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CLAIM FOR DAMAGES AND TIME EXTENSION

PROJECT

Bradley Road Bridge Replacement

OWNER

County of Ventura
800 South Victoria Avenue
Ventura, California 93009

CONTRACTOR

Taylor Jane Construction
151 West Dana Street
Suite 101
Nipomo, California 93444

MARCH 4, 2024

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A. Introduction

This claim arises from a \$910,771 contract between Taylor Jane Construction LP (herein "TJC") as Contractor, and the County of Ventura, California (herein "COV") as Owner, for a project known as the Bradley Road Bridge Replacement Project (herein "Project"). This claim is for damages and a time extension from October 25, 2022 through August 10, 2023.

TJC, with assistance of its technical and scheduling consultants, reviewed the contemporaneous project documentation (such as correspondence, drawings, specifications, submittals, payment applications, requests for information, daily reports, schedules and change order requests) and interviewed key project personnel in preparation of this claim. This claim demonstrates the nexus between COV failures and breaches and resultant TJC damages.

This claim is based upon the information known to TJC as of its date of publication. TJC reserves the right to modify or supplement this claim if new information becomes available.

After evaluating all project records available to it, TJC seeks an equitable adjustment to its present adjusted contract in the amount of **\$899,199.71** and a compensable time extension of 183 working days.

TJC submits this claim per Contract Specification Section No. 3 - Changes in the Work, No. 6 - Disputes and Claims and California Public Contract Code §9204. This document, including the attachments, is not an admission of any liability by TJC.

B. Project Overview (Exhibit No. 1)

The Contract Documents, dated June 30, 2021, were prepared by County of Ventura, Public Works Agency, Transportation Department. Continuous inspection services were provided by Filippin Engineering under the direction of COV.

COV selected a Design/Bid/Build project delivery model and is responsible for significant obligations related to that delivery model. Case law is crystal clear that COV is responsible for complete, accurate and thorough construction documents, as well as timely and professional administration of all its obligations, including those delegated to Flippin. Any and all consequences for deficiencies in those documents and contract administration are the responsibility of COV.

COV also had affirmative obligation to disclose relevant material facts that would impact a contractor's bid or performance. COV had an obligation to correct plans and/or specifications found to be in error.

COV is also subject to bright line California law which makes it responsible for construction delays due to its failures, as well as responsible for differing site conditions.

TJC is a highly experienced civil and structural works contractor and has successfully and profitably performed dozens of public projects of similar work scope throughout Southern California, including for the County of Ventura. No element of the project was outside TJC's proven and tested core competencies.

TJC performed a detailed review of the plans and specifications, its takeoffs and bid were carefully prepared and reviewed. Its proposal was not questioned or challenged by COV at the time of submission. TJC's proposal was patently competitive and reasonable, and it compares favorably with the other bids received.

While this project was significant and treated as such by TJC, both in terms of contract size and technical requirements, it was within TJC's core expertise. TJC assigned a professional team to plan and manage the Project. The work performed by TJC on the Project site is excellent in quality. TJC has a robust and successful safety program for its work force and the public. TJC at all times maintained field supervision and general conditions support.

TJC's scope of work included the demolition of an existing 14 foot x 9 foot concrete box structure and related drainage facilities, installation of a new 19 foot x 12 foot steel plate culvert, retaining walls, drainage facilities, a 24" diameter concrete storm drain, headwalls, concrete swales, asphalt dike, guardrails, striping, grading, paving, public access, notice, traffic control, excavation safety, water pollution control, seeding and erosion control.

The contract between the parties was executed on May 19, 2022 with a short allowable duration of 90 working days. Prior to receipt of the NTP from COV, TJC assigned resources and prepared its subcontracts, baseline schedule and key submittals. COV issued the Notice to Proceed to TJC on June 16, 2022. The original contract completion date was October 25, 2022

C. Taylor Jane Construction

TJC has been in business for 9 years, 3 years as a union contractor. TJC is licensed as a General Engineering Contractor (A), General Building Contractor (B) as well as a Structural Steel Contractor (C-51).

TJC is also a Woman Owned Small Business (WOSB), MicroSmall Business Enterprise (SBE), Economically Disadvantaged Woman Owned Small Business (EDWOSB), Small Disadvantaged Business (SDB), Disadvantaged Business Enterprise (DBE), Woman Business Enterprise (WBE) and a Minority Business Enterprise (MBE).

TJC fielded an experienced project team. Joe Terrain, TJC's project manager, has 30+ years' experience. TJC's foremen average more than 15 years' experience. TJC has also successfully completed many similar projects for public owners, including

Year	Project Name	Owner	Description	Contract Amount
2023	Norris Creek Bridge	Federal Highway Administration	New Steel Bridge	\$1,464,729
2022	Santa Anita Dam Repair	County of Los Angeles	Concrete	\$563,246
2021	Rte. 395, Mono County	Caltrans	Excavation, retaining walls, guardrails	\$1,045,936
2021	Rte. 154, Santa Barbara County	Caltrans	Culvert, fish ladder	\$881,689
2021	San Luis Obispo County	San Luis Obispo County PWD	Guardrail Upgrades	\$799,190
2020	San Marcos RD	Santa Barbara County PWD	Soldier Pile Wall	\$753,749

D. Claim Overview

This claim seeks payment of TJC's earned contract balance, as well as unapproved claims for extra work TJC performed at the request of COV and TJC damages arising from delays for which COV is responsible.

The project documents and the facts of the performance clearly demonstrate that TJC's construction activities have been impacted and additional costs have been incurred by COV's failures and breaches of its obligations under the contract.

TJC has abided by all contract requirements, including, but not limited to, notice on the project impacts and, as will be discussed herein, TJC has actively, and at considerable added cost, sought to mitigate the durational delays related to design flaws and differing site conditions. COV has to date refused to accept any responsibility for its failures and breaches.

Misrepresentation of material facts, defects in the contract documents as well as COV's flawed interpretations of the contract resulted in considerable performance delays of TJC's construction activities, as well as significant inefficiencies, including changes in TJC's planned sequence of work, repeated work stoppages, labor hour and equipment overruns, material cost escalations, as well as a dilution of supervision for TJC.

E. Summary of Failures and Breaches by the County of Ventura (Exhibit No. 2)

Prior to receipt of the Notice to Proceed on June 16, 2022 TJC commenced the required pre-construction activities. TJC prepared and transmitted the submittals for the steel culvert and other key materials, as well as the baseline schedule.

Shortly thereafter TJC could foresee problems and likely future delays and damages arising out of COV's and significant failures in the design of this project. This included the failure to adequately investigate the specified material requirements as well as the onsite conditions.

The bid documents for this project were riddled with design errors and omissions. This included the incomplete design for the new bridge culvert, the lack of a soils report and the lack of proper design for the existing gas and water main relocations. The soils report was not provided to TJC until June 20, 2022.

It is apparent in hindsight, that COV had failed to perform considerable obligations, which would have been essential for TJC to meet either the allowable duration of the contract or its own

schedule. COV and its agents knew, or should have known, that obstacles not in the control of TJC, would delay performance.

During the summer of 2022 TJC was continuously constrained from making significant progress due to the design errors, lack of utility coordination and differing site conditions. COV was fully informed of these constraints and delays by virtue of regular meetings with TJC and a steady stream of written notices from TJC.

COV established the initial contract duration in a vacuum, i.e. without any regard to the supply chain issues which impacted virtual all construction in the aftermath of the Covid19 worldwide pandemic. As an example, on a contract with a 90 workday duration (approx. 120 calendar days) the steel culvert had a minimum lead time of 42 calendar days from date of approval. Though COV agreed to a change to lighter gauge material, this did not resolve COV's design changes.

TJC proactively placed the order for the culvert on June 2, 2022 (prior to NTP), with an anticipated delivery date of August 5, 2022. Unbeknownst to TJC was the fact that the culvert design was premature. COV made significant design changes resulting in a delivery date of November 14, 2022, three and a half months later than planned, and three weeks after the original contract completion date.

More project design changes became apparent shortly thereafter. TJC informed COV on July 12, 2022 that In order to remove the existing bridge TJC would have to expose the high pressure waterline and its concrete thrust blocks. The waterline would hang in the air. It needed to be re-routed. By contract, TJC was prohibited from proceeding with a change without COV approval.

TJC recommended adding valves in the waterline and relocating it under the culvert within the stream bed. COV's Transportation Department prepared a drawing to relocate the waterline under the new culvert and requested TJC price out the extra work on July 22, 2022.

COV did not issue a contract Change Order to TJC until September 1, 2022. TJC was unaware that the new design was also flawed. These flaws resulted in multiple delays during the waterline installation, which began on September 7, 2022.

For example, some of the waterline material specified by COV's Transportation Department and purchased by TJC, was subsequently rejected by COV's Water and Sanitation Department after arriving onsite.

The excavation plan was another area of contention. After studying the soils report TJC informed COV on July 5, 2022 that the excavation would be cut at a 1:1 slope per the information gleaned

from the soils report. In a site meeting with COV on October 5, 2022 TJC informed COV that there would be no shoring on project since the excavations would be sloped at 1:1. TJC again notified COV on October 14, 2022 that there was no requirement for an engineered excavation plan since the excavation would be sloped at 1:1.

Another area of COV failure was the lack of design coordination with Southern California Gas Company, which had a high pressure gas line and a petroleum line running through the project site adjacent to the bridge.

On July 7, 2022 TJC was notified by COV that the gas line indicated on the contract drawing would need to be extended by the Southern California Gas Company. This should have been included in COV's original bid documents. TJC was informed by COV that the work would take one week. But COV neither did the work, nor controlled the gas company's work schedule. It took the gas company three weeks to extend the line.

Southern California Gas Company then shut down the construction from October 12, 2022 to January 19, 2023 because COV had neglected to coordinate the support of the existing high pressure gas line and petroleum line with the gas company when the existing bridge was demolished.

COV demanded a revised completion schedule from TJC. TJC sent COV a new project schedule on October 18, 2022, which reflected a contract completion date of February 24, 2023. Little did it know at the time that this completion date was patently unrealistic.

The response of COV and its agents was to attempt to push the blame onto TJC. COV sent TJC a Notice to Cure on October 25, 2022. It stated that TJC had failed to prosecute work, follow agency instructions, violated the contract provisions, disregarded the laws and regulations, and violated the safety requirements.

Per SOV allowable durations and its contract documents, including a reasonable presumption of complete, thorough, accurate and constructable design, TJC would have completed the bridge replacement in the fall of 2022. Instead, delays for which COV is responsible pushed the project schedule into the cold, rainy winter weather, with temperatures and conditions which did not allow that work to be performed per public safety and contract requirements.

The result of TJC being pushed into wet winter were substantial. The site excavations flooded and widened by record water flow. Some of TJC's work was washed away and TJC was obligated to incur both additional costs and time in restoration. Though its progress was delayed and

inefficient, TJC was obligated, at considerable continuing cost, to maintain traffic control, WPCP, site maintenance and storm clean up from November 2022 to April 2023.

COV has denied responsibility for its design errors and utility delays. A typical response to TJC is shown in its unilateral deductive Change Order No. 3, dated September 25, 2023 with its associated liquidated damages. By this time CO had failed to reimburse TJC for hundreds of thousands of dollars of extra work it directed.

The response by the public agency is stunning in its cynicism. There is no dispute that TJC was not responsible for the design errors and omissions outlined herein or coordinating with the Southern California Gas Company. There is no dispute that these design and project management failures by COV created significant delay and disruption, and resultant added cost for TJC.

Per Contract Specification No. 3-4 TJC is entitled to a Change Order and time extension for its extra work described more fully in this claim. TJC is, and has been, entitled to an adjustment in the contract price and an extension of the compensable contract time.

Compounding the added costs of inefficiency and delay for which TJC was not responsible, COV refused to reimburse TJC for materials stored onsite, including the considerably expensive custom steel culvert, for many months. This stretched the finances of this small business to the limit.

For significant periods of the project TJC could not progress its critical path activities. TJC's inability to work in a sequential manner as bid, i.e. efficiently, would have been patently apparent to any knowledgeable civil contractor or engineer. With continuing deficient action by COV to resolve its numerous problems, including much delayed responses to utility conflicts and design errors, TJC progress was delayed and materially different than its reasonable bid day assumptions.

As required by contract, TJC continuously notified COV of design flaws, delays, impacts, changed conditions and extra workscope as demonstrated in this claim. The following sections provide further illustrative details of COV and its agent's failures and breaches.

F. Culvert Procurement Delays (Exhibit No. 3)

The replacement steel culvert for this project was sole-sourced by COV contract documents from Contech Engineered Solutions. While TJC was proactively preparing the contractually required

submittal for the new culvert, prior to its Notice to Proceed, Contech informed it that the steel was not available in the designated gauge in time to meet the project schedule requirements.

TJC notified COV on June 9, 2022 of the problem with COV specification related to culvert wall thickness. TJC transmitted the culvert submittal to COV on June 15, 2022, it was approved by COV the same day. COV issued Contract Change Order No. 1 to TJC on June 15, 2022 to change the steel plate thickness with a 3 day time extension. TJC then ordered steel culvert from Contech and paid a \$45,285 deposit on June 17, 2022, with an anticipated delivery date of August 5, 2022.

Unbeknownst to TJC, and entirely contrary to industry custom and practice and contract protocol, COV and its agents were working directly with Contech, as a TJC supplier, to refine the design of the new culvert. Said differently, TJC was working with the COV specified sole source supplier while COV, without notice to TJC, was working with the same supplier to make changes.

As a consequence of the design changes after NTP, for which COV is solely responsible, the final approval of TJC's steel culvert submittal did not occur until September 29, 2022, less than one month before the original contract completion date. The new culvert was not delivered to TJC until November 14, 2022, three weeks after the contract completion date, significantly delaying the project schedule. COV has offered neither compensation nor time extension for this delay.

G. Waterline Design Errors and Impacts (Exhibit No. 4)

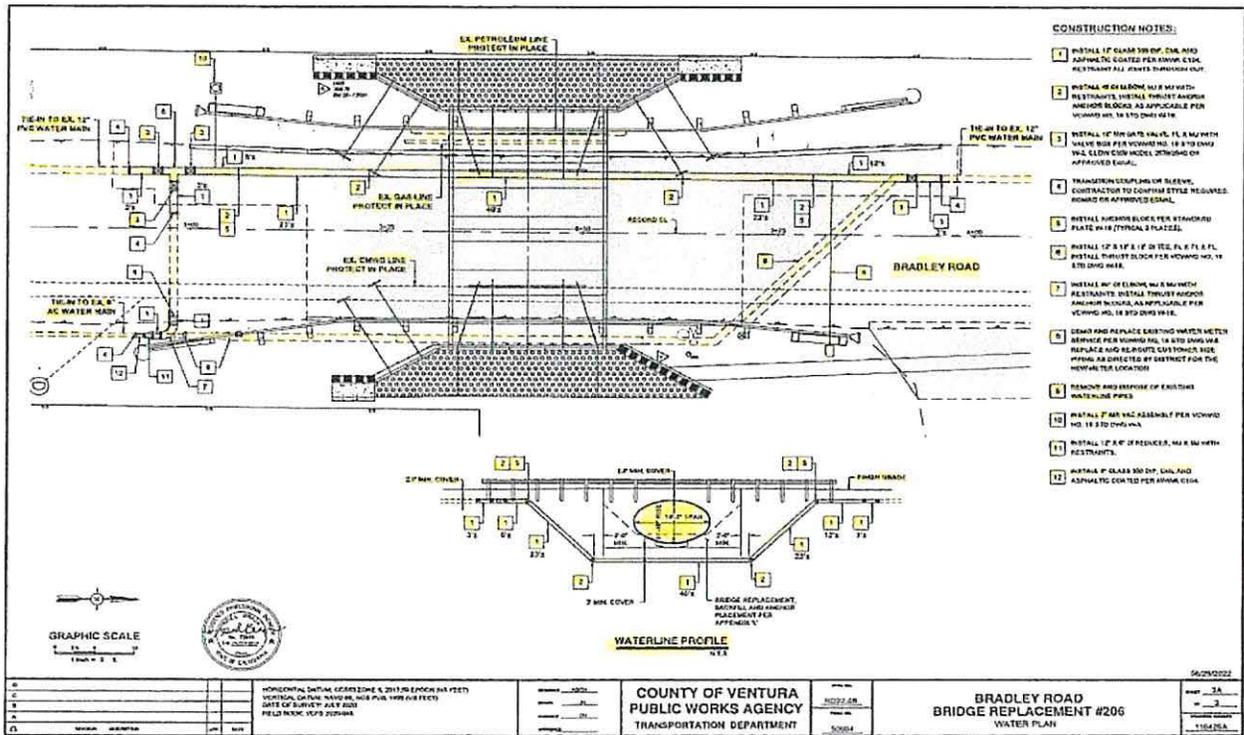
COV also redesigned the waterline in July 2022. For reasons that were, or should have been, apparent to the COV design team prior to NTP, major sections of the waterline were entirely relocated. Though it seems improbable for a contract which was to require a total duration of 90 working days, due to no fault of TJC the waterline issue took from July 2022 to February 2023 to resolve.

The contract drawings directed TJC to 'Protect in Place' the existing 12" diameter high pressure waterline. In order to remove the existing bridge, TJC would have to expose the waterline and its concrete thrust blocks. Again, COV and its agents knew, or should have known, that the thrust blocks could not be suspended, but would hang in the air. TJC brought this to the attention of COV on July 12, 2022 via Request for Information No. 3

Per OSHA regulations we cannot expose thrust blocks a pipe with 200 psi+ pressure. They will be exposed at least 4' each side of bridge, this will require their relocation and replacement outside of the limits of excavation and 3 "rock backfill per manufacturer specification. Thrust blocks are usually poured in around and

sometimes over pipe and mechanical joint fittings making them impossible to separate and salvage any materials at blocks.

TJC recommended adding valves in the waterline and relocating it under the culvert within the stream bed. COV's Transportation Department prepared a drawing to bypass the waterline and requested TJC price out the extra work on July 22, 2022.



TJC initially submitted a Waterline relocation proposal as requested to COV reusing the existing air vac for \$128,164 on August 25, 2022. TJC resubmitted its proposal on August 29, 2022 to COV for \$137,903 to include a new air vac.

TJC proposes to supply all labor and materials to relocate the 12" water main per County plan 3A of 3 & County construction notes (TJC is to reuse existing Air Vac)

Total Price: \$128,164.00

TJC proposes in addition to provide all labor and materials per revised plan and notes provided to TJC on 8/29/2022, includes Crispin UL20 Air Vac. Additional costs will be \$9,742. This will include relocating residential meter and tie in back to existing residential service line within 10' south service side of meter.

Revised Total Price: \$137,906.00

COV issued Contract Change Order No. 2 to TJC on September 1, 2022 to relocate the waterline with a 10 working day time extension. The 10 working day extension *might* have been reasonable to perform the work if the specified materials were onsite or readily available. They were neither.

The 10 working days was a unilateral assumption by COV and entirely insufficient. TJC ordered the specified materials and parts. At the time, largely due to post Covid19 supply chain problems, TJC had to source the parts and materials from multiple suppliers throughout the state of California.

TJC submitted Request for Information No. 5 for additional pipe work to COV on September 29, 2022. TJC requested a change order to its contract.

Our water main bid, 8-25-2022, was based on plan and notes prior to that time, showing Blind Flange on Southeast 12" tee. Subsequent plans on 8-29-2022 and 8-31-2022 changed to additional excavation, fittings, pipe and misc. associated issues, including additional tie-in. We have included a price for the additional tie-in. We have included a price for the additional work based on the following plan.

As COV's design issue with the existing water main became more apparent, they also became more complicated through no fault, or responsibility of TJC. COV responded with clarifications and direction regarding the work described in Request for Information No. 5 on October 7, 2022, but never issued a Contract Change order as requested by TJC.

TJC inquired in Request for Information No. 6 regarding new thrust block requirements per District Standard W-19 was transmitted to COV on October 3, 2022.

The intended plan for the lower thrust blocks that were over excavated is as follows: The thrust blocks will be formed up to the required dimensions 55" x 27" (1,508 square inches) and concrete placed, any excavated area outside of those dimensions will be backfilled with concrete slurry which will exceed the 95% compaction requirements.

Request for Information No. 8 regarding anchors and pipe sections exposed for testing was sent to COV by TJC on December 16, 2022. In its response on December 30, 2022 (14 calendar days later) COV stated its Water and Sanitation Department needed more information. (There are no notations in the bid documents requiring coordination obligations of TJC with another COV department) COV's pattern of deflection of responsibility continued.

TJC submitted Request for Information No. 9 to COV on December 21, 2022 regarding its revised plan to complete Southeast tie-in, which COV never verified

On 8-31-2022 we received a revised plan to complete Southeast Tie-in. On 9-7-2022 we exposed that area for Ventura County inspection to verify your plan. We never received a response from Ventura County. We need your approval for the 8-31-2022 design and will have materials delivered. Attached is the 8-31-2022 detail and picture of area taken on 9-7-2022, please approve it or send us a revision.

TJC received no response from COV to Request for Information No. 9. In Request for Information No. 10, dated January 18, 2023, TJC informed COV that in order to use the specified Romac couplings it would need to remove the cement coating on the existing pipe. Again, TJC received no response from COV.

Even at this late date, well after TJC should have been completed with all its contract work, COV's Transportation Department had not coordinated the waterline relocation design with its Water and Sanitation Department. COV's Water and Sanitation Department rejected the parts and materials procured by TJC as specified in the design package provided to it by, further delaying the project.

The basis for rejection was not TJC failures, it was lack of internal coordination at COV. TJC was receiving direction by one department but another was reviewing the specified submittals. COV did nothing to coordinate. For example, COV specified custom Romac valves. TJC submitted and ordered what was specified, but COV's Water and Sanitation Department would not accept some parts.

COV sent TJC an email on January 26, 2023 noting

Water & Sanitation completed their waterline material inspection and identified some items as being rejected and some as being accepted.

In an email to COV on January 30, 2023 TJC inquired

We would like to arrange a team's meeting with you and Homer to discuss status of pipe and fittings, reinspection. McWane Ductile, District Manager, Carolyn Lopez disagrees with all aspect of your inspections and rejection of pipe, she has reviewed all your pictures and email. Please send her an invitation to the teams meeting, she will supply any documentation or other supplementary information, Carolyn.Lopez@mcwaneductile.com. Our supplier, Famcon, has agreed to change out the 45 degree fittings, for the sake of expediency, again, there is nothing wrong with those fittings and I would not hesitate to involve that manufacturer if you dispute the replacement fittings that they provide.

TJC excavated and installed trench shoring and the new waterline COV then directed TJC to remove the pipe. Finally, COV directed TJC to stop completing waterline installation in early February 2023. COV's Water and Sanitation department completed the waterline installation.

TJC emailed COV on May 17, 2023

I am still waiting on confirmation as to when the Water department will be on site to take possession of the remaining materials. John mentioned the need for delivery but I would need it in writing that the additional cost for this could be added to the bill. It would require renting a forklift and trailer. The brass and copper pieces will be on site as of tomorrow.

In an email to COV on July 6, 2023 TJC wrote concerning COV's waterline work, now being completed by the Water and Sanitation department, impacting and delaying TJC's project completion

TJC does not have a contract with Water and Sanitation. Should Homer have any issues he needs to go through the proper channels instead of directing my employees. Manny was told that Water and San would be on site this past Monday and Wednesday to remove bypass. We have been there both days and no work

has been done. TJC cannot move forward with our contract work until the water line has been taken care of.

COV paid TJC **\$41,427.97** for the procured materials. However COV has not paid TJC for its labor and equipment installing the waterline totaling **\$102,564.57**, which was submitted to COV on June 6, 2023, the cost of which is a component of this claim. The original waterline relocation change order amount deleted from the contract balance.

H. Project Safety/Shoring Plan (Exhibit No. 5)

There was no soils report provided in the bid documents. TJC submitted Request for Information No. 1 to COV asking for the soils report on June 16, 2022. It was provided to TJC on June 20, 2022.

After studying the soils report TJC informed COV on July 5, 2022 via Request for Information No. 2 that 68 lineal feet of excavation with a 1:1 slope would be required versus the 56 lineal feet indicated in the contract plans. COV responded on July 6, 2022 that the extra excavation was acceptable and to charge it under Bid Item No. 6, Excavation Safety.



Excavation with 1:1 Slope at Project Site

On October 3, 2022 TJC received an email from COV demanding that it submit a stamped engineered safety plan. TJC held a site meeting with COV on October 5, 2022 where it informed COV that there would be no need for shoring on project since the excavations would be sloped at 1:1 per the information gleaned from the soils report. COV shut down the construction on October 6, 2022.

On October 11, 2022 TJC received a letter and email from COV again demanding that it submit a stamped engineered safety plan by October 17, 2022. TJC had previously submitted its OSHA required Annual Permit and its 168 page companywide Injury and Illness Prevention Plan to COV. COV was clearly exceeding the contract requirements with its demand.

TJC responded on October 14, 2022 via Request for Information No. 7 again explaining that there was no requirement for engineered safety plan since the excavation would be sloped at 1:1. Under threat of a shutdown by COV, TJC submitted a site specific safety plan, without a PE stamp, to COV on October 18, 2022.

Unfortunately, COV failed to fully understand the contract requirements. An engineer reviewed and stamped shoring plan was required *IF* shoring was used. TJC repeatedly advised COV it would not be using shoring, nor was obligated to. Instead of working with TJC to further the progress of the project and acknowledging its own delays and impacts COV sent TJC a Notice to Cure Default on October 25, 2022 stating

TJC has abandoned the work by:

- *Failing to diligently prosecute the work to completion*
- *Disregarding written instructions from the Agency*
- *Materially violating provisions of the contract documents*
- *Failing to prosecute the work according to the schedule approved by the Engineer*
- *Disregarding laws and regulations of a public body having jurisdiction, and*
- *Committing continuous and repeated violations of regulatory and safety requirements (VCSS §6-4.1 (labeled "6-4.1 in the contract).)*

Specifically, TJC has failed, despite requests for same, to provide an engineered safety plan stamped by a professional engineer (P.E.) that addresses the entire excavation per contract Special Provision 1005 PROTECTION OF EXISTING UTILITY & ROADWAY FACILITIES and 1009 EXCAVATION SAFETY

Specifically Special Provision Section 1005 requires an engineer stamped shoring/bracing plan to protect the utilities suspended during construction. TJC prepared and submitted such a plan for the gas and petroleum lines to COV on July 2, 2022.

Special Provision Section 1009 requires all work to meet the Worksite safety requirements of Standard Specification Section 7-10.4 and all trenching and excavation by conducted in compliance with federal (OSHA) and state (CAL/OSHA) standards, project specifications and safe construction practices.

Standard Specification Section 7-10.4 requires a worksite Safety Official and a designated Competent Person. TJC has a robust and successful Illness and Injury Prevention Plan for its work force and the public which was submitted to COV at the start of the project. This plan identified TJC's Safety Official and Competent Person as required. TJC also submitted its annual statewide CAL/OSHA permit to COV at that time.

Standard Specification Section 7-10.4 also requires a stamped engineered shoring plan. However, in this case, as TJC had explained to COV verbally and in writing on three separate previous occasions, no shoring would be used on this project since the excavation would be sloped at 1:1.

TJC answered the Notice to Cure Default on October 27, 2022 responding to each and every accusation made by COV. It listed the significant project delays and impacts by COV, while citing the applicable contract sections.

Under threat of default TJC submitted an engineer stamped Excavation Safety Plan to COV on November 18, 2022. It was rejected by COV. TJC submitted a revised safety plan to COV on November 29, 2022 which was approved.

I. Gas/Petroleum Line Design Errors and Impacts (Exhibit No. 6)

An existing 6" diameter high pressure gas line and an abandoned petroleum line, owned by the Southern California Gas Company, ran underground through the project site, parallel to Bradley Road and the existing bridge and box culvert which was to be removed and replaced.

The gas line was suspended from the existing bridge headwall over the concrete box culvert. The only base contract work indicated in the bid documents for these two existing conditions was for TJC was to protect the gas and petroleum lines in place.

I.1 Gas Line Extension

The design for the new steel culvert was wider than the old concrete box culvert, which was scheduled to be demolished. As a consequence, and as could/should have been analyzed and included in the project design (which should have been complete, thorough and accurate) the 6" diameter gas line had to be offset up and over the new culvert.

On July 6, 2022, shortly after mobilizing onsite, TJC was notified by COV that the gas line indicated on the contract drawing would need to be extended by the Southern California Gas Company. TJC inquired that day

How far out is the gas line being moved or lengthened? I will need this info in order to complete the support system engineering for the gas line and to line up the proper shoring system.

COV responded the next day to TJC

The gas line will be extended 6' south. The drawing from gas company is attached.

TJC was informed that the work by the gas company, would take five to seven working days, but instead it took the gas company three weeks to extend the line beginning on July 25, 2022. COV failed to coordinate this work with the Southern California Gas Company. TJC had a good faith obligation to cooperate with the Southern California Gas Company but it was COV's responsibility to notice and schedule the work with the gas company.

I.2 Gas Line Engineering/Supports

As was contemplated by its scope of work, prior to removing the old bridge TJC exposed the existing 6" diameter gas line as well as the abandoned petroleum line. The contract drawings directed TJC to 'Protect in Place' the gas and petroleum lines. Special Provision No. 1005 of the contract directed TJC to suspend the gas and petroleum lines during construction.

Shortly after NTP and in compliance with its obligations, TJC submitted an engineered stamped gas and petroleum line suspension plan to COV as required by Section 1005 of the Contract Special Provisions on July 27, 2022. It was rejected by COV and resubmitted for approval on August 25, 2022 and September 1, 2022, subsequently approved on September 13, 2022.

With approved submittal TJC installed the gas and petroleum line suspension in September 2022. Evidently, however, COV had failed to inform the Southern California Gas Company that this work was taking place.



Suspended Gas and Petroleum Lines

Southern California Gas Company shut down the project by informing COV and TJC on October 12, 2022

*At this time the mains unsupported span is at its max and **work at your site can't proceed** without proper support of the gas main, to prevent possible damage to the gas main or/and possible interruption of service to customers.*

In another email to COV on October 13, 2022 the Southern California Gas Company wrote the following, effectively shutting down the project

COV and the gas company required an engineered design drawing for approval. TJC sent a letter to COV on November 14, 2022 requesting the gas company's final design criteria to develop the utility support plans. The design criteria changed a few times over the following week.



Gas Line Pipe Supports

TJC submitted an engineered plan to support gas and petroleum lines over the channel to COV on November 21, 2022. After approval of the TJC-designed pipeline supports by COV and Southern California Gas Company on December 1, 2022, TJC had the supports fabricated by December 6, 2022 and installed by January 19, 2023, after being delayed by significant rainfall as well as excavation for the new culvert.

In an email on September 5, 2023, TJC informed COV

Regarding the engineer-stamped plan for suspending the gas line, as per the project's special provisions, Terry, as you are aware, stamp and approved it. What

wasn't included in the special provisions, or any provisions for that matter, were the requirements for a stamped excavation plan and a shoring plan to support the gas main, as demanded by the gas company after the contract was awarded. These additional requirements undoubtedly constitute both a change order and a change in conditions.

TJC submitted the costs, with priced out daily time and material tickets and backup for the design, fabrication and installation of the Southern California Gas Company pipe supports not included in the bid documents, totaling **\$32,763.19**, to COV on November 8, 2023. These unpaid costs are a component of this claim.

J. Winter Weather/Mud and Debris Removal (Exhibit No. 7)

This project was bid as a "fair weather" construct with a July 2022 start and an October 2022 completion. The plan was to work in a dry creek bed as shown in the photograph above.

The delays and impacts to the project schedule by COV including culvert procurement delays, waterline relocation redesign and installation, lack of coordination with Southern California Gas Company, gas line support requirements and the additional excavation requirements pushed the project into the cold and rainy winter weather.

The 2022/2023 winter was a period with record rainfalls and multiple atmospheric rivers. These excess rain events were so atypical that they made both state and national news. The site flooded on multiple occasions. Upstream mud and debris washed down into the work area. Water swept into the adjacent nursery. The flooding damaged some of TJC's construction.

TJC performed extensive Winter Site Maintenance from November 2022 to April 2023, spending almost \$200,000 for mud and debris removal. COV was fully aware of this extra work and its necessity. TJC wrote to COV on February 14, 2023 requesting reimbursement for the mud and debris removal and was told by COV to submit its costs.

COV sent an email to TJC, dated March 7, 2023, in which it stated

*This does not include the CCO I am still putting together which incorporates the info you provided me for storm mud/debris removal. **That is work to be paid in addition to the current construction contract.***



Onsite Flooding

In an email to TJC on April 11, 2023 COV wrote

*I also need the GPS location or address of the location the debris material has been taken to. The debris I'm talking about is the mud from the storms that **we will be paying as extra work via a CCO**. The GPS location is critical for our hopes to seek reimbursement from FEMA.*

TJC submitted an invoice for the mud and debris removal costs, with priced out daily time and material sheets totaling **\$197,410.34**, to COV on May 19, 2023. COV has refused to reimburse TJC for these costs, which are a component of this claim.



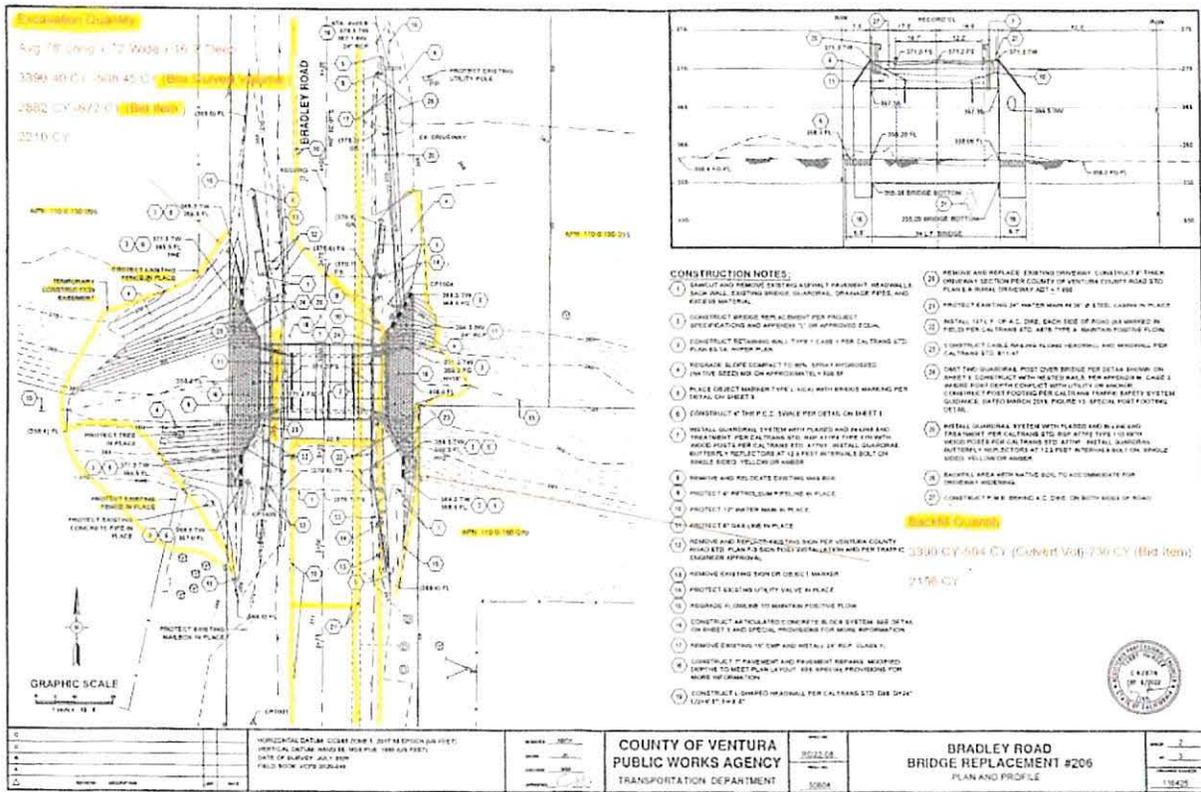
Channel Flooding

TJC sent an email to COV on July 28, 2023 requesting the status of its payment of Bid Item No. 10 for mud and debris removal with no response. COV unilaterally included \$45,000.00 in Contract Change Order No. 3 for this item.

K. Additional Excavation (Exhibit No. 8)

As built, TJC excavated and backfilled a considerably larger quantity of material than was indicated in the bid documents due to the differing site conditions it encountered. TJC excavated the additional material, stockpiled it and covered it with tarps on both sides of the project site.

The additional excavated material totaled 2,210 cubic yards and 2,156 cubic yards of additional backfill, which is reflected in this drawing. This total does not include the material for the waterline installation, gas support installation or mud and debris removal.



Extra Excavation and Backfill Quantities

The extra excavation resulted in extra operated and idle equipment time. A daily log of the equipment used onsite is enclosed. The cost overrun for the equipment only, not labor, is as follows:

Equipment Cost Overrun	
TOTAL EQUIPMENT FOR PROJECT	\$391,670.47
LESS TOTAL EQUIPMENT IN CLAIMS	\$141,363.03
TOTAL EQUIPMENT NOT IN CLAIMS	\$250,307.44
LESS TOTAL EQUIPMENT IN BID	\$89,157.50
EQUIPMENT COST OVERRUN	\$161,149.94

The equipment cost overrun totals **\$161,149.94**. These unpaid costs are a component of this claim.

L. Delayed Payments for Materials and Extra Work (Exhibit No. 9)

TJC was required to pay for some of the materials for this project in advance. Typically, the contractor invoices for stored materials delivered to the project site as they are purchased and delivered (i.e. stored materials). TJC requested reimbursement from COV for those materials upon delivery to the project site. COV slow walked those payments for months on end, forcing TJC to finance COV's project.

TJC emailed COV on July 29, 2022 asking

*Does the County have an address that the bridge components can be delivered to. We were rushed in ordering from Contech and I understand John had to delay delivery due to utility issues. However **we have already paid a substantial amount for the required materials and would like to be paid for this.***

TJC wrote another email to COV August 2, 2022 inquiring

Do you have a supervisors name I can speak with concerning payment. Between the materials we have had to order and the delays on this project starting which affects our bonding as well I need to know what options we have.

On October 3, 2022 TJC informed COV via email

*To date there have been **no payments** on Bid Items 1, 3, 4, 5, 6, 7 or 20. I should have received some payment with Pay Estimate 1 to cover at least bond costs.*

TJC attached the form for Request for Payment for Materials on Hand to the email, along with all of the required backup documentation. In an email from COV on November 2, 2022 TJC was directed to provide the Materials on Hand for Inspection for payment. On November 7, 2022 COV requested "clarification" regarding the Materials on Hand.

A frustrated TJC wrote to COV the same day in two emails

Rafael was out on Thursday to inspect. What is unclear? I suppose we could put it (the culvert) together for you to inspect and then take it apart until it's time to

install it. I have never been delayed on payment to this extent. In hindsight I should have refused to order the materials from Contech especially since delivery/fabrication was delayed due to changes made by you. It was originally supposed to ship in August. The form attached has already been paid in the last pay estimate why would I update it? I submitted a separate one that includes invoices from Contech on 10.31.

I have reached out to Contech for clarification and corrections. Attached is a new MOH requesting payment for the deposit that was paid in mid-June when it was insisted we order the product immediately. Hopefully this will suffice to get TJC some of the money owed since this situation has also turned into an argument. I cannot find anywhere in the spec that requires a bill of lading nor do I see anywhere that I am required to revise or edit a past MOH.

With no movement towards payment TJC sent an email with another Request for Payment for Materials on Hand to COV on December 3, 2022

Can I please get a better explanation as to what is needed to submit for payment for Contech materials. The instructions on the form don't specify anything that was previously asked for and there is nothing in the Special Provisions I can find to help. I can't find where a bill of lading is required, just an invoice or that I have to submit anything monthly.

On December 13, 2022 COV informed TJC that the Contech invoice for its initial deposit in June 2022 was not accepted. TJC sent COV an email with the Request for Payment for Materials on Hand listing for the next pay estimate on January 20, 2023

See attached MOH for the next pay estimate. Just so you know the last pay estimate did not even cover the cost of the engineered stamped plan requested by the county that was not part of our original contract, which we were told we would be compensated for. I did not receive a response to my email concerning no information in the spec about payment for deposits. That deposit went toward the purchase price of the materials because it was a special order. It was not money we will get back. I do not appreciate having to finance the counties project that has now gone 3 months past our original completion date due to design inadequacies.

In another email to COV on February 15, 2023 TJC stated it had received no response to its request regarding where in the project specifications or contract was it shown that deposits for materials were not paid when Materials on Hand payments are submitted.

TJC sent COV two emails May 5, 2023 requesting

Please send me an email explaining exactly what it is you're needing. The most recent MOH form that was sent was for materials that have been purchased and inspected the change order work for the water line. These are materials that have never been paid. Any further questions concerning invoices or payments need to be directed to me.

See the attached MOH for the April progress payment, as well as an email dated 4/6 with additional materials on hand. If there is a process to go through to have these items, that have been on site since 2002 and been inspected multiple times and approved, paid for it should have been brought to our attention a month ago. I am asking now for clarification as to what needs to be done to have these items included in the next progress payment, as well as have them removed from our storage area by whom ever will be taking possession. I have been told you are lacking documentation for the mud removal aspect of the project. Please provide a comprehensive list as to what it is you believe is missing.

Again, on May 8, 2023 TJC asked COV

I would like clarity on this whole issue of liquidated damages, How is TJC at fault for delays? There isn't one aspect of this contract that has not been redesigned. Add to that the addition of the changed conditions since this project was originally slated to be complete prior to the wet season. We also have had no written communication concerning the removal of the change order work that was ultimately performed by the water district. We need to know when the materials that were inspected and approved last year will be picked up so that they may be incorporated into the next pay estimate.

In an email dated June 14, 2023 TJC inquired

I am following up on our conversation last Thursday concerning payment for May. I sent an email this past Monday but did not get a reply. Can you confirm when

we expect payment for May? Also, where are we with additional invoices sent for the waterline and mud removal?

With no response, TJC submitted another email to COV on June 21, 2023

*For the record **this project has been and continues to be continuously underpaid.** It is quite convenient that the total for this most recent pay estimate is just the right amount to cause it to be a zero pay due to a mistake by VCPW. No one has ever been able to show me where it says in the contract that deposits made by the contractor for materials (especially special order items) are not reimbursed with MOH payments.*

The last payment was 20 days late, the payment prior to that was at least 2 weeks late. I have not had a single response from you to any of the many emails I have recently sent concerning payment for the extra work performed by TJC that were a direct result of the design flaws that caused the project to extend into additional months, most of which were rainy. At no time did TJC delay this project.

Until the utility issues were resolved we have been on utility delay, on top of which the temporary water line was installed in a way that made the project even more cumbersome which means we were not able to work according to how this project was bid. All of this is considered changed conditions. We continue to dispute the WSWD. You have been provided with facts that supports TJC position.

Concerning the water line change order, I have submitted bills for this with no response from you. If the county plans on paying the initial agreed upon price even though the installation portion was taken away this work is 100% complete and should be paid accordingly. Otherwise payment for the bill that was submitted needs to be made. I have also submitted bills for the months that we spent removing mud from the project site that was caused by the any rain events. Rain we should not have encountered since this project was scheduled to be complete in October of last year.

None of this has been acknowledged to me, even though I sent an email requesting that the financial portion of this contract be discussed with me and not John (you continue to place calls to John), or paid for. I am not in the business of financing Ventura Counties failures to provide correct plans for projects placed out to bid

and should not be expected to. You have been provided a service which needs to be compensated for.

COV finally responded to TJC on June 22, 2023

MOH payments have all been made for the bridge (Bid Item #10). MOH payments are also not required as part of the contract. They are advanced payments prior to the items being placed. As of now, 90% of the total bridge item LS has been paid for, which includes all deposit amounts

In an email on September 5, 2023 TJC informed COV

Speaking of CCO #4, it's worth noting that it only accounted for 90 tons of HMA, not the full 126 tons that were actually installed.

COV breached the contract by refusing to timely compensate TJC hundreds of thousands of dollars for extra work performed at its direction.

M. Project Closeout (Exhibit No. 10)

TJC demobilized on August 10, 2023. COV unilaterally issued a deductive change order for – 66,215.39 to TJC on September 25, 2023, which included liquidated damages. TJC rejects this Contract Change Order with exception of the scope deduction for hydroseeding for \$9,380.00.

COV sent TJC a Notice of Suspension on November 7, 2023, threatening possible disbarment. TJC submitted a claim for extra work and extended duration costs to COV on November 8, 2023. COV rejected TJC's claim on November 27, 2023.

COV sent TJC a Ventura County Release on Contract form on January 11, 2024 which included \$113,000 in liquidated damages. TJC responded to the Release on Contract to COV on January 12, 2024, rejecting it in full.

N. Extended Duration/Liquidated Damages (Exhibit No. 11)

TJC's baseline schedule with a July 21, 2022 mobilization date was approved on June 15, 2022. The original contract completion date was October 25, 2022.

TJC's project sequence was linear. It began with the approval of material submittals and ordering of the new culvert. Then TJC would mobilize, excavate and demolish the existing culvert, install the new culvert, form and pour the headwalls, backfill, install the storm drain, grade the road, pave, install the guardrails, hydroseed and demobilize.

TJC wrote to COV on August 29, 2022 regarding the fact that COV had only issued two Contract Change Orders to TJC with a total time extension of 13 working days, which did not accurately reflect the time lost due to COV delays. TJC was concerned with potential liquidated damages. COV replied the same day to TJC

You are still on utility delay at this time. As long as you pursue the work, LD's should not be an issue.

On October 11, 2022 TJC received a letter and email from COV stating that TJC was about one month behind, demanding that TJC submit a recovery schedule. This is two weeks before the original contract completion date. TJC responded on October 14, 2022 via Request for Information No. 7 with a list of COV project delays.

TJC sent COV a revised project schedule on October 18, 2022, which reflected a contract completion date of February 28, 2023. Little did it know at the time that this completion date was patently unrealistic.

On January 24, 2023 TJC wrote a letter to COV entitled "Statement of Working Days Protest" stating

We do not agree with the working days charged on this statement. We maintain, as we have, that delay started on July 13, 2021 and continues until new 12" water line is completed per RFI # 7.

In an email from TJC, dated May 12, 2023, TJC again disputed the Weekly Statement of Working Days, referenced utility delays and interferences indicated in photographs, and mentioned the project being delayed into winter weather and associated storm damage.

TJC wrote to COV in an email on June 7, 2023

Please ensure there is a written explanation that comes with the next pay estimate. We still disagree with the fact that the county has chosen to charge liquidated damages since Taylor Jane has only just recently been able to perform actual

contract work due to the utility delays and changed conditions we have encountered since prior to the preconstruction meeting. Backup emails were provided to assist in the dispute of working days, one in which Terry Hanser expressly stated that we should not have to worry about LDs due to utility delays as long as we actively pursue work. I am also needing a written response to the EWBs that have been sent for the mud Removal and Waterline portion.

On June 22, 2023 email from COV responded to TJC, requesting a meeting

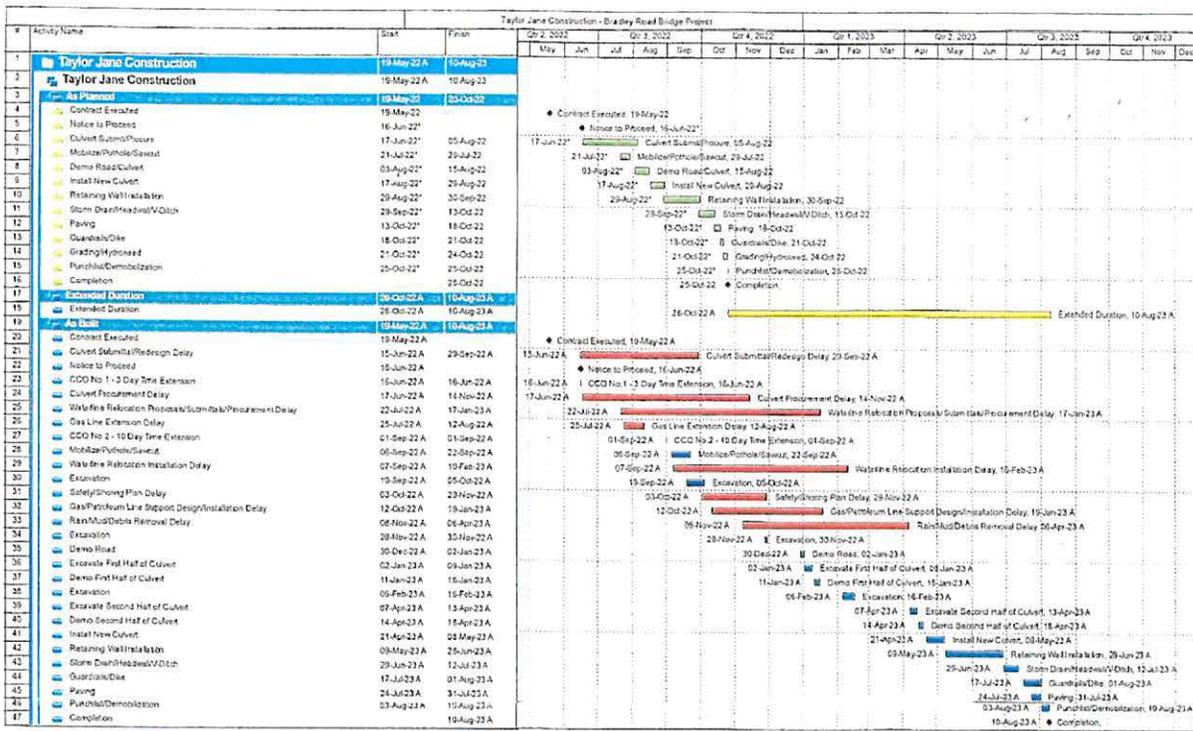
We can also discuss delays that took place prior to the rainy season. Once the rains hit, the project was awarded "rain" days and any wet condition days were not charged. Utility delays were accounted for in the CCO which provided more working days to the contract. They were agreed upon and signed by both the Contractor and the County. Much of the delays that took place prior to the rainy season were due to observed safety concerns, lack of trench shoring produced on site, and Excavation Safety (Bid Item #6). There were also delays due to incorrect placement of the proposed waterline and times when the pipe was damaged on site and needing replacement.

On August 14, 2023 in an email from COV, TJC was informed

There are no punchlist items. I stopped the liquidated damage day accruals on August 10th when the CMS boards were being removed from the project site.

As outlined in this claim TJC's performance period was impacted, delayed and extended due to the actions/inactions of COV and its agents.

TJC's actual completion date was August 10, 2023, a delay of 196 working days. TJC has received contract time extensions totaling 13 working days, for a net delay of 183 working days. Attached is a durational bar chart schedule graphically indicating the main project delays and impacts by COV.



Bradley Road Bridge Project As-Planned v As-Built Schedule

O. Legal Basis for Entitlement

As set forth in this claim, COV provided defective plans and specifications for the construction of the project. The consequence of the defective documents resulted in added duration and costs for TJC. The differing site conditions resulted in substantial productivity impacts for TJC for which it has not been compensated. TJC is entitled to recover its additional costs due to these impacts and delays.

O.1 COV Was Legally Obligated to Provide Complete Plans and Specifications for the Competitive Public Bidding and For the Contract. COV is Liable for the Damages Caused by its Failure to Do So. The Owner's Failure to Provide Correct Plans and Specifications Is a Breach of Warranty

A public agency's liability for breach of the implied warranty of the correctness and accuracy of plans and specifications is a well-established legal principle. *United States v. Spearin*, 248 U.S. 132 (1918) (United States Supreme Court holds that a public entity is responsible for the

consequences of defects in the plans and specifications provided at the time of bidding); *see also* *Christie v. United States*, 35 U.S. 565, 566 (1918); *United States v. Atlantic Dredging Co.*, 40 U.S. 423 (1920); *Souza McCue Const. Co. v. Supreme Court*, 57 Cal.2d 508 (1962); *Tonkin Construction Co. v. County of Humboldt*, 188 Cal. App. 3d. 828 (1987); *Warner v. City of Los Angeles*, 2 Cal. 3d 285 (1970).

The California Supreme Court has adopted the holding in *Spearin*, and has recognized that a misrepresentation of the completeness and accuracy of bidding documents gives rise to a breach of contract action based on the implied warranty of the correctness of the plans and specifications. *Souza McCue Const. Co. v. Superior Court*, *supra* 57 Cal.2d at 510-511). In *Souza*, the California Supreme Court specifically confirmed that:

A contractor of public works who, acting reasonably, is misled by incorrect plans and specifications issued by public authorities as the basis for bids and who, as a result, submits a bid which is lower than he would have otherwise made may recover in a contract action for extra work or expenses necessitated by the conditions being other than as represented.

Id. at 510; *see also* *E.H. Morrill Co. v. State of California*, 65 Cal.2d 787, 791 (1967); *Coleman Engineering Co. v. North Am. Aviation, Inc.*, 65 Cal.2d 396, 404 (1966).

The California Court of Appeal has consistently applied the Supreme Court's recognition that a public agency's providing of misleading plans and specifications constitutes a breach of the implied warranty of correctness. As explained recently by one court:

Under general principles of contract and tort law, a party who conceals or fails to disclose material information to another is liable for fraud. In the public construction contract context, however, conduct of a public agency that would otherwise amount to a tortious misrepresentation is treated as a breach of contract. The underlying theory is that providing misleading plans and specifications constitutes a breach of the implied warranty of correctness.

Howard Contracting, Inc. v. G.A. McDonald Construction Co., Inc., 71 Cal.App.4th 38, 55 (1999).

The California Supreme Court has also confirmed that a public agency is liable to a Contractor for the damages caused by the "furnishing of misleading plans and specifications." *Warner Const. Corp. v. City of Los Angeles*, 2 Cal.3d 285, 301 (1970) (court holds that a mislead Contractor "undoubtedly should recover [its] additional cost of construction attributable to the Owner's misrepresentations, plus a reasonable profit.").

Based upon well-established California case law, COV was obligated to provide complete plans and specifications to TJC at the time of contracting. When COV solicited bids for the construction of the project, it was affirmatively warranting to all potential bidders, including TJC, that the plans and specifications for the project were complete and accurate. When TJC submitted its bid to construct the project, it reasonably assumed that COV complied with this legally imposed obligation.

As explained in this claim, however, the plans and specifications issued by COV at the time of contracting were incomplete and inadequate, and resulted in delays and the performance of additional work. In effect, COV breached its contract with TJC at the time of execution by furnishing incomplete and inadequate construction documents, a fact that manifested itself over the course of construction.

COV is liable for the additional costs incurred by TJC for the delays that were encountered and the additional work that they were required to perform on the project. The additional costs are more fully set forth in this claim.

O.2 COV, as the Breaching Party, Is Liable for Breach of Contract Damages in the Same Manner as a Private Contracting Party

It is well established that contracting public agencies are liable for breach of contract in a like manner as private individuals. Once a valid contract is in place, if a Contractor is damaged by a public entity's breach of that contract, the Contractor may recover its damages from the public entity for breach of contract. Civil Code Section 1635 ("All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code."). As explained by the California Supreme Court:

When the State makes a contract with an individual it is liable for a breach of its agreement in like manner as an individual, and the doctrine of governmental immunity does not apply.

Souza, supra, 57 Cal.2d at 510; *Kemper Constr. Co. v. Los Angeles*, 37 Cal.2d 696, 704 (1951) ("California cases uniformly refuse to apply special rules of law simply because a governmental body is a party to a contract.").

Accordingly, TJC is entitled to recover all of its damages that naturally flow from COV's breach of the Contract. See, e.g., Civil Code Section 3300. Such allowable damages include, but are not limited to, extra work and delay damages arising out of COV's breach of the Contract. See *Howard, supra*, 71 Cal.App.4th 38.

O.3 COV Had the Responsibility to Disclose Material Facts That Would Affect the Contractor's Bid or Performance

The California Supreme Court has held that a public works Contractor who, acting reasonably, is misled by incorrect plans and specifications issued by an Owner may recover in a contract action for extra work or expenses necessitated by the conditions being other than represented. The Contractor need not prove an affirmative fraudulent intent to conceal in order to recover additional compensation as long as the information not disclosed materially affects the cost of performance on the project.

Los Angeles Unified School District v. Great American Insurance Company
49 Cal. 4th 739 (2010)

O.4 COV is Statutorily Barred from Disclaiming Liability for Differing Conditions

The California Public Contract Code expressly prohibits COV from disclaiming liability for differing site conditions by shifting responsibility to the Contractor. Specifically, Public Contract Code Section 7104 provides:

Any public works contract of a local public entity which involves digging trenches or other excavations that extend deeper than four feet below the surface shall contain a clause which provides the following:

(a) That the Contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Pursuant to Section 7104, COV included the design drawings in the Contract documents. Public Contract Code Section 7104 (and COV's specifications) *require* a change order to be issued where subsurface conditions at the site differ materially from those indicated by information available to bidders prior to the deadline for submitting bids. COV does not and cannot dispute that it provided information to bidders in the form of design drawings prior to the deadline for submitting bids. The design drawings clearly indicate some, but not all, of the existing underground obstructions within the project limits.

Based on the information available and provided to TJC for the purposes of bidding the project, TJC estimated the project cost. Clearly the difference in the subsurface conditions was a material difference which would have drastically changed the way TJC approached the project and likely impacted the project price.

The spirit and purpose of Section 7104 is simple: it is intended to ensure Contractors are not held responsible for differing underground conditions which they were not able to determine prior to bidding the project. Section 7104 protects a Contractor's ability to justifiably rely on the information about the site provided to bidders prior to bidding the project without fear of being held responsible for errors within the information provided. Here, TJC had no opportunity to test or examine beneath the surface of the soil prior to bidding. No reasonable inspection of the site would have allowed TJC to know the conditions below the surface.

TJC bid based on the knowledge it had, as provided by COV. Public Contract Code Section 7104 clearly allocates the risks of unforeseen conditions between the Owner and the Contractor. Specifically, the risk for differing subsurface or latent physical conditions remains with the project

owner. The reasoning behind this is obvious. Prior to bid time the Owner is in the best position to assess and avoid the risk of subsurface conditions. The Owner has time for investigations and benefits from them by using the information to refine the design.

The Owner employs engineers and architects to research the project and draw the plans. The Owner has unlimited access to the site before the project is bid. In contrast, a bidding Contractor has little time and limited access to the jobsite prior to bidding. While a reasonable investigation of the physical conditions can and should be made, testing beneath the surface is simply not feasible or practical. Thus, the Legislature has properly determined that the Owner bears the risk of unforeseen conditions.

COV and its design engineers chose to provide bidders with outdated data which indicated only a portion of the underground obstructions that actually existed. COV bears the costs associated with this risk and must pay TJC for the additional costs incurred as a result of the differing subsurface condition.

Section 7104 provides, in no uncertain terms, that if a differing site condition exists, then the Contractor has a contractual right to a change order. In that change order, the Contractor should be compensated for *all of the effects of the differing site condition*, including overhead, profit and time extensions. Under state law, the failure to issue that change order amounts to a breach of the contract.

Accordingly, COV is responsible for the increased costs and is required to issue a change order for the costs incurred based on the materially different site conditions encountered by TJC. By failing to recognize and pay such costs, as well as issue time extensions, COV has breached the contract between the parties. A change order is statutorily mandated and responsibility cannot be disclaimed nor shifted to TJC.

P. Taylor Jane Construction's Recoverable Damages

Due to COV's design errors, mismanagement of the project, differing site conditions, resequencing of the base contract work and extra workscope required of TJC, and the resulting inefficiencies and delays caused by those actions, TJC has incurred substantial damages. COV has refused to recognize its responsibility for those damages and forced TJC to finance the construction of this project. TJC's affirmative claims for damages are in the following categories:

Description	Amount
Contract Balance	\$82,660.72
Gas Line Engineering/Supports	\$32,763.19
Waterline Installation Work	\$102,564.57
Mud and Debris Removal	\$197,410.34
Equipment Cost Overrun	\$161,149.94
Credit De-Scope for Hydroseeding	-\$9,380.00
Extended Overhead	\$279,937.54
Pre-Judgement Interest	\$21,263.41
Legal and Consulting Fees	\$30,830.00
Total	\$899,199.71

This damage summary is prepared as of March 4, 2024. TJC reserves the right to update and modify this claim as necessary. Note: Certified payrolls have been provided to COV by TJC to verify all personnel on Daily Extra Work Reports for claims.

P.1 Contract Balance

<u>Description</u>	<u>Amount</u>
Original Contract Amount	\$910,771.00
Approved Change Orders *	\$16,382.00
Current Contract Amount	\$927,153.00
Paid to Date	\$844,492.28
Contract Balance	\$82,660.72

* Only Contract Change Order No. 1 is listed. Contract Change Order No. 2 is deleted, replaced with Waterline Installation Work claim. COV issued a unilateral deductive Contract Change Order No. 3 on September 25, 2023, which is disputed by TJC and not included in this calculation.

P.2 Extended Overhead Costs

TJC's project duration was extended resulting in job cost overruns and added home office and field operations overhead costs. This was due to the actions of COV as well as the resequencing of base contract work, extra work, differing site conditions, alteration of contract requirements and design errors and omissions.

In calculating its extended duration costs TJC is not using the most abstract approach, nor the one which would generate the most dollars. This claim is based on the standard, non-modified approach. TJC reserves the right to modify this calculation as it deems appropriate in the event this claim is not promptly resolved. TJC's extended duration costs for the additional time it spent on this project include the extended home and field office overhead.

The Eichleay method of calculating extended overhead costs is recognized on public works projects in California. This has been held up in various legal venues, for example *Eichleay Corp.*, ASBCA No. 5183, 60-2 BCA ¶12688 (1960), and more recently confirmed in *JMR Construction Corp. v. Environmental Assessment and Remediation Mgmt., Inc.*, 198 Cal.Rptr.3d 47 (2015).

P.2.1 Home Office Overhead

TJC's average home office costs during the project's performance period were as follows:

<u>Description</u>	<u>June 2022 - Aug 2023</u>	<u>Monthly</u>
Company Executive Salaries	\$273,342.09	\$18,222.81
Payroll Taxes	\$79,643.13	\$5,309.54
Health Insurance	\$3,998.46	\$266.56
Liability Insurance	\$73,467.19	\$4,897.81
Workers Compensation Insurance	\$65,664.76	\$4,377.65
Internal Accounting Fees	\$11,757.50	\$783.83
Outside Accounting Fees	\$54,134.66	\$3,608.98
Legal Services	\$69,353.39	\$4,623.56
Dues and Subscriptions	\$9,589.62	\$639.31
Credit Card Fees	\$106.53	\$7.10
Advertising	\$275.06	\$18.34
Bank Service Charges	\$5,637.95	\$375.86

Loan Payments	\$129,623.39	\$8,641.56
Office Rent	\$28,081.99	\$1,872.13
Telephone	\$3,506.69	\$233.78
Utilities	\$6,790.90	\$452.73
Office Supplies	\$10,486.56	\$699.10
Computer Maintenance	\$2,494.75	\$166.32
Postage and Delivery Services	\$3,112.65	\$207.51
Cleaning/Janitorial	\$127.63	\$8.51
Miscellaneous	\$1,878.67	\$125.24
Meals	\$1,545.95	\$103.06
Insurance Trucks and Equipment	\$27,185.28	\$1,812.35
Storage Yard Rent	\$33,218.82	\$2,214.59
Property Taxes	\$4,850.10	\$323.34
Travel	\$687.51	\$45.83
Totals	\$900,561.23	\$60,037.42
	Daily WD Rate	\$3,001.87

TJC had other projects under construction during the extended time period of this project. COV's project represented 27.63% of its revenue during that time period. Therefore 27.63% of its home office costs were assigned to this project. TJC's average home office costs were \$60,037.42 per month, which is \$3,001.87 per working day. At a 27.63% assignment, this project's share of TJC's home office costs is \$829.53 per working day.

TJC as-planned completion date was October 25, 2022. TJC's actual completion date was August 10, 2023. Based on the Extended Duration Section N herein, 183 working days are excusable and compensable. At a compensable rate of \$865.26 per working day, TJC is entitled to **\$151,803.98** its extended home office costs.

P.2.2 Field Operations Overhead

TJC's average field operations duration costs during the project's extended time period were as follows:

<u>Description</u>	<u>June 2022 - Aug 2023</u>	<u>Monthly</u>
Project Manager	\$84,000.00	\$5,600.00

Onsite Foremen	\$129,545.36	\$8,636.36
Payroll Taxes, Union Fringe Benefits	\$95,922.09	\$6,394.81
Bottled Water	\$213.15	\$14.21
Temporary Water	\$2,140.00	\$142.67
Portable Toilets	\$1,515.91	\$101.06
Small Tools and Supplies	\$9,238.89	\$615.93
Postage, Fed-Ex	\$211.12	\$14.07
Copying, Printing, Blueprinting	\$75.54	\$5.04
Total	\$322,862.06	\$21,524.14
	Daily WD Rate	\$1,076.21

TJC as-planned completion date was October 25, 2022. TJC's actual completion date was August 10, 2023. TJC was onsite an additional 146 working days which are excusable and compensable. At a compensable rate of \$1,076.21 per working day, TJC is entitled to **\$157,126.20** for its extended field operations costs.

P.2.3 Extended Duration Claim Summary

TJC's as-planned completion date was October 25, 2022. As of August 10, 2023, TJC has experienced a delay of 183 working days beyond the original contract completion date. Based on the Extended Duration Section N described herein, 183 working days are excusable and compensable.

In the submitted claims herein there is **\$54,441.50** included for field and home office overhead, which is being deducted here from TJC's extended duration costs.

Description	Amount
TJC Home Office Overhead	\$151,803.98
TJC Field Operations Overhead	\$157,126.20
Less Claim Overhead	(\$54,441.50)
Subtotal	\$254,488.68
10% Profit	\$25,448.87

Total	\$279,937.54
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With a 10% markup for profit TJC is entitled to **\$279,937.54** for its extended duration costs.

P.3 Pre-Judgement Interest

TJC is entitled to 10% pre-judgement interest for sums unpaid for extra work after 30 days from submission as follows:

Claim Description	Amount	Date Submitted	Days to 3/1/24	Days less 30	10% Interest
Gas Line Engineering/Supports	\$32,763.19	11/08/23	93	63	\$565.50
Waterline Installation Work	\$102,564.57	06/06/23	270	240	\$6,743.97
Mud and Debris Removal	\$197,410.34	05/19/23	288	258	\$13,953.94
				Total	\$21,263.41

Per the calculations above TJC is entitled to **\$21,263.41** for pre-judgement interest for sums unpaid as of the date of this claim.

P.4 Legal and Consulting Fees

TJC has paid its attorneys and consultants **\$30,830.00** for assistance in preparation of this claim to collect revenue due to it by COV as of March 1, 2024. TJC is entitled to recover those costs from COV.

Q. Reservation of Rights

TJC reserves the right to supplement this claim as additional information becomes available.

R. Conclusion

TJC is a competent and professional contractor with many years of experience in constructing projects similar in nature to the COV project. TJC has performed admirably despite poor contract administration and other obstacles placed in its path by COV and its agents.

Delays in meeting project milestones were solely caused by COV's project management team. As demonstrated in this claim, the impacts to the bridge demolition and replacement were caused by the design errors and omissions, redesign of key components of the project and the failure of COV's management team to timely perform their contract obligations.

These include the failure to timely review submittals, expedite utility facility relocations and coordinate with the appropriate agencies. There are so many impacts they preclude separation and individual quantification.

Succinctly, but for the inactions of COV and its agents, TJC would have completed its bridge replacement activities in 90 working days as-planned. If TJC had been able to perform its contract as it reasonably anticipated TJC would have achieved its target margins, if not more. Instead, due to causes beyond TJC's control and responsibility and within COV's responsibility, TJC suffered a major productivity and financial loss.

Instead of treating TJC like a project team member, COV has created an adversarial relationship with TJC by failing to address its project management errors. COV has also failed to fairly evaluate TJC's requests for extra compensation in a timely manner.

TJC has submitted claims for its extra workscope. Some of these claims have not been approved by COV, others were unilaterally reduced. TJC is entitled to payment for its claims for which it properly performed extra work at the direction of COV.

TJC seeks the payment of additional compensation in the amount of **\$899,199.71** for additional costs for which it is not responsible for. TJC is also entitled to a contractual time extension of 183 working days from its extended completion date until its last full day on the project, August 10, 2023, due to the delays caused by COV.

TJChas complied with all of the applicable contract provisions. This claim and the change order requests were submitted in a timely manner as required by the contract. TJC is confident it will prevail in litigation regarding this claim.

Sincerely,



Angie Souza, Partner

Taylor Jane Construction LP