, with the lesser of the following number of days:
 1. The number of days reasonably required to repair or replace the covered “auto”. If “loss” is caused by theft, this number of days is added to the number of days it takes to locate the covered “auto” and return it to you.
 2. 30 days.
- C. Our payment is limited to the lesser of the following amounts:
 1. Necessary and actual expenses incurred.
 2. \$50 per day.
- D. This coverage does not apply while there are spare or reserve “autos” available to you for your operations.
- E. If “loss” results from the total theft of a covered “auto” of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the PHYSICAL DAMAGE COVERAGE Coverage Extension.
- F. The Rental Reimbursement Coverage described above does not apply to a covered “auto” that is described or designated as a covered “auto” on

Rental Reimbursement Coverage Form
CA 99 23.

the manufacturer for the installation of a radio.

AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

A. Coverage

1. We will pay with respect to a covered "auto" for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".
2. We will pay with respect to a covered "auto" for "loss" to any accessories used with the electronic equipment described in paragraph A.1. above.

However, this does not include tapes, records or discs.
3. If Audio, Visual and Data Electronic Equipment Coverage form CA 99 60 or CA 99 94 is attached to this policy, then the Audio, Visual and Data Electronic Equipment Coverage described above does not apply.

B. Exclusions

The exclusions that apply to PHYSICAL DAMAGE COVERAGE, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to this coverage. In addition, the following exclusions apply:

We will not pay for either any electronic equipment or accessories used with such electronic equipment that is:

1. Necessary for the normal operation of the covered "auto" for the monitoring of the covered "auto's" operating system; or
2. Both:
 - a. an integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto"; and
 - b. permanently installed in the opening of the dash or console normally used by

C. Limit of Insurance

With respect to this coverage, the LIMIT OF INSURANCE provision of PHYSICAL DAMAGE COVERAGE is replaced by the following:

1. The most we will pay for "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:
 - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
 - c. \$1,000.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".
3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

D. Deductible

1. If "loss" to the audio, visual or data electronic equipment or accessories used with this equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Comprehensive or Collision Coverage, then for each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" to audio, visual or data electronic equipment caused by fire or lightning.
2. If "loss" to the audio, visual or data electronic equipment or accessories used with this equipment is the result of a "loss" to the covered "auto" under the Business Auto Coverage Form's Specified Causes of Loss Coverage, then for each covered "auto" our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.
3. If "loss" occurs solely to the audio, visual or data electronic equipment or accessories used with this equipment, then for each covered "auto" our obligation to pay for, repair,

return or replace damaged or stolen property will be reduced by a \$100 deductible.

4. In the event that there is more than one applicable deductible, only the highest deductible will apply. In no event will more than one deductible apply.

SECTION V — DEFINITIONS is amended by adding the following:

- Q. "Personal effects" means your tangible property that is worn or carried by you, except for tools, jewelry, money, or securities.
- R. "New vehicle" means any "auto" of which you are the original owner and the "auto" has not been previously titled and is less than 365 days past the purchase date.

BLANKET WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 5/1/12

forms a part of Policy No. WC65256167

Issued to Fleming Environmental, Inc.

By **GRANITE STATE INSURANCE COMPANY**

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization with whom you have a written contract that requires you to obtain this agreement from us, as regards any work you perform for such person or organization.

The additional premium for this endorsement shall be 2 % of the total estimated workers compensation premium for this policy.

