

1 GREGORY W. KOEHLER
2 ATTORNEY AT LAW, CBN 171208
3 937 South Coast Highway - Suite 208
4 Encinitas, California 92024
5 gwkoehler@gmail.com
6 Tel. (760) 633-1803 □ Fax (760) 633-3349

7 Attorney for: PORTILLO CONCRETE, INC.

8 VISTA IRRIGATION DISTRICT
9 VISTA, CALIFORNIA

10 IN THE CLAIM OF:
11 PORTILLO CONCRETE, INC., A
12 California Corporation,
13
14 Claimant,
15 and
16 VISTA IRRIGATION DISTRICT, a
17 Government Entity, a/ka a Public
18 Entity,
19 Respondent.
20

PORTILLO CONCRETE, INC.'s
REQUEST TO PRESENT A LATE
CLAIM UNDER CALIFORNIA
GOVERNMENT CODE §911.2
et seq.

SUPPLEMENTAL RESPONSE

AGENDA ITEM 7 - Nov. 6, 2024
Board Meeting

21 TO: The Board of Directors of the VISTA IRRIGATION DISTRICT of Vista,
22 California.

23 FROM: Claimant, PORTILLO CONCRETE, INC., a California Corporation of
24 Lemon Grove, California.

25 This supplemental response shall serve as a rebuttal to the Recommendation of the Staff
26 Report presented to the Board of Directors.

27 There exists many points of contention in the aforementioned Report as set forth below,
28 amounting to errors as well as a general misapplication of the current legal authorities previously
provided.

1 IGNORANCE OF THE LAW DOES NOT APPLY:

2 In summary the Staff analysis seems to rely on a legal maxim regarding “ignorance of the
3 law.” The submitted brief does not state that Portillo Concrete set forth any such claim as a “mistake
4 of the law.” Actually the submittal cites mistake, not of the law but of the facts, and the application
5 of an industry standard for contracting. Additionally the Staff failed to address the point of
6 “excusable neglect” as set forth on page 3 lines 5 and 6. There is no statement that there was a
7 “mistake in the law” submitted.

8 THE DISTRICT KNEW OF THE MASSIVE FLOODING OCCURRENCES AND
9 THEREFORE HAD NOTICE AND THE DISTRICT WAS ABLE TO INVESTIGATE AS
10 THE DISTRICT’S PERSONNEL WERE ON SITE IMMEDIATELY AT THE MASSIVE
11 FLOODING EVENT:

12 It is erroneous to claim that there was a lack of knowledge of the damages as the District
13 personnel was on-site within hours of the flooding. The District personnel therefore did investigate
14 the extent of the damages, and undertook their own tasks for stopping the flooding, traffic control,
15 and bore their own costs, equipment, and personnel assigned on the day of the flooding. Also, the
16 Staff Report claims that it was Portillo Concrete’s claim submittal that made them aware of the
17 extent of the damages. Such a statement is incongruent with the denial of the claim because it could
18 not have been the initial point of awareness, and therefore not prejudiced. The failure to file a timely
19 claim by Portillo Concrete was due to the negligence of the Claimant as the District knew of the
20 massive flooding. Accordingly, the extent of the damages was known by the District, just not the
21 total costs to rectify.

22 PORTILLO CONCRETE, INC. SUBMITTED THEIR INVOICES WITHIN SIX MONTHS
23 OF THEIR FINAL RECONCILIATION:

24 The crux of the mistake was adequately set forth in the initial claim, which was reported
25 within the six month time period of the enumeration of the actual costs and damages. Albeit that six
26 months was outside the Government Code’s six month period but within the mistaken six month
27 period Portillo Concrete felt was the beginning of the time period to report. The Staff report claims
28 that all losses were within the initial six month period, but the mistake was the calculation of the
beginning of the time period by the Claimant, nothing else.

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NOTICE TO CLAIMANT’S LEGAL COUNSEL WAS SHORT AND THE DISTRICT
FAILED TO NOTIFY THE CLAIMANT:

Sending an email to Portillo Concrete’s legal counsel less than one week before the Board meeting is inadequate to file a proper response, rearrange a court appearance calendar to properly present an opposition, or even appear at the Board meeting. Interesting it seems a mistake was made in the email notification on behalf of the District, whereby the sender failed to utilize the proper email address for the Claimant. The email addresses the meeting notice were emailed to were: "gwkoehler@gmail.com" which was correct, and the following erroneous email to "mportillo@concreteinc.com," an incorrect email address which was never received by the Claimant. It seems that mistakes indeed do happen, as the email address for Portillo Concrete, as listed clearly on the submitted Claim Form was set forth as: "mportillo@portilloconcreteinc.com." Portillo Concrete’s personnel may have had the opportunity to appear, but are now unable to arrange an appearance on short notice.

Please accept this Supplemental Response submittal as the appearance of the Claimant at the Board meeting and consider the above items as an addition to the initial Request to Submit a Late Claim. No appearances will be able to be made at the November 6, 2024 Board meeting.

Dated: November 5, 2024

The Law Office of Gregory W. Koehler



Gregory W. Koehler, Attorney for
PORTILLO CONCRETE, INC.