


**LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT**

**MEMORANDUM**

**DATE:** DECEMBER 8, 2015

**TO:** BOARD OF DIRECTORS  
Lake Arrowhead Community Services District

**FROM:**   
AIDA HERCULES-DODARO, District Engineer

  
CATHERINE CERRI, Acting General Manager

**SUBJECT:** PROJECT ACCEPTANCE FOR DAM TO TUNNEL PHASE 2  
SLIPLINING AND MANHOLE REHABILITATION, PROJECT NO.  
048

**A. RECOMMENDATION**

It is recommended that the Board of Directors:

Accept the work as performed by Insituform Technologies, LLC (Insituform) as complete under the construction contract for the Dam to Tunnel Phase 2 Sliplining and Manhole Rehabilitation, Project No. 048.

**B. REASON FOR RECOMMENDATION**

The project is complete.

**C. BACKGROUND INFORMATION**

On February 26, 2013, the District received three bids for the construction of this project. On March 12, 2013, the Board of Directors awarded the construction contract for the project to Insituform for their low responsive and responsible bid of \$1,713,567.50.

There were seven change orders on this project, six approved and one rejected. The values are shown in the table below:

<b>CO#</b>	<b>Description</b>	<b>Amount</b>
1	Four inch French Drain	\$ 1,054.50
2	Raise buried MH #39 - REJECTED	-
3	MH #405 abandonment	\$ 2,023.97
4	Bid quantities overage and balance	\$ 74,755.50
5	Time extension	\$ 0.00
6	Cosmetic defect credit	(\$ 8,005.00)
7	Reconciling change orders	(\$ 18,942.00)
	<b>Total Change Orders</b>	<b>\$ 50,886.97</b>

Change order 1 reflects additional labor, equipment and material used on the installation of approximately 60 feet of 4 inch perforated French Drain. While trenching for the installation of a new 8 inch sewerline, it was discovered that underground water influenced by a nearby creek would impact and perhaps destabilize the new pipe and trench. The French Drain was installed to collect and divert the underground water back to the creek and ultimately the lake.

Change order 3 denotes the additional labor and equipment to properly abandon MH #405, which was found to be 7 feet in diameter and 10 foot deep, and actually used as a wet well in the past. The District provided the slurry to keep the cost down.

Change order 4 illustrates the difference between the final quantities measured in the field and the bid quantities. It represents approximately 4% of the original contract price.

Change order 5 was approved for a time extension at no cost to the District. This additional time was requested by the contractor due to some construction activities depending on the ALA and its residents.

Change order 6 signifies the conclusion of the negotiations between the contractor and the District regarding defects on portions of the cured liner. After reviewing videos, getting 3<sup>rd</sup> party opinion and following the contract section about accepting defective work, it was decided the defect was purely cosmetic and would not cause an impact on future maintenance procedures. The District requested the contractor to provide a price to repair the work using bid prices as a base (\$4,300). In addition, we requested a price for going back to the field and perform the repair (\$8,005). It was clear that additional costs were associated with the repair after the contractor had demobilized. We settled for the highest credit.

Change order 7 represents a credit to the original contract price for unused bid quantities associated with the actual field conditions and to balance the final contract price. The total amount in all change orders represent approximately 3% of the original contract

price, which is within the 15% range authorized by the Board during the award of this contract.

The last punchlist items were completed on October 17, 2013; however, the District received a call from a resident complaining about damage to his property, particularly the railroad tie steps going to the lakeshore. The contractor repaired the steps in kind but more erosion and settlement occurred due to a few rainstorms. In addition, the contractor's original team left the company the following months, leaving the paperwork about this complaint behind. This past August, we were contacted by the new Insituform team assigned to this project who were eager to resolve the outstanding issues to close out the project. The new team also contacted the resident that complained about the steps this past January. After several weeks of negotiations between the resident, Insituform and the District, an agreement was reached late October. The resident agreed on executing a Property Damage Release agreement releasing the District and Insituform for and from any and all claims associated with the construction of this project within his property for a one time payment of \$20,264.69. This amount was paid by the District and half of it was deducted from Insituform's retentions, resulting in the District paying have the damages and Insituform the other 50%. The attached agreement between Insituform and the District was executed to record the transaction.

#### **D. FISCAL INFORMATION**

The total construction cost for this project was \$1,764,454.47, and the funding provided by the Wastewater Capital Improvement Fund 220.

#### **E. ATTACHMENTS**

Attachment 1 – Release and Waiver Agreement LACSD - Insituform

## RELEASE AND WAIVER AGREEMENT

This Release and Waiver Agreement ("Agreement") is entered by and between the Lake Arrowhead Community Services District ("District") and Insituform Technologies, LLC., ("Insituform"). The District and Insituform are sometimes collectively referred to herein as the "Parties." The Parties enter this Agreement with respect to the following recitals:

### RECITALS

A. Insituform provided certain construction services generated under the Dam To Tunnel Phase 2 Sliplining and Manhole Rehabilitation Project No. 048 ("Project");

B. The property owner at 28805 North Shore Road, Lake Arrowhead, California (Property Owner), claims that he incurred certain property damage as a result of Insituform's services provided under the Project; and

C. Without any admission of fault, the District and Insituform agreed to compensate the Property Owner for the subject property damage in the amount of \$20,264.69, conditional upon the Property Owner executing and delivering a waiver and release of all claims against the District and Insituform related to the Project ("Settlement"); and

D. By this Agreement, the Parties wish to finalize the Project and close out all issues related thereto.

**WHEREFORE**, in exchange for the consideration and mutual promises set forth herein, the Parties agree as follows:

1. Upon the Property Owner's execution of the Settlement and full satisfaction thereof, the District shall release to Insituform, all retention funds remaining due on the Project, less \$10,132.35, which represents Insituform's portion of the Settlement payment. The total payment to Insituform shall be \$76,104.88.

2. In exchange for the payment set forth above, Insituform hereby forever waives and releases the District from any and all claims it may have related to the Project, including, without limitation, any claim related to the Settlement. In signing this Agreement, Insituform expressly waives all rights which it may have under California Civil Code section 1542 which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, Insituform expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all claims related to the Project, known or unknown.

3. Insituform acknowledges that it may hereafter discover facts different from or in addition to those which it now believes to be true with respect to the Project. Insituform agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts or any discovery thereof.

4. Insituform represents, warrants and agrees that in executing this release, it does so with full knowledge of any and all rights which it may have with respect to the Project and that it has received, or has had the opportunity to receive, independent legal advice from attorneys with respect to the facts involved in the controversy compromised by this Agreement and with regard to its rights and asserted rights arising out of such facts.

5. Insituform further represents and warrants that it has not assigned its rights and that it has full authority to settle and execute this Agreement.

6. The provisions of this Agreement constitute the entire Agreement between the Parties and supersede all prior negotiations, proposals, agreements and undertakings related to the subject matter of this agreement.

7. The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out the intent or provisions of this Agreement.

8. This Agreement shall bind and inure to the benefit of the successors and assigns of the respective Parties, and to all affiliates, dba's or any other associated entities.

9. This Agreement and its provisions shall not be construed or interpreted for or against any party because that party drafted or caused the party's legal representative to draft any of its provisions.

10. This Agreement may be signed by the Parties in multiple counterparts and/or by facsimile, all of which shall be taken together as a single document.

11. No promise or warranty shall be binding on any party except as expressly contained in this Agreement.

12. Should either party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other appropriate relief.

13. No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

14. The effective date of this Agreement shall be the final date of execution by the Parties.

15. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Each party agrees to use San Bernardino County, California, as the forum in which any litigation proceedings related to this Agreement shall be conducted.

**PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS A GENERAL RELEASE OF CLAIMS KNOWN AND UNKNOWN.**

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement on the dates set forth below.

Dated: Nov. 4, 2015

LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

By: [Signature]  
Its: GENERAL MANAGER

Dated: 10/29/15

INSITUFORM TECHNOLOGIES, LLC.

By: [Signature]  
Its: Sr. Project Manager

DAVID BIBAYAN