

November 7, 2019

W.M. Lyles Company
PO BOX 4377
Fresno, CA 93744

**RE: DESIGN-ASSIST & CONSTRUCTION AGREEMENT – Pleasant Grove
Wastewater Treatment Plant Energy Recovery Project**

At the Roseville City Council meeting of November 6, 2019, the Roseville City Council approved the above referenced agreement between you and the City. Enclosed please find a fully executed agreement and a certified copy of Resolution Number 19-475.

If you have any questions, please contact Senior Engineer Tracie Mueller at 916-774-5688.

SONIA OROZCO, MMC
CITY CLERK

By:



Cary Busterna
City Clerk Technician

cc: Tracie Mueller/ Environmental Utilities

AGREEMENT FOR THE DESIGN-ASSIST AND CONSTRUCTION OF

Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

THIS AGREEMENT, made and entered into in duplicate, on November 6, 2019, by and between the CITY OF ROSEVILLE, a municipal corporation and located in Placer County, CA (hereinafter referred to as "City"), and W.M. Lyles Co. (Lyles) (CSLB License #422390 A and B), doing business as a California corporation hereinafter referred to as "Contractor").

RECITALS

WHEREAS, the City gave published NOTICE TO GENERAL CONTRACTORS requesting Statements of Pre-Qualifications ("SOPQ") to be submitted by April 1, 2019 for consideration by the City to become a Pre-Qualified Contractor approved by the City to submit a Bid Proposal for the design-assist and construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project; and

WHEREAS, Contractor, pursuant to the provisions of said notice requesting Statements of Pre-Qualifications, submitted an SOPQ to the City and such SOPQ is included in this Agreement and made a part hereof as Exhibit A; and

WHEREAS, the City, based on the representations and statements made by Contractor in its SOPQ, approved the Contractor as a Pre-Qualified Contractor which allowed Contractor to submit a Bid Proposal for the design-assist and construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project; and

WHEREAS, the City issued Request for Bid Proposals ("RFBP") to the approved list of Pre-Qualified Contractors to be submitted by July 22, 2019 to allow for the City to determine the best value ranking of all responsive and responsible Proposals using all technical information, required forms, cost information provided by Proposers in the Proposals, and other investigations by the City; and

WHEREAS, the Contractor, pursuant to the requirements of the City's RFBP submitted a Bid Proposal for the design-assist and construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project and such Technical Bid Proposal is included in this Agreement and part hereof as Exhibit B; and

WHEREAS, the City, after an evaluation of all opened Bid Proposals, ranked the Contractor's Bid Proposal as the highest ranked and best value Bid Proposal, and after final negotiations with Contractor, issued a written Notice of Intent to award a Contract to the Contractor on October 31, 2019 for the design-assist and construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project; and

WHEREAS, at a regular meeting of the City Council held on the 6th day of November, 2019 by Resolution 2019-475 the City Council found and declared the Bid Proposal of Contractor to be the highest ranked best value Bid Proposal and thereupon awarded this Agreement to the Contractor for the construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project; and

WHEREAS, the Contractor is ready, willing and able to perform the aforementioned services required in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, the City and Contractor agree as follows:

ARTICLE 1 - DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS

Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine and feminine of the words and terms.

The Contract Documents include the terms "as allowed," "as approved," "as ordered", "as directed" or terms of like effect to authorize an exercise of professional judgment by the City, Construction Manager or Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect are used to describe an action or determination of the City, Construction Manager or Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term is not intended to and shall not be effective to assign to City, Construction Manager or Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority contrary to the other provisions of the Contract Documents.

Specification Section Paragraphs entitled "Section Includes" summarize briefly what is generally included in the section. Requirements of Specifications are not limited by "Section Includes" paragraphs. Specifications and Drawings have been partially streamlined by intentionally omitting words and phrases, such as "the Contractor shall," "in conformity therewith," "shall be" following "as indicated," "a," "an," "the" and "all." Phrase "by City's Representative" or "by Engineer" or "by Construction Manager" modifies words such as "accepted," "directed," "selected," "inspected," and "permitted," when they are unmodified.

Phrase "to City's Representative" or "to Engineer" or "by Construction Manager" modifies words such as "submit," "report," and "satisfactory," when they are unmodified.

Words "Contractor shall" are implied when direction is stated.

Colons (:) are used to introduce a list of particulars, an amplification, or an illustrative quotation:

1. When used after designation of product, colons are used in place of words "shall be."

Whether the term or phrase is capitalized or in all capitals (for example, Contractor or CONTRACTOR) in the Contract Documents shall be deemed to be the same for purposes of the Definitions of Language Used, Words and Terms.

Agreement. This Agreement for design-assist and construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project, its exhibits, all documents incorporated therein, and all amendments and/or modifications hereto executed by the parties concerning the performance of the Work and the furnishing of labor, equipment, materials and incidentals in the construction of the Work. This Agreement supersedes all prior negotiations, representations, and/or agreements, whether written or oral.

Allowance. "Allowance" shall mean an amount of money set aside under the Contract for a special purpose identified and defined in the Contract Documents. See Exhibit D, ALLOWANCES AND ALLOWANCE AMOUNTS.

Applicable Laws. All laws, codes, ordinances, rules and regulations of governmental authorities having jurisdiction over the Site and/or the Work.

Application for Payment. A document prepared by Contractor and submitted to the City showing Contractor's entitlement to payments, the requirements of which are more fully described in Article 12.3, Applications for Payment.

Asbestos. Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

Beneficial Occupancy. Beneficial occupation or "Beneficial Occupancy" is a term that can be used to describe a distinct portion of the Work, that in the City's Representative's opinion, is capable of being used for its intended purpose, even though it may have some minor deficiencies, including outstanding punch list items to complete.

Bid Proposal. The offer of a Proposer to perform the Work pursuant to completed prescribed Bid Proposal requirements and forms, properly executed and guaranteed, and timely submitted.

Bonds: Labor and Material Bond, Performance Bond, and Warranty Bond. The payment bond (Labor and Materials Payment Bond) and Performance Bond issued by an admitted Surety covering the faithful performance and completion of the Work, including payment for all materials and labor furnished or supplied in connection with the Work, by Contractor. The Labor and Material Bond shall be in an amount equal to one hundred percent (100%) of the GMP and shall be for payment of just claims for materials, equipment, labor and subcontractors employed by the Contractor thereon. See Exhibit G, FAITHFUL PERFORMANCE BOND; Exhibit H, LABOR AND MATERIAL PAYMENT BOND; and Exhibit I, WARRANTY BOND.

The Faithful Performance Bond shall be in an amount equal to one hundred percent (100%) of the GMP and shall be for the faithful performance of the Agreement, and for the fulfillment of such other requirements as may be provided by Law.

The Warranty Bond shall be issued by an admitted Surety and be in the penal sum equal to ten percent (10%) of the GMP.

The surety company shall familiarize itself with all of the conditions and provisions of this Agreement, and it waives the right of special notification of any change or modification of this Agreement or of extension of time, or of decreased or increased work, or of the cancellation of the Agreement, or of any other act or acts by the City or its authorized agents under the terms of this Agreement; and failure to so notify the aforesaid surety companies of changes shall not relieve the surety companies of their obligations under this Agreement.

All premiums for the Performance Bond, Labor and Materials Payment Bond, and Warranty Bond shall be included in the Cost of the Work and GMP. The City shall have the right to withhold any payment(s) under this Agreement until Contractor has fully complied with all bonding requirements.

Business Day. "Business Day" means any day when the office of the City Clerk of the City of Roseville is open for business.

Change Order. A document which is signed as recommended by the Construction Manager, accepted by the Contractor, and accepted by an authorized representative of the City, which authorizes an addition, deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price (GMP) or the Contract Time, issued on or after the Effective Date of the Agreement.

City. The word "City" refers to the City of Roseville, the governing body of which is termed the "City Council".

City's Representative. The person(s) designated by the Director of the City's Environmental Utilities Department who has been duly authorized to exercise control and supervision of the Work. A City's Representative generally will be either a professional engineer or architect, depending on the nature of the Work, but is not required to be a professional engineer or architect.

Claim. A demand or assertion by the Contractor seeking an adjustment of the GMP or Contract Times, or both, or other relief with respect to the terms of the Agreement. A demand for money or services by a third party is not a Claim.

Construction Change Directive (CCD). A CCD is a written order prepared by the Construction Manager and signed by the City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract GMP amount or Contract Time.

Construction Manager. The person designated, in writing, by the City to act as its representative at the Site and to perform administrative functions relating to this Agreement. The Construction Manager shall also furnish inspection services as provided by the contract between the Construction Manager and the City. All contact by the Contractor with the City shall be through the Construction Manager; unless otherwise specified or directed. Only the City may modify the Agreement.

Contract Documents. The "Contract Documents" shall consist of the following documents and all documents incorporated therein:

- Request for Bid Proposal (including appendices);
- Agreement (including exhibits A-L attached thereto);
- General Requirements (Division 1);
- Technical Specifications (Divisions 2 through 46);
- Appendices included with Technical Specifications;
- Contract Drawings, prepared by Engineer;
- Addenda issued during the RFBP period; and
- Permits from other agencies specifically required for the performance of the Work as may be required by law.
- City of Roseville's most current version (and Amendments to the current version) of Construction Standards and Design Standards
- Other Referenced Standard Specifications;
- Other Referenced Standard Plans

Exhibits to this Agreement (enumerated as follows):

- Exhibit A - Contractor's SOPQ dated April 1, 2019 excluding the financial statement;
- Exhibit B - Contractor's Technical Bid Proposal dated July 22, 2019 excluding Sections 7 through 11 and the appendices;
- Exhibit C - Guaranteed Maximum Price, Cost of Work and Fees;
- Exhibit D - Allowances and Allowance Amounts;
- Exhibit E - Designation of Subcontractors;
- Exhibit F - Completion Times and Liquidated Damages;
- Exhibit G - Faithful Performance Bond;
- Exhibit H - Labor and Materials Payment Bond;
- Exhibit I - Warranty Bond;
- Exhibit J - Escrow Agreement For Security Deposits In Lieu of Retention;
- Exhibit K - Workers' Compensation Insurance Certification;
- Exhibit L - Contractor's Insurance Certificates;

The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- Notice to Proceed;
- Field Directive(s);
- Change Order(s);
- Construction Change Directive;
- Field Order(s).

There shall be no Contract Documents other than those listed above.

The Contract Documents are complementary; what is called for by any one of the documents is as binding as if called for by all the documents. It is the intent of the Drawings and Specifications to describe the Work to be constructed in accordance with the requirements of the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the requirements of the Contract will be furnished and performed whether or not specifically called for. When words or phrases that have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. The intent of the Drawings specifically includes the intent to depict construction that complies with all applicable laws, codes and standards. Subject to applicable law, including but not limited to California Public Contract Code Section 4100 et seq., and the terms of this Contract governing subcontracting, the Divisions and Sections of the Specifications and identifications of any Drawings shall not control Contractor in dividing the Work among subcontractors or suppliers or delineating the work to be performed by any specific trade.

Reasonably implied parts of the Work shall be performed as "incidental work" even though absent from the Drawings and Specifications. "Incidental" work shall be performed by Contractor and included in the Cost of the Work without an increase in the GMP. Incidental work includes any work not shown on Drawings nor described in Specifications, but which is necessary or normally or customarily required as a part of the Work shown on the Drawings or described in the Specifications to provide a complete installation which is fully connected and tied into the existing facilities and processes and is fully functional and operational. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and expense thereof shall be included in the GMP. Incidental work includes, but is not limited to, tasks required to be performed under Division 1, GENERAL REQUIREMENTS of the Specifications.

The technical specifications are presented in paragraphs for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All paragraphs of the Specifications and Plans are interdependent and applicable to the Work as a whole.

The Specifications and all notes on the Drawings are directed to the Contractor unless otherwise indicated, and all work shall be performed by the Contractor even though phrases such as "the Contractor shall" or "shall be done by the Contractor" are omitted. Where terms such as "approved," "acceptable," "favorably reviewed," "review," "selected," "directed," "equivalent," "equal," or "satisfactory" are used, it shall mean by or to the Construction Manager and/or City's Representative and/or Engineer.

In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:

- (1) Permits from other agencies specifically required for the performance of the Work as may be required by law;
- (2) Supplemental Agreements and Change Orders, the one dated later having the precedence over another dated earlier;
- (3) Agreement;
- (4) General Requirements (Sections 01 11.00 through 01 99 90);
- (5) Technical Specifications (Division 2 and all other Divisions following);
- (6) Contract Drawings;
- (7) City of Roseville's most current version of Construction Standards and Design Standards and Amendments to the Current Version
- (8) Other Referenced Standard Specifications;
- (9) Other Referenced Standard Plans.

With reference to the Drawings, the order of precedence is as follows:

- (1) Addenda/Change Order drawings govern over any other drawings;
- (2) Enumerated dimensions govern over scaled dimensions;

- (3) Detail drawings govern over general drawings; and
- (4) Contract Drawings govern over standard drawings/plans.

The provisions of the Contract Documents shall take precedence over any Laws or Regulations applicable to the performance of the work unless such an interpretation of the provisions of the Contract Documents would result in a violation of such Law or Regulation.

Contract Time. The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Construction Manager's written recommendation of final payment. See Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

Contractor. The individual, partnership, corporation or limited liability company who enters into the Agreement for the performance of the Work. The term "Contractor" means the Contractor or his authorized representative. The term "Contractor" also may include subcontractors, sub-tier subcontractors, consultants, equipment and material suppliers, and their employees.

Contractor's Plant and Equipment. The equipment, material, supplies and all other items, except labor, brought onto the Site by the Contractor to carry out the Work, but not to be incorporated in the Work.

Cost of the Work. Consists of those items of Work, which are paid for by City to Contractor, and consist of those categories of costs set forth as allowable on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE. The "Actual Total Cost of the Work" is the aggregate amount of costs and fee actually chargeable to City under the provisions of Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, up to the GMP.

County. Refers to Placer County where the Site is located.

CPM. A critical path method schedule in the form of precedents, networks, and time sequences.

Days. The word "Days" shall mean calendar days, including legal holidays, Saturdays and Sundays, unless specifically noted otherwise. The day shall be 24 hours measured from midnight to the next midnight.

Defective Work. Defective Work refers to Work that does not meet the requirements of the Contract Documents and has been identified to the Contractor by the Construction Manager in writing because the Work:

- A. Does not meet the requirements of or conform to the Contract Documents; or
- B. Does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- C. Has been damaged prior to Construction Manager's or Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by City as of the Substantial Completion date in accordance with the Contract Documents).

Punch list or other minor corrective items of work that are not in compliance with the Contract Documents do not meet to the definition of "Defective Work" as used in these Contract Documents. For work to be deemed "Defective Work," the Construction Manager must have notified the Contractor in writing of a defective item of the Work.

Engineer. The engineer, architect or specialty design consultant designated by the City to have design control over the Work or a specified portion of the Work, acting either directly or through duly authorized representatives. Such representatives shall act within the scope of the particular duties delegated to them. The Engineer may also furnish inspection services as provided by the Agreement. The Engineer may also

be referred to as the "City's Representative " if the definition is used in an Engineer role and capacity. For the purposes of this Agreement, the Engineer is Brown and Caldwell, Inc.

Direct. Action of the City or Construction Manager by which the Contractor is ordered to perform or refrain from performing work under the Agreement.

Drawings. Also referred to as "Plans." That part of the Contract Documents consisting of the graphical and technical requirements of the Agreement as included on the plan, profile, section and detail sheets, included in a response to Request for Information or any revisions issued by Engineer. Drawings, or reproductions thereof, show the location, character, dimensions and details of the Work to be done. Shop drawings and other Contractor submittals are not Drawings as so defined.

Equipment. (Construction): All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated. (Installation): All material or articles used in equipping a facility or apparatus required to fulfill a functional design.

Execution. Field or site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the Site.

Extra Work. New or unforeseen work, or added work of a different character or function; or that involves revisions of the details of the Work on which Contractor based its GMP. If the extra work increases the Contractor's Cost of the Work and/or time to perform the Work, and is approved by the City via a written Change Order, the GMP and/or Contract Times shall be adjusted as provided in the Contract Documents. Extra Work shall not include Work which is shown, detailed or specified in the Contract Documents or which constitutes "Incidental Work" as defined within the Contract Documents definition above.

Fee. As applicable, means the fee payable to Contractor pursuant to this Agreement and as part of the GMP, as shown on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE.

Field Directive. A change in the scope of the Agreement that does not cause an increase in the Cost of the Work, nor an adjustment to the GMP or the Contract Time(s), unless the Construction Manager determines the Field Directive warrants a Change Order. Also referred to as a "Directive".

Field Order. A written instruction given to the Contractor by Construction Manager authorizing work that is a change to the scope of Work to be performed on a time and material basis or a lump sum cost agreed to between City and the Contractor.

Final Acceptance. Formal approval by City in accepting a portion of the Contractor's work as completed.

Final Completion. The date when the Work is 100% complete, including completion and acceptance of all punch list corrections, as certified by the Construction Manager.

Force Majeure. Force Majeure includes industry wide or nationwide labor dispute (excluding labor shortage), fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming Contractor has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than Contractor or subcontractors), material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the reasonable control of and without the fault or negligence of Contractor. It is expressly agreed that the following matters shall not constitute Force Majeure:

- Lack of or inability to use funds for any reason;
- Any occurrence which results from the wrongful act, or wrongful omission, of the affected party, or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;

- Any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
- An event or circumstance, where the event or circumstance, or its effects on the affected party, or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- Breakdown of Contractor's Equipment;
- Strike or industrial action of Contractor's employees or those of subcontractors; or
- Adverse weather conditions including, without limitation, wet weather, unless the weather is unusually severe for the Site.

Funding Agency or Funding Agencies. A government agency or agencies that the City is in contract with or planning to execute a contract with to obtain construction funds for financing of the Project. For this Project this includes:

- State Water Resources Control Board (SWRCB) including the United States Environmental Protection Agency (USEPA), the State of California and the California Infrastructure and Economic Development Bank that fund and administer the Clean Water State Revolving Fund (CWSRF) Program.
- California Energy Commission (CEC) that fund and administer the Alternative and Renewable Fuel and Vehicle Technology Program.
- Placer County Air Pollution Control District (PCAPCD) that fund and administer the Carl Moyer Program.

Furnish. The word "furnish" when used in connection with services, materials, or equipment, shall mean to supply and deliver specified services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

Guaranteed Maximum Price or "GMP". The amount set forth on Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, hereto, which may be increased or decreased in accordance with the provisions of the Contract Documents.

General Requirements. Division 1, GENERAL REQUIREMENTS, which forms the part of the Contract Documents establishing special conditions or requirements peculiar to the Work.

Hazardous Waste. The term Hazardous Waste shall include the meaning provided in Section 100 of the Solid Waste Disposal Act (42 USC Section 6903 and/or Section 25117 of the California Health and Safety Code) as amended from time to time, or any other hazardous material, hazardous waste, hazardous substance, pollutant, and/or contaminant with requirements under federal, State of California, or local law, statute, regulation, rule, ordinance, order, action, policy or common law.

Herein. Refers to information presented in the Contract Documents.

Hold Harmless. An agreement by one (1) party to indemnify and defend a second party when the second party is sued by a third party as a result of the first party's actions or inactions.

Holidays. The legal holidays as designated by the City including: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

Inspector. Inspector shall mean the person(s), firm(s), or agency(ies) employed by the City to perform inspection during construction of the Work, under the direction of the Construction Manager. It shall also mean any representative of the City who will perform inspections of the Work for code compliance and

quality assurance reporting in addition to those inspections performed by the City's Representative and/or the Engineer. Said inspector may be the Construction Manager or may be another representative of the City.

Install. The word "install" when used in connection with services, materials, or equipment, shall mean to put into use or place in final position the services, materials, or equipment, complete and ready for intended use.

Laws and Regulations; Laws or Regulations. Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or the Work.

Liens. Charges, security interests, or encumbrances upon Project funds, or personal property.

Liquidated Damages. The amount of dollars assessed for each and every calendar day required to complete the Agreement in excess of the Contract Time. See Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

May. "May," wherever or in whatever manner used, refers to permissive actions.

Milestone. An event specified in the Contract Documents relating to an intermediate completion date or time prior to Final Completion of all the work.

Notice of Completion. Formal action taken by the City in determining that the Contractor's Work has been completed, or as delegated pursuant to a City Council resolution, accepting the Work as fully completed. The written notice is signed by the City and filed with the County Recorder.

Notice to Proceed. A written notice given by the City to the Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

Or Equal. Any product, equipment, material, thing, service, mean/method or service which is proposed by the Contractor for use in the Work, which is equal to or better than, and is as suitable as the product, equipment, material, thing, service, mean/method or service specified in the Contract Documents as to function, performance, reliability, quality, schedule and general configuration. Any "or equal" substitutions must be approved by the City.

Paragraph. For reference or citation purposes, a paragraph shall refer to the paragraph, or paragraphs, called out by paragraph number and alphanumeric designator.

Party. The City or the Contractor individually, and "Parties" shall mean the City and the Contractor collectively.

Perform. Refer to "Provide."

Person. The term, "person", includes firms, companies, corporations and partnerships.

Plans. See "Drawings."

Preconstruction Services. Work performed prior to the issuance of first Drawing(s) for construction to the Contractor, which shall initiate the start of construction services.

Prejudiced. As used herein, the term "Prejudiced" shall include, but is not limited to, material interference with the City's timely consideration of action to prevent increases in the cost or time required to perform the

Work, ability to monitor the Contractor's increased costs resulting from the situation, to timely marshal facts, and to timely plan its affairs.

Product Data. Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts, and other information assembled by or for the Contractor and submitted by the Contractor to illustrate materials or equipment for some portion of the Work.

Products. Materials, equipment, systems, shop fabrications, mixtures, and source controls.

Progress Schedule. A schedule, prepared and maintained by the Contractor, describing the sequence and duration of the activities comprising of the Contractor's plan to accomplish the Work within the Contract Times.

Project. The design-assist and construction of the Pleasant Grove Wastewater Treatment Plant (PGWWTP) Energy Recovery Project (ERP), together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as required thereby or reasonably inferred therefrom.

Proposer. Any individual, firm, partnership, corporation or limited liability company, submitting a Bid Proposal for the Work contemplated, acting directly or through a duly authorized representative.

Provide. The words "provide" or "perform," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in context clearly requiring an obligation of Contractor, "provide" is implied.

Punch List. Those minor items of work to be completed after Substantial Completion and prior to Final Completion, which do not prevent others from taking over defined areas of the Work to complete the Project.

Reference Specifications. Those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents.

Request for Information. Also referred to as "Request for Clarification". A Request for Information (RFI) is issued by the Contractor to the Construction Manager requesting additional information necessary to clarify or amplify an item in the Contract Documents that the Contractor believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems which have arisen under field conditions. A RFI is not to be used for request for materials/equipment substitutions or value engineering/cost reduction incentive proposals.

Request for Quotation. A request for a proposed cost made to the Contractor by the City to add, delete or change the Work. A Request for Quote (RFQ) shall not be deemed to be a direction to proceed with any addition, deletion or change to the Work.

Samples. Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

Separate Contractors. Those individuals or entities (including, but not limited to, concessionaires) who have entered into arrangements with City for the provision of labor, materials or other services in connection with the Project or other projects. The terms "Others" or "Expansion Project Contractor" or "EP Contractor" may also be used to indicate "Separate Contractors".

Shall or Will. Refers to actions entered into by the Contractor or the City as a covenant with the other party to do or to perform the action.

Shop Drawings (Submittals). Shop drawings (submittals) are drawings, diagrams, illustrations, schedules, performance charts, instructions, brochures, and other data which are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the Work.

Shown. Refers to information presented on the drawings, with or without reference to the drawings.

Site. Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

Specifications. That part of the Contract Documents consisting of written descriptions of the technical features of materials, equipment, construction systems, standards, and workmanship.

Specify. Refers to information described, shown, noted or presented in any manner in any part of the Agreement.

State. State of California.

State of California Specifications. The State of California Department of Transportation Standard Specifications in effect as documented in the Specifications and/or Drawings. Also referred to as State Standard Specifications and Caltrans Standard Specifications.

Subcontractor. An individual or entity who has entered into an agreement with Contractor or another subcontractor for the provision of labor, materials or other services required to be performed by Contractor under the Contract Documents. The term subcontractor does not include any separate contractor or any separate contractor's subcontractors.

Submittals. The information which is specified for submission to the Construction Manager in accordance with the Contract Documents.

Substantial Completion. Sufficient completion of the Project or the portion thereof to permit a utilization of the Project. Determination of Substantial Completion is solely at the discretion of the City. Substantial Completion does not mean complete in accordance with the Agreement nor shall Substantial Completion of all or any part of the Project entitle the Contractor to Final Completion under the Agreement.

Substantial Completion Date. Date when the City puts into service, the Project or that portion of the Project that has been determined to be Substantially Complete.

Sub-subcontractor. A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform any of the Work associated with the Project. The term sub-subcontractor means a sub-subcontractor or an authorized representative thereof, also referred to as sub-tier-subcontractor.

Supplier. A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any subcontractor.

Surety. One or more issuers of the Labor and Material Payment, Faithful Performance, and Warranty Bonds, each of which shall be admitted and licensed to do business in the State of California.

Surveyor. A land surveyor licensed in the State of California.

Trade Names. Where a certain product is called by its Trade Name, it is intended as a guide for type and quality.

Typical Details. Details of standard structures, devices or instructions referred to on the Plans and Specifications by title or number and developed by the Engineer.

Underground Facilities. All underground pipelines, including but not limited to, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electrical, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

Unit Price Work. Work to be paid for on the basis of unit prices.

Utility. Public or private fixed works for, including but not limited to, the transportation of fluids, gasses, power, signals, or communications.

Work. Any and all direct and/or incidental obligations, duties, and responsibilities necessary to complete the design-assist and construction assigned to, or undertaken by, the Contractor pursuant to the Contract Documents including all labor necessary to produce such construction and all materials, equipment, and supplies incorporated or to be incorporated in the construction. Also, the completed construction or parts thereof required to be provided under the Contract Documents to provide a complete installation which is fully connected and tied into the existing facilities and processes and is fully integrated, functional and operational.

Work Day. A working day is defined as any day, except Saturdays, Sundays and City's Legal Holidays. Any work scheduled by the Contractor on non-working days (Saturdays, Sundays, and City Legal Holidays) shall be verified with the City at least 72 hours in advance. Depending on the circumstances, the City may request Contractor compensation for inspection work, at an hourly rate, for any work performed on non-working days and for overtime.

Work Site. Any and all areas where Work is to be performed by Contractor as required in the Contract Documents with particular emphasis of Work performed at or adjacent to the City's Pleasant Grove Wastewater Treatment Plant located at 5051 Westpark Dr. Roseville, CA 95747.

ARTICLE 2 - SCOPE OF WORK

The City, in conjunction with its Engineer and other consultants, developed the Design-Assist and Construction of the Pleasant Grove Wastewater Treatment Plant Energy Recovery Project Contract Documents. The Contract Documents include the RFBP, this Agreement, Drawings, Specifications, and supplemental information to present the City's Final Design Submittal and timeline to meet the City's needs at the City's Pleasant Grove Wastewater Treatment Plant for this Project.

The Work includes but is not limited to construction of a new compressed natural gas (CNG) fueling station to fuel the City's solid waste garbage truck fleet including all the compressors, dispensers, high pressure storage, and fuel management systems required for a fully operational fast-fill station, biogas upgrading system to treat the City's digester gas (from anaerobic digesters constructed as part of the PGWWTP Expansion Project) to meet CNG engine fuel quality requirements, a microturbine cogeneration facility to use a blend of biogas-upgrading tail gas and natural gas to produce electricity and heat, and a high strength waste receiving station to allow for offloading of trucked material to be fed to the PGWWTP anaerobic digesters. The Work also includes all interconnecting and associated yard piping, electrical and instrumentation duct banks, and all other miscellaneous improvements in support of the Project, including asset management, start up and testing to provide a complete, integrated and operational system as specified and shown within these Contract Documents.

Based on the Final Design Submittal, and in accordance with the Contract Documents, the Contractor will work with the City, Engineer, Construction Manager and possibly other personnel that have regulatory and/or funding authority and as a Design Assist Team member and complete the following design assist activities:

- Conduct a constructability review of the Final Design Submittal Drawings and Specifications, and submit comments and identified mitigation solutions to the City.
- Identify cost savings and added value alternative design/construction solutions, and submit to the City for evaluation.
- Develop detailed cost estimates for identified alternatives when requested by City for the City's evaluation.
- Identify construction sequencing and the impacts of the identified alternatives on the sequencing.
- Develop a detailed schedule and the impacts of the identified alternatives on the schedule.
- Participate in a cooperative partnership relationship with City, Engineer, and Construction Manager to develop a comprehensive construction plan to address project risk and minimize existing facility disruptions.
- Participate in up to twelve (12) Final Design Coordination Meetings lasting up to four (4) hours each to present and work collaboratively to allow for issuance of the Project Drawings and Specifications for construction.

Note that the Engineer is the entity professionally responsible for the design of the Project. City acknowledges that Contractor is a general contractor and not an architect or engineer. Except with respect to any subcontractors of Contractor providing architectural or engineering services for the Project as design-build work, the Contractor's review of or input for any design documents, or Contractor's recommendation for any design concepts, is made solely in Contractor's capacity as a licensed contractor and not as a licensed design professional. Contractor is not responsible for any errors in the Engineer's design or failure of the design to comply with applicable laws, codes, rules and regulations, or lawful orders of public authorities. However, if Contractor observes any such nonconformity or errors it shall promptly notify City's Representative and the Engineer.

The City is working with the SWRCB to obtain CWSRF Program Project funding, and has already obtained funding from CEC and PCAPCD. Compliance with the Funding Agencies requirements contained within the Contract Documents RFBP and Specifications is required as part of the Contractor's Scope of Work. Whether listed or not in the Contract Documents, the Contractor shall meet the Funding Agencies requirements and cooperate in partnership with the City and Engineer as required to obtain grant and/or loan funding and payments.

In accordance with the timeline found in See Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, the Contractor will commence construction at the Site of the Work on portions of the Work based on partial Construction Documents, provided these documents have been approved by the City and the Engineer. The Contractor shall provide all supervision, testing, construction, equipment, labor, materials, tools, subcontractors and services to complete the construction within the Contract Times listed in See Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

The Contractor is solely responsible for the proper handling, storage, installation, testing and demonstration; all in accordance with the Contract Documents and each manufacturer's recommendations/instructions. Failure to meet any performance requirement due to improper handling, storage, installation, testing or demonstrating will be corrected by the Contractor without an increase to the GMP.

ARTICLE 3 – CITY’S REPRESENTATIVE AND CITY’S CONSULTANTS

3.1 City’s Representative. The City’s Director of the Environmental Utilities Department has designated Tracie Mueller to act as the City’s Representative. The City may change the individual(s) acting as the City’s Representative(s), or delegate one or more specific functions to one or more specific City’s Representative at any time without notice and without liability to Contractor. Each City’s Representative is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

3.2 Engineer. The City has designated Brown and Caldwell to act as the Engineer. The City may assign all or part of the City’s Representative’s duties, rights and responsibilities to the Engineer. The Engineer is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

3.3 Construction Manager. The City has designated Brown and Caldwell to act as Construction Manager. The City may assign all or part of the City’s Representative’s duties, rights and responsibilities to the Construction Manager. The Construction Manager is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

3.4 Construction Consultant. The City may retain, a Construction Consultant(s) as it deems necessary to assist/advise the City staff and/or other City consultants during the progress of the Work. Any Construction Consultant retained by City for this Project will not have any formal contract administration responsibilities. The Construction Consultant(s) is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.

ARTICLE 4 - CONTRACTOR’S REPRESENTATIONS

4.1 Representations and Warranties. In order to induce the City to enter into this Agreement, Contractor makes the following representations and warranties:

- A. Contractor has visited the Site, has observed, familiarized itself with and understands the nature and extent of the Contract Documents, Work, Site, locality, actual conditions apparent upon reasonable observation, visible as-built conditions, and local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- B. Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents in its capacity as a contractor and not as an architect or engineer.
- C. Contractor has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and record drawings and actual conditions in its capacity as a contractor and not as an architect or engineer.
- D. Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California, including, but not limited to, maintaining in good standing its Contractor’s license issued by the State of California.
- E. Contractor has represented to the City that it has significant knowledge and experience and the requisite expertise, skills, labor, equipment, capabilities and all other necessary resources required to perform the Work.

- F. Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

The failure or neglect of Contractor to receive or examine any of the Contract Documents shall in no way relieve it from any obligation with respect to the Contract, and no claim for additional compensation or time will be allowed which is based upon a lack of knowledge of any Contract Documents.

Moreover, the Contractor acknowledges that its observation of the Site prior to the execution of the Agreement has provided information related to existing conditions, as described in paragraph 4.1.A, above, which may affect cost, progress or performance of the Work. Contractor further acknowledges and agrees that, in executing the Agreement, it is relying on its own observation of (1) the Site of the Work, (2) access to the Site, (3) all other data and matters requisite to the fulfillment of the Work and on its own knowledge of existing facilities on and in the vicinity of the Site of the Work to be constructed under the Agreement, (4) the conditions to be encountered, (5) the character, quality and scope of the proposed Work, (6) the quality and quantity of the materials to be furnished, and (7) the requirements of the Contract Documents, and other related information made available to Contractor by the City.

4.2 Supplementary Information. The Contractor hereby acknowledges that, prior to the execution of the Agreement, City has furnished the following Supplementary Information. These Supplementary Information documents are not part of the Contract Documents.

- Geotechnical Report for Pleasant Grove WWTP Cogeneration Facility, Roseville, California dated April 2017 prepared by Blackburn Consulting
- Placer County Air Pollution Control District Carl Moyer Grant Agreement Contract No. SCN101486 for the PGWWTP ERP
- California Energy Commission Grant Agreement Exhibit A – Scope of Work for the PGWWTP ERP
- California Energy Commission Grant Agreement Exhibit C – Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP) Terms and Conditions
- California Energy Commission Budget Forms Template
- Pleasant Grove Wastewater Treatment Plant Topographic Survey, dated December 2016, prepared by KSN, Inc.

ARTICLE 5 - CONTRACT ADMINISTRATION

5.1 Administration of the Contract

The City's Representative and the Construction Manager will provide administration of the Agreement as hereinafter described. If the status of any of the above parties should change, the City will provide written notice to the Contractor of such change.

5.2 City's Representative

5.2.1 General – The City's Representative has the authority to act on behalf of the City on change orders, field orders, progress payments, Contract Decisions, acceptability of the Contractor's work, and early possession.

5.2.2 Change Orders – The City's Representative has the authority to accept or reject change orders and cost proposals submitted by the Contractor or as recommended by the Construction Manager.

5.2.3 Progress Payments – The City's Representative has the authority to accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Construction Manager.

5.2.4 Contract Decisions – Should the Contractor disagree with the Construction Manager's decision with respect to the Agreement, the Contractor may appeal to the City's Representative in accordance with the provisions of the Agreement.

5.2.5 Acceptability of Work – The City's Representative has the authority to make the final determination of the acceptability of the Work.

5.3 Construction Manager

5.3.1 General - The Construction Manager is a representative of the City employed to act as advisor and consultant to the City in construction matters related to the Agreement. The term Construction Manager may include more than one individual to perform contract administration and construction observation. Hereinafter, the term Construction Manager includes any and all representatives working under the direction of the Construction Manager.

All instructions to the Contractor and all communications from the Contractor to the City or the City's Representative shall be forwarded through the Construction Manager. The Construction Manager will have authority to act on behalf of the City only to the extent provided in the Contract Documents. The City has delegated its authority to the Construction Manager to make initial decisions regarding questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work. The Construction Manager shall make initial decisions with respect to the Contractor's fulfillment of the Agreement and the Contractor's entitlement to compensation. The Contractor shall look initially to the Construction Manager in matters relating to the Agreement.

The Construction Manager's authority to act under ARTICLE 5, CONTRACT ADMINISTRATION, herein, and any decision made by it in good faith either to exercise or not to exercise such authority, shall not be interpreted or construed as control of or responsibility for any of the Work performed under this Agreement.

5.3.2 On-Site Representative - The Construction Manager will observe the progress, quality, and quantity of the Work to determine, in general, if the Work is proceeding in accordance with the provisions of the Contract Documents. The Construction Manager shall not be responsible for the superintendence of the construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor's personnel; or for safety practices or unsafe practices, precautions, and programs in connection with the Work.

In accordance with the provisions of these Contract Documents, the Construction Manager will make decisions relative to all matters of interpretation or execution of the Contract Documents.

5.3.3 Observation and Inspections of Construction - The Construction Manager shall observe the construction and shall have the authority to reject work and materials which do not conform to the Contract Documents, and to require special inspection or testing. Observation and inspection by the Construction Manager or an inspector is not an authorization to revoke, alter, or waive any requirements of the Specifications. Observation and inspection is the authorization to call the attention of the Contractor to any failure of the Work, materials or workmanship to conform to the Contract Documents. The Construction Manager shall have this authority including the ability to reject materials or, in any emergency, suspend the Work. The Contractor may appeal any such issue which it disagrees with to the Construction Manager for decision. If the decision of the Construction Manager is not satisfactory to the Contractor, the Contractor may appeal such decision to the City's Representative.

5.3.4 Acceptability of the Work - The Construction Manager has the authority to make a recommendation as to the acceptability of the Work.

5.3.5 Change Orders - The Construction Manager has the authority to initiate change orders; to

reject change orders proposed by the Contractor; to negotiate and recommend acceptance of change orders to the City; or to order minor changes in the Work that result in no cost to the City.

5.3.6 Construction Schedule - The Construction Manager has the authority to review and recommend acceptance of the progress schedule submitted by the Contractor at the start of the Work and subsequent significant revisions for conformance to the specified sequence of Work and logic.

5.3.7 Progress Payments - The Construction Manager has the authority to recommend acceptance or rejection of requests for progress payments which have been submitted by the Contractor.

5.3.8 Final Payment - The Construction Manager, with the assistance of the City's Representative and the Engineer, will conduct inspections to determine the date of Final Completion of the Work, and the Construction Manager will receive and forward to the City, for the City's review, written warranties and related documents required by the Agreement and assembled by the Contractor.

5.3.9 Contract Interpretation by the Construction Manager – Notwithstanding any omission from the Specifications or the Drawings it shall be the duty of the Contractor to call the Construction Manager's attention to apparent errors or omissions upon discovery by the Contractor and request instructions in writing before proceeding with the Work. The Contractor shall not unreasonably take advantage of any errors or omissions found by Contractor. If the Contractor discovers any errors or omissions that it believes affect the time or cost of performing the Work, it shall be entitled to request a Change Order. Contractor shall promptly notify the Construction Manager in writing of any design, materials, or specified method that the Contractor identifies as defective or insufficient, provided, however, that in doing so Contractor will be acting in its capacity as a contractor and not an architect or engineer, and that this section does not affect City's responsibility with regard to the Contract Documents. The Construction Manager may, by appropriate written instructions, correct errors and supply omitted information, which instructions shall be as binding upon the Contractor as though contained in the original Specifications or Drawings when incorporated into Change Orders. Such instructions shall be incorporated into the Agreement in accordance with the Change Order provisions of the Agreement.

Any discrepancies discovered by the Contractor between the Contract Documents and Site conditions or any inconsistencies or ambiguities in the Contract Documents shall be promptly reported, in writing, to the Construction Manager. Questions regarding the meaning and intent of the Contract Documents shall be referred in writing by the Contractor to the Construction Manager with a Request for Information (RFI). RFI procedures are further described in Section 01 33 50, REQUESTS FOR INFORMATION AND CLARIFICATIONS.

Work done by the Contractor after its discovery of such errors, omissions, discrepancies, inconsistencies or ambiguities without such notice and prior to response from the Construction Manager shall be done at the Contractor's risk and shall not be reimbursed as a Cost of the Work, nor be a basis for an increase in the GMP.

5.4 Engineer

5.4.1 General – The Engineer will have the authority to act on behalf of the City only to the extent provided in the Contract Documents. The Engineer shall not be responsible or have authority for the superintendence of construction site conditions; construction means, methods, appliances techniques, sequences, or procedures; operation of equipment; Contractor's personnel; or for safety practices or unsafe practices; precautions and programs in connection with the Work; or for any failure of the Contractor to comply with laws, regulations, rules, ordinances, codes, or orders applicable to the Contractor furnishing and performing the Work.

5.4.2 Interpretations - The Engineer has the authority to be the initial interpreter of the technical requirements of the Contract Documents. Either party to the Agreement may make written request to the Construction Manager for interpretations necessary for the proper execution or progress of the Work. The

Construction Manager shall refer such written requests to the Engineer, who will render such interpretations. Where the Contractor has requested an interpretation from the Construction Manager, or been notified by the Construction Manager that such interpretation has been requested by the City, any work done before receipt of such interpretations, if not in accordance with same, shall be removed and replaced or adjusted as directed by the Construction Manager without additional expense to City and shall not be reimbursed as a Cost of the Work, or be a basis for an increase in the GMP.

5.4.3 Acceptability of the Work – The Engineer has the authority to make a recommendation as to the acceptability of the Work. The Engineer has the authority to recommend acceptance regarding the remediation or retention of Defective Work.

5.4.4 Submittal – The Engineer shall receive, through the Construction Manager, shop drawings, product data and samples for review in accordance with Section 01 33 00, SUBMITTAL PROCEDURES.

The Engineer has the authority to review and take other appropriate action upon the Contractor's submittal such as shop drawings, product data and samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents.

ARTICLE 6 - CITY

6.1 General

The City, acting through the City's Representative or the Construction Manager, shall have the authority to act as the sole judge of the Work and materials with respect to both quantity, quality function, performance and reliability as set forth in the Agreement except as delegated to the Construction Manager in these Contract Documents.

6.2 Attention to Work

The City's Representative, Construction Manager and Engineer are designated in ARTICLE 3 herein. The Construction Manager will normally be available at the Site of the Work. An alternate Construction Manager representative will be designated when the designated Construction Manager's representative is not available at the Site of the Work. The Engineer may be available at the Site of the Work at certain specific times as needed to facilitate the Work. If the Contractor requires assistance from the Engineer, this assistance shall be coordinated through the Construction Manager. The Engineer will assign a representative to be available at the Site of the Work during the said specific times as needed.

6.3 Observation and Inspection

In addition to the Construction Manager's designated representative, the City may provide one or more inspectors to the Construction Manager to observe the Work and with the same authority as provided for in Article 5.3.3, Observation and Inspections of Construction.

Separate and independent from the observations and inspections above, the Work may be inspected by Building Officials, Fire Officials, Roseville Electric and/or Pacific Gas and Electric for code compliance. Such inspectors shall have the authority provided to them by their jurisdiction. Any design deficiencies or additional work required by these code inspections not required by the Contract Documents may be incorporated into the Work in accordance with the Change Order provisions of the Agreement.

6.4 City's Right to Use or Occupy

The City reserves the right, prior to Final Completion, to occupy, or use, any completed part or parts of the Work, providing these areas have been approved for occupancy by the City. The exercise of this right shall in no way constitute a Final Acceptance of such parts, or any part of the Work, nor shall it in anyway affect the dates and times when progress payments shall become due from the City to the Contractor or in any

way prejudice the City's rights in the Agreement, or any bonds guaranteeing the same. The Agreement shall be deemed completed only when all the Work contracted has been duly and properly performed and accepted by the City.

Prior to such occupancy or use, the City and Contractor shall agree in writing regarding the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

In exercising the right to occupy or use completed parts of the Work prior to the Final Acceptance thereof, the City shall not make any use which will materially increase the cost to the Contractor, without increasing the GMP, nor materially delay the completion of the Agreement, without extending the time for completion.

The part or parts of the Work, if any, which the City anticipates the use or occupancy of prior to Final Completion are noted in Section 01 12 16, WORK SEQUENCE. Failure to include a part of the Work in the above referenced Section, shall not limit the City's right to use or occupy parts of the Work not listed.

6.5 City's Right to Carry Out the Work

If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents or fail to perform any provision of the Agreement, and fails within seven (7) days after receipt of written notice from the City to commence and continue correction of such neglect or deficiency with diligence and promptness, the City may, and without prejudice to any other remedy, make good such default, neglect or failure. A Change Order shall be issued unilaterally deducting from the payments then or thereafter due the Contractor, for the cost of correcting such deficiencies and for performing such work, including compensation for the Engineer's, the Construction Manager's, and City's additional services made necessary by such default, neglect or failure.

The City also reserves the right to perform and suspend any portion of the Work due to an emergency threatening the safety of the Work, public, City, and any property or equipment. No deductive Change Order shall be issued for an emergency not caused by Contractor.

6.6 City's Right to Perform Work and to Award Separate Contracts

The City reserves the right to perform work related to the Project with the City's own forces, and to award separate contracts in connection with the Project or other work on the Site. If the Contractor claims that delay, damage, or additional cost is involved because of such action by the City, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

When separate agreements are awarded for different portions of the Project or other work on the Site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate Agreement.

The City will provide for the coordination of the work of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Article 7.10, Cooperation with Other Contractors.

6.7 Non-Responsibility of the City

The City shall not be held responsible for the care or protection of any material or parts of the Work prior to the Final Acceptance, except as expressly provided in the Contract Documents.

ARTICLE 7 - CONTRACTOR

7.1 Status of Contractor and Subcontractors

7.1.1 Contractor – It is stipulated and agreed that the Contractor shall be an independent contractor in the performance of this Agreement and shall have complete charge of persons engaged in performance of the Work. The Contractor shall perform the Work in accordance with its own means, methods, and appliances subject to compliance with the requirements of the Agreement.

7.1.2 Subcontractors – If any part of the Work to be done under this Agreement is subcontracted, the subcontract shall be in writing and shall provide that all Work to be performed thereunder shall be performed in accordance with the terms of the Contract Documents. The subcontracting of any or all of the Work to be done will in no way relieve the Contractor of any part of its responsibility under the Agreement. Subcontractors will not be recognized as having a direct relationship with the City. The persons engaged in the Work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the Agreement. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the City or the Construction Manager shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

The Contractor shall only employ subcontractors that are properly licensed in accordance with State law and are registered with the California Department of Industrial Relations (DIR).

Prior to commencement of any work by a subcontractor, the Contractor shall submit to the Construction Manager:

- A. Verification that the subcontractor is properly licensed for the work it will perform.
- B. Upon City's request, copies of subcontract agreements.
- C. Copies of subcontractor's insurance certificates and endorsements.

7.2 Contractor's Representative

The Contractor shall provide in writing, a request to the City to delegate authority to an individual to serve in the capacity of authorized representative and shall wait to receive written confirmation from the City, before the authorized representative can start work. The authorized representative shall be qualified for the duties required and have complete authority to represent and to act for the Contractor. Said authorized representative has the authority to act in matters relating to the Agreement, and shall be personally present at the Site at all times while work is actually in progress on the Agreement. During periods when the Work is suspended, arrangements acceptable to the Construction Manager shall be made for any emergency work that may be required. The Contractor's authorized representative shall be fluent and proficient in the English language in order to understand, receive, and carry out oral and written communications or instructions relating to all job functions and responsibilities. All communications to and from the Contractor's authorized representative shall be binding as if given to or by the Contractor.

Contractor shall provide its authorized representative's contact information which shall include the representative's name, office street address, office telephone number, mobile phone number, home phone number, email address and the office mailing address if different from the street address.

The Contractor's authorized representative shall give its personal attention to and shall supervise the Work to the end that it shall at all reasonable times be prosecuted faithfully; and when the authorized representative is not personally present on the Work, the representative shall at all reasonable times be represented by a competent designated alternate, superintendent or foreman (approved in writing by the City, to act in this capacity) who shall receive and obey all instructions or orders given under this Agreement, and who shall have full authority to supply materials, tools, and labor without delay, and who shall be the legally appointed representative of the Contractor. The Contractor shall be liable for the faithful observation of any instructions delivered to the Contractor or to its authorized representative.

The Contractor's authorized representative shall not be replaced by a person to whom City has a reasonable objection. Furthermore, the City shall have the authority to remove the Contractor's authorized representative from the Project for reasons found in Article 8.3, Character of Workers.

7.3 Use and Protection of City's Site and Adjacent Property

7.3.1 With the approval of the Construction Manager, the Contractor may use designated portions of the City's Site for storage of construction equipment, materials and field offices provided the Contractor does not interfere with City's operations. The Contractor will not be allowed to unreasonably encumber the Site or adjacent areas with its materials and/or equipment. The City will not accept any responsibility for damage to or loss of the Contractor's equipment or materials stored on any Project related site caused by vandalism, nature, or otherwise, suffered by the Contractor. Protection of all construction equipment, stores, and supplies shall be the sole responsibility of the Contractor. Where additional work space is desired by the Contractor or where the City cannot provide the space to the Contractor, it shall be the Contractor's sole responsibility and expense to obtain such a space for its use.

7.3.2 All workers or representatives of the Contractor, subcontractors or suppliers are admitted to the Site only for the proper execution of the Work and have no tenancy without the express written permission of the City. Furthermore, no persons may occupy property owned by the City outside the limit of the Work, as indicated on the Drawings, without the express written permission of the City.

7.3.3 The Contractor shall enforce any instructions from the City or Construction Manager regarding combustible materials, placement of signs, danger signals, barricades, radios, noise, dust, and smoking. Upon completion of the Work, the Contractor shall remove all temporary barricades, signs and related materials.

7.3.4 The Contractor shall determine safe loading capacities and shall not overload any structure, building, pipe or other existing facility beyond its safe capacity during construction. In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin and protect as may be necessary all foundations and other parts of all existing structures, facilities and improvements on the Site or adjacent to the Site which are in any way affected by the Contractor's excavations or other operations connected with the Work. Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, the Contractor shall notify the Construction Manager to discuss responsibilities for properly notifying the owners/occupants of adjacent land and the protective measures taken by the Contractor. Upon request of the Construction Manager, the Contractor shall meet with the recipient of any notice or attend local public meetings as proper public outreach on local impacts caused by completion of the Work should be communicated to any parties that may be affected prior to commencing any work.

7.3.5 The Contractor shall take all necessary precautions to protect existing facilities on which Contractor is performing Work against the effects of weather and environmental elements.

7.3.6 All existing improvements and facilities shall be protected from any damage resulting from the operations, equipment or workers of the Contractor during the entire Contract Time.

7.3.7 The Contractor shall take all steps necessary to protect all structures, buildings, land and other facilities from fires and sparks originating from the Work. The Contractor shall comply with all laws and regulations regarding fire protection and shall comply with all instructions given by the City's fire department.

7.3.8 Any damage to existing conditions, or to any other improvement or property above or below the ground surface, whether public or private, arising from the Contractor's operations or performance of the Work shall be repaired within forty-eight (48) hours by the Contractor without expense to the City, unless disruption of the City's operations or creation of a safety hazard has occurred, in which case damage will be repaired immediately. The forty-eight (48) hour non-emergency repair response time may be extended

only if agreed to in writing by the City and/or private property owner. Any delays to the Project completion times caused by such repairs shall be considered non-compensable and no further extension of the Contract Time will be granted therefor. Should the Contractor not be timely in repairing damage caused by its operations or performance, the City shall take steps to protect against loss of property and life, in its sole discretion, and deduct entire cost of such Work from the next payment due the Contractor. No prior notice to the Contractor shall be necessary for the City to take such action.

7.3.9 The Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform construction services efficiently, safely and without interfering with the use of adjacent land areas, and as further stipulated in the Contract Documents. When the Work is Substantially Complete, or a portion of the Work has been completed, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use. Contractor shall provide a finished cleaning of all areas acceptable to the City before releasing any area to the City for occupancy.

7.4 Fees and Permits

The permit requirements for the Project are specified in Section 01 35 43, ENVIRONMENTAL PROCEDURES.

7.5 Compliance with Laws

The City is a municipal corporation in the State of California and is subject to the applicable provisions of law relating to public contracts as a Charter City. It is agreed that all provisions of law applicable to public contracts are a part of these Contract Documents to the same extent as though set forth herein and will be complied with by Contractor.

The Contractor, shall at its own cost and expense, observe and keep itself and its subcontractors fully informed of all existing and future legislated State and Federal Laws and City and County ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials and equipment used in the Work, or which in any way affect the conduct of the Work, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or in any other part of this Agreement, in relation to any such law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Construction Manager in writing. The Contractor shall at all times observe and comply with all existing laws, ordinances, regulations, orders and decrees; and shall protect, indemnify, and defend the City, the Construction Manager, the Engineer, the Funding Agencies and all of their officers, officials, employees, agents, volunteers, and servants against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor itself, employees, or its subcontractors.

Attention is directed to the following specific regulations and requirements that are included in the Contract Documents. This list of regulations is not warranted to be complete and the burden of ascertaining legal requirements that must be satisfied shall rest solely with the Contractor.

7.5.1 Davis-Bacon Wages- Pursuant to State Water Resources Control Board (SWRCB) Division of Financial Assistance Guidelines for Clean Water State Revolving Fund (CWSRF), the successful bidder must comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemental by Department of Labor regulations (29 CFR Part 5) it shall be mandatory upon the Contractor to whom the Work is awarded and upon any subcontractor under the Contractor to pay not less than Davis-Bacon wage rates. The Davis-Bacon requirements and rate determination is included within the RFBP APPENDIX A. The rate determinations may also be found on the Department of Labor's website at: <http://www.wdol.gov/dba.aspx>. It shall be mandatory upon the Contractor to whom the work is awarded and upon any subcontractor under the Contractor to pay not less than said specified rates or Davis-Bacon wage rates, whichever is higher, to all workmen employed by them in the execution of the Agreement.

7.5.2 Prevailing Wage Rates – This Agreement is subject to prevailing wage requirements pursuant to Section 1770 et seq. of the California Labor Code, which are hereby incorporated by reference and made a part hereof. Accordingly, Contractor shall comply with all applicable laws and regulations related to payment of prevailing wages and Contractor shall ensure that every lower-tier subcontractor complies with all applicable laws and regulations related to payment of prevailing wages. The Contractor and every lower-tier subcontractor shall pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. The Contractor and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically as required by the DIR and City, and via hard copy to the Construction Manager. Contractor is responsible for compliance with all prevailing wage requirements, and shall include these requirements in every subcontract. This Agreement is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

7.5.3 DIR Registration- California Labor Code section 1725.5 requires the Contractor and all lower-tier subcontractors performing public works services to be currently registered with the California DIR, as specified in California Labor Code section 1725.5. California Labor Code section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. The Contractor shall list the Contractor's current DIR registration number, and the current DIR registration number of all subcontractors, as part of its Bid Proposal.

Further information can be found on DIR's website at <http://www.dir.ca.gov/Public-Works/Contractors.html>. The above summary is provided solely for informational purposes, and does not in any way affect the Contractor's and subcontractors' obligation to comply in all respects with all other applicable laws and regulations. The Contractor shall disseminate these provisions to every lower-tier subcontractor.

7.5.4 Apprentices on Public Work Projects- The Contractor and any subcontractor or subconsultant shall comply with California Labor Code section 1777.5 et seq., and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. Contractor and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7. Please refer to the link below for guidance in meeting your obligation to satisfy the apprentice requirements for this Project: <https://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>.

7.5.5 Contractor Agrees to the Following:

7.5.5.1 The Contractor and subcontractors shall pay all mechanics and laborers employed directly on the Site of the Work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics.

7.5.5.2 The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the Site of the Work.

7.5.5.3 There may be withheld from the Contractor so much of accrued payments as the City considers necessary to pay to laborers and mechanics employed by Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the Work and the rates of wages received by the laborers and mechanics and not refunded to Contractor or subcontractors or their agents.

7.5.6 Travel and Subsistence Payments – Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Section 1773.1 of the California Labor Code.

7.5.7 Workday – In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code, State of California, and in particular Sections 1810 to 1815 inclusive, thereof, eight (8) hours labor shall constitute a days' work and no laborer, worker, or mechanic in the employ of said Contractor, or any subcontractor doing or contracting to do any part of the Work contemplated by this Agreement, shall be required or permitted to work more than eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week unless compensated at not less than time and a half as set forth in California Labor Code Section 1815. However, if the prevailing wage determination requires a higher rate of pay for overtime than is required under said Section 1815, then the overtime rate must be paid, as specified in California Code of Regulation Title 8, Group 3, Section 16200(a)(3)(F). The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours for the inspection of the City or its officers or agents and by the Division of Labor Standards Enforcement of the Department of Industrial Relations, their deputies or agents; and it is hereby further agreed that said Contractor shall forfeit as a penalty to the City, the sum of the greater of (i) Twenty-Five and No/100 Dollars (\$25.00) or (ii) the maximum penalty allowable by statute for each laborer, worker or mechanic employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such laborer, worker or mechanic is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in one calendar week in violation of these provisions.

7.5.8 Certified Electricians – Workers performing work for an electrical contractor installing, constructing, or maintaining any electrical system covered by the National Electrical Code shall be certified as a General Electrician per California Labor Code Section 3099.

7.5.9 Receipt of Workers' Wages, Fee for Registering or Placing Persons In Public Works – Attention is directed to the provisions of sections 1778 and 1779 of the California Labor Code, which reads as follows:

"Section 1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony."

"Section 1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor."

7.5.10 Labor Discrimination – Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this Section is subject to all the penalties imposed for violation of this chapter."

Non-Discrimination. Contractor agrees that it shall not discriminate against any person on account of their sex, race, color, religious creed, ancestry, national origin, disability, medical condition, marital status, age, gender, military or veteran status, genetic information, or sexual orientation in violation of the Fair Employment and Housing Act or the Unruh Civil Rights Act. Upon a final determination by a court of competent jurisdiction

that the Grantee has violated either of these Acts, the City may, at its option, (1) withhold payments to Contractor under this Agreement until Contractor complies; or (2) suspend or terminate this Agreement. Contractor shall include the provisions of this paragraph in every subcontract, including procurement of materials and lease of equipment, unless specifically exempted by the City.

7.5.11 Workers' Compensation Insurance – The provisions of Article 13.1.2, Workers' Compensation Insurance, shall be considered as repeated herein.

7.5.12 Not Used.

7.5.13 Safety Standards – The Contractor shall comply with all applicable provisions of the Safety and Health Regulations of Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 327 et. seq.) as set forth in Title 29, C.F.R., CAL/OSHA, and the regulations issued thereunder. Compliance shall be the Contractor's sole responsibility, and neither the City, the Construction Manager nor the Engineer shall have any liability for non-compliance. See Article 7.7, Safety, for additional safety requirements.

7.5.14 Asbestos Related Work – All work involving asbestos containing material must be performed in accordance with California Labor Code, Sections 6501.5 through 6510, inclusive, and California Administrative Code, Title 8, Section 5208 and all other pertinent laws, rules, regulations, codes, ordinances, decrees and orders.

7.5.15 Public Records Act –

A. Ownership and Disclosure

Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of City's business, including information submitted by the Contractor ("Records"), shall become the exclusive property of City and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code § 6250 et seq.). The City's use and disclosure of its records are governed by this Act. The City will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by the Contractor to City. The City will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

B. Litigation Related to Disclosure

In the event of litigation concerning the disclosure of any Records, City's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold City harmless from all costs and expenses including attorney's fees in connection with any such action.

7.6 Compliance with Environmental Laws

During construction, the Contractor shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations, including, but not limited to, the Federal Clean Air Act, State and local air pollution and noise ordinances, construction site erosion control regulations. Specific requirements are further specified in Section 01 11 80, ENVIRONMENTAL CONDITIONS.

7.7 Safety

7.7.1 Contractor's Safety Responsibility – The Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor (OSHA), the California Occupational Safety and Health Act (CalOSHA), and all other applicable Federal, State, County, and local laws, ordinances, codes, including but not limited to the requirements set forth below, and any regulations that may be detailed in other parts of these Contract Documents. In the event of conflicting requirements, the most stringent requirement as it pertains to the Contractor's safety responsibility, shall be followed by the Contractor.

No provision of the Contract Documents shall act to make the City, the Construction Manager, Engineer or any other party than the Contractor responsible for safety. Neither the City nor the Construction Manager, Engineer or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for having hazards, and/or potential hazards, corrected and/or removed at the location(s) where the work is to be performed. The Contractor agrees that neither the City nor the Construction Manager, Engineer or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be responsible for taking steps to protect the Contractor's employees from such hazards and/or potential hazards, or for instructing the Contractor's employees to recognize such hazards and/or potential hazards, or to avoid the associated dangers. The Contractor agrees that with respect to the Work to be performed under this Agreement and the location(s) where such Work is to be performed, the Contractor will be responsible for not creating hazards, and for having hazards corrected and/or removed. The Contractor agrees that through the safety obligations contained in this Agreement and the Contractor's own inspection of the Site(s) where the Work is to be performed, the Contractor is aware and has been notified of the hazards and/or potential hazards to which the Contractor's employees may be exposed in the performance of the Work. The Contractor has taken and/or will take appropriate, feasible steps to protect the Contractor's employees from such hazards, and has instructed and/or will instruct its employees to recognize such hazards and/or potential hazards and how to avoid the associated dangers. The Contractor agrees that neither the City nor the Construction Manager, Engineer or their respective officers, officials, employees, agents or volunteers or other authorized representatives will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or subcontractors or Material Suppliers acting pursuant to this Agreement.

The Contractor shall indemnify, defend and hold City and Construction Manager, Engineer, Funding Agencies and their respective officers, officials, employees, agents and volunteers or other authorized representatives harmless to the full extent permitted by law concerning liability related to the Contractor's safety obligations in accordance with Article 13.2, General Indemnification Obligations.

If death or serious injuries or serious damages occur, the accident shall be reported immediately by telephone or messenger to both the Construction Manager and the City. In addition, the Contractor shall furnish the Construction Manager with a copy of the Employer's Report of Injury immediately following any incident requiring the filing of said report during the prosecution of the Work under this Agreement. The Contractor shall also furnish the Construction Manager with a copy of the Employer's Report of Injury involving any subcontractors on this Project. The Contractor shall make all reports as are, or may be, required by any authority having jurisdiction, and permit all safety inspections of the Work being performed under this Agreement.

If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Construction Manager, giving full details of the claim.

7.7.2 Safety Program – The Contractor shall establish, implement, and maintain a written injury prevention program as required by Labor Code Section 6401.7. Before beginning the Work, the Contractor shall file with the Construction Manager a written Contractor Safety Program that provides for the implementation of all of the Contractor's safety responsibilities in connection with the Work at the Site and the coordination of that program and its associated procedures and precautions with safety programs,

precautions and procedures of each of its subcontractors and other Contractors performing work at the Site. The Contractor shall be solely responsible for initiating, maintaining, monitoring, coordinating, and supervising all safety programs, precautions, and procedures in connection with the Work and for coordinating its programs, precautions, and procedures of the other contractors and subcontractors performing the Work at the Site. The Safety Program should contain all the necessary elements for the Contractor to administer its program on the Site. At a minimum, this written Safety Program shall address the elements required by Labor Code Section 6401.7.

The Contractor's compliance with requirements for safety and/or the Construction Manager's acceptance for filing of the Contractor's Safety Program shall not relieve or decrease the liability of the Contractor for safety. The Construction Manager's review of the Contractor's Safety Program is only to determine if the above listed elements are included in the program. The Contractor's completion of review of the Safety Program does not confirm adequacy of the Program to protect workers. The Contractor is solely responsible to determine adequacy of the program to protect workers per the applicable Labor Code Section.

7.7.3 Safety Supervisor – The Contractor shall appoint an employee as safety supervisor who is qualified and authorized to supervise and enforce compliance with the Safety Program. The Contractor shall notify the Construction Manager in writing prior to the commencement of work of the name of the person who will act as the Contractor's safety supervisor and furnish the safety supervisor's resume to the Construction Manager.

The Contractor will, through and with its Safety Supervisor, ensure that all of its employees and its subcontractors of any tier, fully comply with the Project Safety Policies. The Safety Supervisor shall be a full-time employee of the Contractor whose responsibility shall be for supervising compliance with applicable safety requirements on the Site and for developing and implementing safety training classes for all job personnel. The City shall have the authority to require removal of the Contractor's Safety Supervisor if the representative is judged to be improperly or inadequately performing the duties; however, this authority shall not in any way affect the Contractor's sole responsibility for performing this work safely, nor shall it impose any obligation upon the City to ensure the Contractor performs its work safely.

7.7.4 Safety and Protection – The Contractor shall take all necessary precautions to prevent damage, injury, and loss to:

- A. All employees on the Project, employees of all subcontractors, and other persons and organizations who may be affected thereby;
- B. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- C. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, wetlands, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of underground facilities and utility districts when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

7.7.5 Excavation Safety – In accordance with the provisions of Section 6705 of the Labor Code, the Contractor shall submit, in advance of excavation of any trench or trenches five feet or more in depth,

a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plans vary from the shoring system standards set forth in the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plans shall be prepared and signed by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Agreement for completion of the Work as set forth in the Contract Documents. Nothing in this article shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this article shall be construed to impose a tort liability on the City, the Engineer, the Construction Manager, nor any of their officers, officials, employees, agents, consultants or volunteers. The City's review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders.

Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

7.7.6 Safety Emergencies – In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Construction Manager, will take reasonable action to prevent threatened damage, injury or loss. The Contractor shall give the Construction Manager prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

7.7.7 Safety Violations – Should the Contractor fail to correct an unsafe condition, the City shall have the right to notify the Contractor through the Construction Manager that an unsafe condition may exist and must be corrected or the Work in question can be stopped in accordance with Article 9.6, **City Suspension of Work**, until the condition is corrected to the satisfaction of the City. No extension of time or additional compensation will be granted as a result of any stop order so issued. The notification and suspension of such Work or the failure to provide such notification and suspension by the City shall not relieve the Contractor of its sole responsibility and liability for safety and the correction of any unsafe conditions.

The City shall have the authority to require the removal from the Project of any worker and the foreman and/or superintendent in responsible charge of the work where safety violations occur. The City also delegates such authority to the Construction Manager as well.

7.7.8 Equipment Safety Provisions – The completed Work shall include the specified permanent safety devices, such as machinery guards and similar safety items, required by the State and Federal (OSHA) industrial authorities and applicable local and national codes. Further, any features of the Work, including City-selected equipment, subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. All equipment furnished shall be grounded and provided guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by safety codes, this shall be provided. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. The Contractor shall notify all equipment suppliers and subcontractors of the provisions of this paragraph.

7.7.9 Confined Spaces – The Project requires work in confined spaces and requires compliance with CAL/OSHA and Federal OSHA requirements. Confined spaces for the purposes of this article shall be as defined by the Division of Industrial Safety. Work within confined spaces of this Project is subject to the definitions and applicable provisions of Section 5156 *et seq.*, Title 8, Division 1, Chapter 4, Subchapter 7, Group 16, Article 108 of California Code of Regulations, and Title 29 Part 1926 of the Code of Federal Regulations.

In addition the City classifies the following existing facilities as confined space: the interior of pipelines, vaults, manholes, reservoirs and any other such structure or space which is similarly surrounded by confining surfaces as to permit the accumulation of dangerous gases or vapors. The confined spaces are "permit" confined spaces as defined by OSHA and CAL/OSHA and therefore entry is allowed only through

compliance with a confined space entry permit program by the Contractor that meets the requirements of 8 C.C.R. Section 5157. While the above mentioned locations have been identified as permit confined spaces, other permit confined spaces may exist. It shall be the responsibility of the Contractor to identify and classify these confined spaces.

It is anticipated that the Contractor may encounter hazardous conditions within these permit confined spaces which include, but are not limited to the following:

- A. Exposure to hydrogen sulfide, methane, carbon dioxide and other gases and vapors commonly found in municipal sewers which could have or has the potential of having Immediate Danger to Life or Health Conditions (IDLH).
- B. Exposure to atmosphere containing insufficient oxygen to support human life.
- C. Exposure to combustible, flammable and/or explosive atmosphere.
- D. Exposure to sewage which may contain bacteriological, chemical and other constituents harmful to humans.
- E. Work in conditions where engulfment or entrapment may occur.
- F. Work in environments which may be slippery and/or have uneven work surfaces.
- G. Work in structures where workers may trip, slip and/or fall several feet.
- H. Exposure to an oxygen enriched environment.

7.7.10 Public Safety and Convenience – The Contractor shall conduct its work so as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Work and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Construction Manager and the written approval by the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

7.8 Provisions for Handling Emergencies

It is possible that emergencies may arise during the progress of the Work, which may require special treatment or make advisable extra shifts of labor forces to continue the Work for twenty-four (24) hours per day. These emergencies may be caused by damage or possible damage to nearby existing structures or property by reason of the work under construction, or by storm, accidents, or leakage. The Contractor shall be prepared in case of such emergencies to make all necessary repairs and shall promptly execute such work when required; such emergency work will be reimbursed as a Cost of the Work and the GMP increased accordingly.

Upon start of the Work, Contractor shall provide means for immediate emergency notification of Contractor's designated representative and designated emergency alternates.

7.9 Nonstandard Working Hours

The Contractor may be required to prosecute the Work at night or outside of the normal working hours defined in Section 01 12 16-1.03.B, Hours of Work. Such work may be required due to project or operational constraints as defined in Section 01 12 16, WORK SEQUENCE, or if emergencies arise as provided for in Article 7.8, Provisions for Handling Emergencies. When required, ordered, or permitted to work at night,

the Contractor shall provide sufficient and satisfactory lighting and other facilities therefore. Except as provided in Article 7.8, above, for work outside of the normal working hours, the Contractor shall receive no extra payment, but compensation shall be considered as having been included in the GMP stipulated for the Work, except for authorized work performed outside of the Agreement.

7.10 Cooperation with Other Contractors

This paragraph shall serve as notice to the Contractor that the City may allow other contracts for other work at or near the Site of this Work. The Contractor shall afford other Contractors reasonable opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

Should construction be under way by other forces or by other Contractors within or adjacent to the limits of the work or in the vicinity of the work to be done under this Agreement, the Contractor shall so conduct its operations as to interfere to the least possible extent with the work of such other forces or Contractors.

Any difference or conflicts which may arise between the Contractor and any other forces or Contractors, creating delays or hindrance to each other, shall be adjusted as determined by the Construction Manager.

Section 01 12 16, WORK SEQUENCE, indicates anticipated other construction activities within or adjacent to work to be performed in this Agreement. City shall require contractors performing Work by Others to cooperate with Contractor and not unduly interfere with Contractor's performance of the Work.

ARTICLE 8 - CONTROL OF WORK AND MATERIAL

8.1 Means, Methods and Appliances

The means, methods and appliances adopted by the Contractor shall be planned and executed to produce the highest grade quality of work and will enable the Contractor to complete the Work in the time agreed upon. The City and Construction Manager shall not supervise, direct, or have control over, or be responsible for, Contractor's means, methods and appliances of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work.

8.2 Contractor's Responsibility for Work

Unless specified otherwise in the Contract Documents, until the Final Completion of the Work by the City, the Contractor shall have the charge and care and shall bear the risk of damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or non-execution of the Work.

The Contractor shall rebuild, repair, restore and make good all damages to any portion of the Work occasioned by any of the above causes before Final Completion and shall bear the expense, except such damages occasioned by the acts of the Federal government or acts of war.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for the Work as previously specified and shall also be responsible for all materials delivered to the Site. Where necessary to protect the Work from damage, the Contractor shall, at its own expense, provide suitable drainage of the worksite and erect such temporary structures as necessary to protect the Work from damage during any period of suspension of work.

The Contractor shall provide twenty-four (24) hour emergency service for all maintenance and operations of the Work specified and shall supply the City with the name and phone number of the responsible person. Contractor will respond to requests for emergency service for the Work promptly upon notification. If the Contractor fails to provide this service after notice from City, City may perform such emergency service and the cost thereof shall be deducted from the next Progress Pay Estimate due the Contractor.

8.3 Character of Workers

None but competent superintendents, forepersons and workers shall be employed on the Work by the Contractor and its subcontractors at all tier levels. The Contractor shall remove from the Work any person who commits trespass, possesses firearms or other weaponry, is under the influence or is in the possession of alcohol or other drugs/controlled substance, or is, in the opinion of the City or Construction Manager, disorderly or profane, dangerous, abusive, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not be the basis of any claim for compensation or damages against the City, its officers, officials, employees, agents, and volunteers, the Engineer, the Construction Manager, and their partners, officers, employees, agents or any representatives.

8.4 Supply of Sufficient Workers

The Contractor shall at all times employ qualified workers sufficient to prosecute the Work at a rate and in a sequence and manner necessary to complete the Work within the required Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type. At any time during the progress of Work, should the Contractor directly or indirectly (through subcontractors), refuse, neglect, or be unable to employ a sufficient number of qualified workers to prosecute the Work as required, then the City may require the Contractor to accelerate the Work and/or furnish additional qualified workers as City may consider necessary, at no cost to City.

If Contractor does not comply with the notice within seven (7) days of date of service thereof, City shall have the right (but not a duty) to provide qualified workers to finish the Work or any affected portion of Work, as City may elect. City may at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that City exercises this right. City will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons doing Work. City will deduct from funds or appropriations set aside for purposes of Contract Documents, the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of City from claims of others.

Exercise by the City of the rights conferred upon the City in this Agreement is entirely discretionary on the part of the City. The City shall have no duty or obligation to exercise the rights referred to this Article 8.4, Supply of Sufficient Workers, and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of City's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon City under this Article 8.4, Supply of Sufficient Workers, are cumulative to City's other rights under any provision of the Contract Documents.

8.5 Materials and Workmanship

The Contractor shall provide safe access, including plants where materials or equipment are manufactured or fabricated, for the City Representative and inspectors to adequately inspect the quality of work and for conformance with the Contract Documents. The Contractor shall furnish the City Representative the necessary labor and facilities for such things as excavation in the compacted fill to the depths required to take samples. The Contractor shall provide adequate lighting, ventilation, ladders and other protective facilities as may be necessary for the safe performance of inspections.

Unless otherwise indicated in the Contract Documents or favorably reviewed by the Engineer, materials and equipment for the Work shall be the best grade in quality of a manufacturer regularly engaged in the production of such materials and equipment, or materials and equipment of comparable character. All materials must be of the specified quality and equal to approved samples, if samples have been submitted. All Work shall be done and completed in the best workmanlike manner, obtainable in the local market. All permanent materials and equipment shall be new unless otherwise specified.

Construction Manager will notify Contractor of Defective Work promptly upon identifying the Work at issue. All Defective Work or materials shall be promptly removed from the premises by the Contractor, whether in place or not, and shall be replaced or renewed with Work that meets the requirements of the Contract Documents. All materials and workmanship of whatever description shall be subjected to the inspection of, and rejection by, the Construction Manager if not in conformance with the Contract Documents.

Defective Work shall be modified, replaced, repaired or redone by the Contractor at no change in GMP (nor will any of the costs to correct Defective Work be reimbursable as a Cost of the Work) or Contract Time. Acceptance of Defective Work, without specific written acknowledgement and approval of the City, shall not relieve the Contractor of the obligation to correct such Work. Should the City determine that it is not feasible or in the City's interest to require Defective Work to be repaired or replaced, an equitable credit shall be made to the Costs of Work owed to the Contractor and a corresponding reduction in the GMP shall be made by agreement between the City and the Contractor (If the Contractor has been paid in full for its Work, the Contractor agrees to pay City the amount of the equitable credit mutually agreed to leave in place the Defective Work). If an equitable amount cannot be agreed upon, a Change Order will be issued and the amount in dispute resolved in accordance with the Contract Documents. The City and the City's consultants disclaim any and all responsibility for Work that is not in conformance with the Contract Documents. The Contractor shall have full responsibility for all direct consequences resulting from Defective Work, including without limitation all delays (pursuant to Section 01 40 00, QUALITY REQUIREMENTS), extra inspection and correction costs, consultant and attorneys' fees costs by the Contractor and re-Work.

The City agrees that after providing the Contractor with written notice of works that it deems to be Defective Work, the City shall allow the Contractor fifteen (15) days to investigate the Defective Work in order for the Contractor to determine whether it agrees that the work is Defective Work and if so, submit to the City, for its approval, a proposed remedy for the Defective Work, before the City shall charge the Contractor for any reasonable extra inspection, consultant and attorneys' fees costs associated with the Defective Work. If it is determined by a court or arbitrator, or the City otherwise agrees, that the work was not Defective Work, City shall bear all inspection, consultant and attorneys' fees costs incurred by City or Contractor as a result of the alleged Defective Work.

Unless otherwise stipulated in the Contract Documents, any defective material, equipment or workmanship, or any unsatisfactory or imperfect work which may be discovered before the Final Completion of the Work or within one (1) year thereafter, shall be corrected immediately upon the receipt of notice from the City, without extra charge, notwithstanding that it may have been overlooked in previous inspections and estimates. The City's failure to inspect work shall not relieve the Contractor from any obligation to perform sound and reliable Work as herein described. Any material, equipment and/or workmanship determined to be defective after the expiration of the one year express warranty provision (or beyond any furnished warranty extending beyond one year) shall be subject to the ten year statute relating to latent defects. The express warranties of the Contract Documents are in addition to, not in lieu of, the ten year statutory obligations.

In the event that the Contractor shall fail to comply with the conditions of the foregoing guarantee within fifteen (15) calendar days after the date of written notification of the defect, the City shall have the right, but shall not be obligated to repair, or obtain the repair of, the defect and the Contractor shall pay to the City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, the City shall have the right to immediately repair, or cause to be repaired, such defect, and the Contractor shall pay to the City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of the City.

8.6 Use of Materials Found on the Site

The City does not warrant the suitability of any native material on the Site for use in the Project. The Contractor, with the approval of the Engineer, may use in the proposed construction such stone, gravel,

sand or other material as may be found on the Site and deemed suitable in the opinion of the Engineer. The Contractor shall replace at its own expense all of that portion of the material so removed and replaced with other suitable material. No charge for native materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from any location that is not within the excavation, as indicated by the slope and grade lines shown on the Drawings, without written authorization from the Engineer.

8.7 Existing Utilities

8.7.1 General – The location of known existing utilities and pipelines are shown on the Drawings in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site of the Work can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Work.

The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities to the extent required by law.

8.7.2 Utility Location – It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation or time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days, but not more than fourteen (14) calendar days, before performing any excavation. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service.

After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit. The Construction Manager shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings or indicated based on the utility survey, and prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities which are to remain in service for any period subsequent to the construction of the run of pipe involved.

8.7.3 Utility Relocation and Repair – If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Construction Manager in writing. The Construction Manager shall work together with the Contractor to supply a method for correcting said interferences in accordance with the responsibilities of this Article and Government Code Section 4215.

The City shall compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main(s) or trunkline utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 10.1, Change Orders. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay is caused by the failure of the City or utility company to provide adequate advance information to the Contractor for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Section 01 32 16-1.13, ADJUSTMENT OF PROJECT TIME.

The public utility, that owns the affected utility/asset, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter into the Site for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

When the Agreement indicates that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Agreement.

Temporary or permanent relocation or alteration of utilities approved by the utility owner and the City that is desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

8.8 Surface Restoration

Surface restoration shall be defined as that work necessary to restore the excavated area above backfill and the scarred surrounding work areas to a condition equivalent to or better than existed prior to the construction. This may include pavement replacement, concrete curbs and surface replacement, seeding, shrub and plant replacement, and restoration of ditches and drainage areas.

The replacement of grass and/or wild flowers shall be accomplished by seeding. The kind and type of seed is to be determined by the City. The City and Contractor shall agree before proceeding as to which plants and shrubs shall be saved or replaced.

The restoration of trench surfaces shall include measures to prevent surface erosion of the trench. This shall include seeding, cutoff walls, surface header boards, water bars, interceptor dikes, gravel filter dikes, or rip rap energy dissipaters. These measures shall be used as required to prevent surface erosion.

8.9 Disposal of Materials

Unless otherwise specified in the Contract Documents, the Contractor shall make arrangements for disposing of materials. Excess excavated material not required for backfill, debris, chemicals, sledges and other removed materials shall be disposed of legally by the Contractor.

When any materials, including excess of unsuitable excavated earth or other materials are to be disposed of off the Site, the Contractor shall first obtain a written permit from the property owner on whose property the disposal is to be made and shall file said permit or certified copy together with a written release from the property owner absolving the City from any and all responsibility in connection with the disposal of material on said property. Before any material is disposed of on said property, the Contractor shall obtain permission from the City's Representative to dispose of the material at the location designated in said permit.

Unless otherwise provided in the Contract Documents, full compensation for all cost involved in disposing of materials as above specified, including all costs of overhaul, shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be made.

8.10 American Iron and Steel Requirement Compliance

Goods and services under this Agreement may be funded with monies made available by CWSRF that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the Project to be produced in the United States ("American Iron and Steel

Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor shall comply with the American Iron and Steel Requirement, and all of the iron and steel products applicable to the American Iron and Steel Requirement used in the Project shall be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved. The Contractor shall also provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the City or Funding Agency. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the City to recover as damages against the Contractor any loss, expense, or cost including without limitation attorney's fees incurred by the City or Funding Agency resulting from any such failure including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Agency or any damages owed to the Funding Agency by the City.

ARTICLE 9 - PROGRESS OF THE WORK

9.1 Commencement of Work

Within forty-five (45) calendar days after executed of the Agreement, written Notice to Proceed will be issued by the City to Contractor. Notwithstanding other provisions of the Agreement, the Contractor shall not be obligated to perform the Work, and the City shall not be obligated to accept or pay for such Work performed by the Contractor, prior to City's issuance of the Notice to Proceed. The Contractor shall provide the required Agreement bonds and evidences of insurance prior to the City's execution of this Agreement and prior to commencement of any Work.

The Contractor shall commence execution of the Work within ten (10) days after the date established in the Notice to Proceed for the commencement of Contract Time.

The Contractor shall give the Construction Manager written notice not less than five (5) working days in advance of the actual date on which the Work is to begin on the Site (excluding Preconstruction Services performed under the Agreement) will be started. The Contractor shall be entirely responsible for any delay in the Work which may be caused by its failure to give such notice.

9.2 Contract Time

All time limits for Substantial Completion, and Final Completion as stated in the Contract Documents are of the essence of the Agreement. The counting of Working or Calendar Days shall begin ten (10) Calendar Days from the date the Notice to Proceed is issued. The Contractor shall prosecute the Work so that the various portions of the Work shall be complete and ready for use within the times specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES. It is expressly understood and agreed by and between the Contractor and the City that the Contract Time(s) for Contract Milestones, Substantial Completion of the Work and for Final Completion are reasonable times taking into consideration the average climatic and economic conditions and other factors prevailing in the locality and the nature of the Work known as of the date this Agreement is entered into.

9.3 Delays

9.3.1 Notice of Delays - When the Contractor foresees a delay in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay to its Work, the Contractor shall notify the Construction Manager in writing of the occurrence of delay, providing the estimated extent of the delay and its cause. The Contractor shall take immediate steps to prevent or mitigate, if possible the occurrence or continuance of the delay.

The Contractor agrees that no claim shall be made for any occurrence of delay that is not the subject of a written notice and that is not submitted to the attention of the Construction Manager within ten (10) calendar days of its occurrence. The City may accept a delay with more than ten (10) calendar days of notice if the

City finds that the Contract was acting in good faith and the City was not Prejudiced by the Contractor's failure to timely provide the required notice.

9.3.2 Non-Excusable Delays – Non-excusable delays in the prosecution of the Work are delays which were caused by the Contractor, or by its subcontractors and suppliers, at any tier level, or delays which could have been avoided by the exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. The Contractor shall receive no compensation or time extension for such delay. The determination of Non-Excusable Delays shall be made solely by the Construction Manager. In the event that the Contractor is not in agreement with the Construction Manager's decision, the Contractor may appeal the decision by submitting to the City (for consideration), evidence that supports the Contractor's claim for an Excusable Delay consideration.

9.3.3 Excusable Delays - Excusable Delays in the prosecution or completion of the Work are delays which are not caused by or within the control of Contractor and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level. In addition, before a delay will be deemed an "Excusable Delay," the delay must prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule submitted by Contractor in accordance with the Contract Documents. The Contractor shall receive no compensation for such delay unless such delay also qualifies as a Compensable Delay, as described below. The following are examples of Excusable Delays:

- A. **Abnormal Delays** - Delays caused by fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials shall be considered as Excusable Delays insofar as they prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule.
- B. **Weather Delays** – Delays caused by inclement weather conditions or the conditions resulting from inclement weather shall be considered as "Excusable Delays" if they prevent the Contractor from proceeding with seventy-five (75%) percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of such operation or operations, and the crew is dismissed as a result thereof.
- C. **Material Shortages** - Upon the Contractor's submission of satisfactory proof to the Construction Manager, shortages of material may be considered an "Excusable Delay" upon the satisfaction of the conditions set forth herein. The Contractor must demonstrate that the Contractor has made every effort to obtain such materials from all known sources within reasonable reach of the proposed Work. Only the physical shortage of material, caused by unusual and unforeseeable circumstances, will be considered as eligible for an "Excusable Delay," and no consideration will be given to any claim that the material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Construction Manager that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and usual practices in obtaining such quantities. A time extension for shortage of material will not be considered for material ordered or delivered late or whose availability is affected by virtue of the Contractor's or its subcontractor's or supplier's mishandling of the procurement for such material. The above provisions apply equally to equipment to be installed in the Work. Nothing herein is intended to affect the Contractor also needing to demonstrate that the delay must prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule.

9.3.4 Compensable Delays – Compensable Delays in the prosecution or completion of the Work are delays which meet each of the following three elements: (1) delays which result from causes beyond the control of the Contractor and which could not have been avoided by the reasonable exercise of care, prudence, and diligence on the part of the Contractor or its subcontractors or suppliers, at any tier level; (2) delays that prevent the Contractor from proceeding with at least seventy-five (75%) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest approved progress schedule; and (3) delays that are caused by one of the following three causes:

- A. Delays due to the actions and/or inactions of the City, Construction Manager, Engineer or any of their agents or employees.
- B. Delays due to differing site conditions as defined in Article 10.2, DIFFERING SITE CONDITIONS.
- C. Delays due to other contractors (excluding W. M. Lyles) employed by the City who interfere with the Contractor's prosecution of the Work as defined above.

9.3.5 Concurrent Delays – Concurrent delays are those delay periods when the prosecution of the Work is delayed during the same period of time due to causes from a combination of the delays defined in Article 9.3.2, NON-EXCUSABLE DELAYS, Article 9.3.3, EXCUSABLE DELAYS, or Article 9.3.4, COMPENSABLE DELAYS. During such concurrent delay periods, time extensions will be granted in accordance with Article 9.4, TIME EXTENSIONS; however, the Contractor will be granted a non-compensable time extension, and the City shall not assess its actual costs as defined in Article 9.4.1, NON-EXCUSABLE DELAYS, nor will the City assess Liquidated Damages.

9.4 Time Extensions

9.4.1 Non-Excusable Delays – The Contractor shall receive no compensation or time extension for Non-Excusable Delays.

9.4.2 Excusable or Compensable Delays – If the Contractor is delayed in the performance of its Work as defined in Article 9.3.3, EXCUSABLE DELAYS, or Article 9.3.4, COMPENSABLE DELAYS, then the Contract Time(s) will be extended by the City for such time that, the Contractor shows, and the City agrees (which agreement will not be unreasonably withheld), the Project's critical path completion dates will be delayed, provided that the Contractor strictly fulfills the following:

- A. The Contractor shall have provided written notification, in accordance with Article 9.3.1, NOTICE OF DELAYS;
- B. The Contractor shall have submitted in writing a request for an extension of time to the Construction Manager stating at a minimum the cause of the delay and the estimated number of days being requested. Such request for an extension of time shall be submitted in accordance with the requirements of 01 32 16-1.13, ADJUSTMENT OF PROJECT TIME. As provided therein, the Contractor's request for a time extension shall be submitted within fifteen (15) days of the Contractor furnishing its written notice pursuant to Article 9.3.1, NOTICE OF DELAYS. In the case of an Excusable Delay or Compensable Delay that allegedly is impacting the Contractor's operations for a period longer than fifteen (15) days, the Contractor shall update its request for a time extension, including updating its time impact analysis, every thirty (30) days until the delay is no longer allegedly impacting the Contractor's operations.
- C. If the Contractor maintains that the delay at issue is a Compensable Delay, the Contractor shall submit an estimate of the additional compensation for Field Overhead and Indirect Home Office Overhead (per Article 9.4.3, FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS) that it is seeking in regards to the alleged

delay. This estimate shall be included with the Contractor's request for time extension that is described in paragraph B, above. In the case of a Compensable Delay that allegedly is impacting the Contractor's operations for a period longer than fifteen (15) days, the Contractor shall update its estimate of additional compensation every thirty (30) days until the delay is no longer allegedly impacting the Contractor's operations.

- D. If requested by the Construction Manager, the Contractor shall provide sufficient information to the Construction Manager to assess the cause or effect of the alleged delay (as well as additional compensation in the case of Compensable Delay), or to determine if other concurrent delays affected the Work. Such additional information shall be furnished within fifteen (15) days of the Construction Manager's request for additional information.
- E. Time extensions due to Excusable or Compensable Delays will be granted only if such delays involve controlling critical path operations which would prevent completion of the whole Work within the specified Contract Time(s), as described in the above conditions for determination of "Excusable Delay" or "Compensable Delay."
- F. **Force Majeure.** Force Majeure events shall be considered Excusable Delays. Any claim by Contractor to classify a Force Majeure event as a Compensable Delay shall be handled pursuant to Article 11.1, RESOLUTION OF DISPUTES. See definition of Force Majeure in Article 1, DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS.

Construction Manager will, in writing, approve or reject the Contractor's request for a time extension within fifteen (15) days of the latter of (i) the Construction Manager's receipt of the Contractor's complete request for a time extension; or (ii) the Construction Manager's receipt of the additional information referenced in paragraph C, above. Should Construction Manager not provide a written response within such fifteen (15) day time period, the Contractor's request shall be deemed denied by the City.

If the Construction Manager determines that the Contractor is entitled to a time extension, during such approved extension of time, neither extra compensation for engineering, inspection and administration nor damages for delay will be charged to the Contractor.

For Weather Delays, the Contractor will be granted a non-compensable time extension for weather caused delays, pursuant to Article 9.3.3.B, WEATHER DELAYS, over and above an allowance as provided for in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES. No time extensions for weather delays will be granted until the total number of weather days exceeds this allowance.

Should the Contractor fail to complete the Work within the time specified in the Agreement, as extended in accordance with this clause if appropriate, the Contractor shall pay to the City liquidated damages in accordance with Article 9.5, LIQUIDATED DAMAGES.

9.4.3 Field Overhead and Indirect Home Office Overhead for Compensable Delays

The Contractor shall be compensated for field overhead and indirect home office overhead expenses due to Compensable Delays for periods of time when the Work is delayed as defined in Article 9.3.4, COMPENSABLE DELAYS. However, no payment shall be made for compensable delays which occur during a concurrent delay as defined in Article 9.3.5, CONCURRENT DELAYS. As a condition precedent to payment for field overhead and indirect home office overhead, the Contractor must fulfill all conditions as provided in Article 9.4.2, EXCUSABLE OR COMPENSABLE DELAYS. Compensation will be calculated in accordance with 9.4.3.1 and 9.4.3.2, below. No additional markup for overhead or profit shall be provided for such field overhead and indirect home office overhead expenses.

Payment to the Contractor for indirect overhead expenses will be made only if the extended Contract Time period granted for the compensable delay(s) is required to complete the Work following the depletion of the original Contract Time period and any time extensions granted other than compensable time extensions. Payment for field overhead and indirect home office overhead shall be calculated as follows:

9.4.3.1 Field Overhead – For those allowable delay periods as described in Article 9.4.3, FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS, the Contractor shall be reimbursed for its field overhead based on:

- A. Actual invoice costs for on-site field offices and temporary utilities as described in Section 01 50 00, TEMPORARY FACILITIES AND CONTROLS.
- B. Actual labor costs as shown in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, for field office staff.
- C. Fair rental values acceptable to the Construction Manager as described in Section 01 26 00-3.2, COST DETERMINATION, for construction equipment idled due to the delay.
- D. Actual Errors and Omissions insurance costs attributable to delay periods.

9.4.3.2 Indirect Home Office Overhead – For those delay periods as described in the introduction of Article 9.4.3, FIELD OVERHEAD AND INDIRECT HOME OFFICE OVERHEAD FOR COMPENSABLE DELAYS, the Contractor shall be reimbursed for its indirect home office overhead based on the following formula:

[Guaranteed Maximum Price (\$) divided by the Contract Time Period (Calendar Days)] x 0.03 =
Daily Indirect Home Office Overhead (\$/Calendar Day)

As it is impractical to determine the actual home office overhead, such reimbursement shall encompass full payment for any and all indirect home office overhead expenses for such periods of time for the Contractor and all subcontractors. Distribution of the markup amount among the Contractor and all subcontractors and suppliers is the responsibility of the Contractor.

9.5 Liquidated Damages

9.5.1 City and the Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, plus any extensions thereof allowed in accordance with Article 9.4, TIME EXTENSIONS. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the Contractor's failure to fully perform the Work or to fully perform all of its Agreement obligations that have accrued by the times for completion as specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES.

9.5.2 It is, therefore, agreed in accordance with California Government Code Section 53069.85 that the Contractor will forfeit and pay to the City liquidated damages in the amount set forth in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, per day for each and every calendar day that expires after the times for completion specified in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, and/or as specified for completion of any scheduled operations or works described in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES, except as otherwise provided by extension of time pursuant to Article 9.4, TIME EXTENSIONS. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this Agreement was made, and that the City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due the Contractor.

9.5.3 Liquidated damages will continue to accrue at the stated rate until the completion of any defined completion milestone(s) and Final Completion of Work, all as set forth in Exhibit F, COMPLETION TIMES AND LIQUIDATED DAMAGES. Accrued liquidated damages may be deducted by the City from

amounts due or that become due to the Contractor for performance of the Work. Liquidated damages may not be waived or reduced by the City unless expressly waived or reduced in writing by the City.

9.6 City Suspension of Work

9.6.1 If the Contractor fails to correct Defective Work as required by Article 8.5, MATERIALS AND WORKMANSHIP, or fails to carry out the Work in accordance with the Contract Documents or any other applicable rules and regulations, or otherwise breaches a material provision of the Agreement, and fails to respond to the City's written notice of the alleged default within ten (10) days, the City, by a written order of the City's Representative or signed personally by an agent specifically so empowered by the City, in writing, may order the Contractor to stop the Work, in its entirety or any portion thereof. In the event of a suspension of only a portion of the Work, the Contractor is obligated to perform the portion of the Work not suspended. The suspension of Work shall remain in effect until the condition or cause for such order has been eliminated. The City's concurrence that the condition or cause has been eliminated will be provided to the Contractor in writing. This right of the City to stop and suspend the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. All delays in the Work occasioned by such stoppage shall not relieve the Contractor of any duty to perform the Work or serve to extend the time for its completion. Any and all work necessary to correct Defective Work in order to comply with the Contract Documents shall be performed at no cost to the City.

9.6.2 In the event that a suspension of Work is ordered as provided for in paragraph 9.6.1, the Contractor, at its expense (i.e., without reimbursement as a Cost of Work or an increase in the GMP), shall perform all Work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by the City, the City's other contractors, public, pedestrian, and vehicular traffic, during the period of such use by suspension. Should the Contractor fail to perform the Work as specified, the City may perform such Work and the cost thereof may be deducted from partial payments and/or final payment due the Contractor under the Agreement. The City is also entitled to withhold any costs, expenses and/or damages incurred, in proportion to the Contractor's proportion of responsibility for the suspension, including consultants' costs and fees, due to the suspension of Work if the suspension was due to Contractor's fault. Contractor shall not be entitled to any relief pursuant to an Excusable Delay or Compensable Delay for the Work impacted by any suspension hereunder.

9.6.3 The City shall also have authority to suspend the Work wholly or in part, for such period as the City may deem necessary, due to convenience to the City, unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the Work. Such temporary suspension of the Work, if for City's convenience and reasons unrelated to deficiencies in Contractor's performance, shall be a Compensable Delay in accordance with Article 9.3.4, COMPENSABLE DELAYS and justification for time extension pursuant to the provisions set forth in Article 9.4, TIME EXTENSIONS.

9.6.4 The Contractor as directed by the City shall comply with the provisions in Article 9.6, CITY SUSPENSION OF WORK, above. Such additional work shall be compensated as provided for in Article 10, CHANGES IN THE WORK, unless the City's suspension of the Work is caused by the Contractor's failure to prosecute the Work in accordance with the Contract Documents.

9.7 City's Right to Terminate Contract

9.7.1 Termination for Default – If the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure its completion within the Contract Time(s) specified herein, or any authorized extension thereof, or fails to perform the Work in a manner required by the Contract Documents, or fails to complete such Work within such time as required under the Contract Documents or, if the Contractor should be adjudged as bankrupt, or is otherwise deemed insolvent by the City based on good cause and is unable to proceed with the Work, or if the Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor files a petition to take advantage of any debtor's act, or if the Contractor should persistently or repeatedly refuse or fail (except in cases for which an authorized extension of time is provided) to supply enough properly skilled workers or proper materials to complete the Work in the time

specified, or if the Contractor should fail to make prompt payment to subcontractors of undisputed amounts due for material or labor, or if the Contractor should persistently disregard laws or instructions given by City, or if the Contractor otherwise substantially fails to fulfill its obligations under the Contract Documents the City may, without prejudice to any other right or remedy, serve written notice upon the Contractor and Sureties of the City's intention to terminate the Contractor's performance under the Agreement. Said notice shall contain the reasons for such intention to terminate the Contractor's performance under the Agreement, and unless, within seven (7) days after the service of such notice, such alleged violations cease and satisfactory arrangements for the corrections thereof have been made, the City may terminate Contractor's performance under the Agreement and the Contractor shall not be entitled to receive any further payment until the Work is finished.

In the event of any such termination, the City shall serve written notice thereof upon the Surety and Contractor, and the Surety shall have the right to take over and perform the Agreement. However, if the Surety, within ten (10) days after the service of a notice of termination, does not give the City written notice of its intention to take over and perform the Agreement, or if it serves such notice of its intent to take over and perform the Agreement and does not begin performance thereof within fifteen (15) days from the date of serving said notice, the City may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable for the account and at the expense of the Contractor, and the Sureties and/or Contractor shall be liable to the City for any excess cost or other damage incurred by the City thereby. In such an event, the City may without liability for so doing, take possession of and utilize such materials, supplies and other property belonging to the Contractor and/or assume assignment of any and all subcontracts for subcontractors and/or suppliers that may be on the worksite and be necessary to complete the Work. For any portion of such Work that City elects to complete by furnishing its own employees, materials, tools, and equipment, the City shall be compensated in accordance with the schedule of compensation for force account work as stated in Section 01 26 00, CONTRACT MODIFICATION PROCEDURES.

If the Surety assumes the Contractor's terminated Work, it shall take the Contractor's place in all respects for that part and shall be paid by City for all Work performed by it in accordance with the terms of the Contract Documents, less any amounts City is entitled to withhold pursuant to the Contract Documents. If the Surety assumes the entire Agreement, all money due the Contractor at the time of its default shall be payable to the Surety as the Work progresses, subject to the terms of the Agreement.

In the event of a termination based on Contractor's default, the Contractor will be paid the actual amount due in accordance with the Contract Documents less damages caused to the City arising from the termination, including but not limited to, consultants' costs, attorneys' fees and all costs to the City to complete the Work including all costs generated to insure or bond the work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to the Contractor. If City's costs to complete the Work, including the aforementioned costs exceed the unpaid balance, the Contractor shall pay the difference to the City promptly upon demand. On failure of the Contractor to pay, the Surety shall pay upon demand by City. Any portion of such difference not paid by the Contractor or Surety within thirty (30) days following the mailing of a demand for such costs shall earn interest at the maximum rate authorized by California law.

The Contractor and the City agree that nothing in this article is intended to create a right to recover attorney fees as prevailing party in any lawsuit on this Agreement.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies under law or in equity available to City.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as, by way of example and not limitation, a fire, flood, or other event which was not the fault of or was beyond the control of the Contractor, the City may allow the Contractor to continue Work on a mutually agreeable schedule, or treat the termination as a termination for convenience, and the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City. Also, in the event that it is determined by a third party, including a judge, jury or arbitrator, that the Contractor should

not have been terminated for fault, then Contractor agrees that the termination will be deemed to be a termination for convenience under Article 9.7.2, TERMINATION FOR CONVENIENCE.

9.7.2 Termination for Convenience – The City, by written notice to the Contractor from the City Manager, may terminate the Contractor's performance under the Agreement, either in whole or in part, at its own discretion or when conditions encountered during the Work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Agreement by an act of God, by law, or by official action of a public authority, or upon a determination that such termination is in the best interest and convenience of the City, or whenever the City is prohibited from completing the Work for any reason. The City shall provide no less than seven (7) days written notice of its intent to terminate the Agreement for convenience, but in no event shall City provide written notice of its intent to terminate without having a prior consultation with Contractor.

- A. Upon receipt of such written notice of termination, the Contractor shall:
 - 1. Stop Work as specified in the written notice;
 - 2. Terminate all orders and subcontractors except as necessary to complete Work which is not terminated;
 - 3. If directed in writing by the City to do so, assign all right, title and interest in materials in progress, in which case the City will have the right at its discretion to settle, or pay any or all Claims arising out of the termination of such materials contracts, but in no event shall recovery by any Contractor include lost profits for uncompleted portions of Work;
 - 4. Deliver or otherwise make available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and material as may have been accumulated by the Contractor in performing this Agreement whether completed or in process;
 - 5. Settle outstanding liabilities and Claims with the approval of City;
 - 6. Complete performance of such part of the Work as has not been terminated; and
 - 7. Take such other actions as may be necessary, or as may be directed by the City for the protection and preservation of the Project and/or property related to the Agreement.
- B. Upon receipt of City's written notice of termination for convenience, and within a period of 30 to 60 days, as determined by the City at the time of termination, the Contractor shall submit to the Construction Manager a Termination Proposal which shall include, but is not limited to, the Contractor's estimate of costs to be incurred by the Contractor as a result of the termination for convenience, and as allowed by the Contract Documents, including documentation reasonably necessary to support such costs; the status of the Work at time of termination; the status of termination of the Contractor's subcontractor(s) and Supplier(s) agreement(s) including the amount of each agreement, amount paid under each agreement up to the date of termination, and the amount that currently remains due and owing under each agreement for Work completed as of the date of termination, if any; a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Construction Manager; and any other information and/or documentation as required by City. Within thirty (30) days of receipt of Contractor's Termination Proposal, City shall provide to Contractor written acceptance of Contractor's Termination Proposal or exceptions to items within the Termination Proposal which must be modified in order to gain City's acceptance of the Termination Proposal.

Upon receipt of City's written acceptance of, or exceptions to, Contractor's Termination Proposal, the Contractor shall submit to the Construction Manager a request for final payment (or the undisputed portion of the Termination Proposal) pursuant to the Contract Document requirements. Such request shall be submitted promptly, but no later than fifteen (15) days from the effective date of receipt of City's written acceptance of, or exceptions to, Contractor's Termination Proposal.

- C. Contractor shall not be entitled to recover any lost profits, fee or any other cost or expense on portion of the Work terminated. The final payment to the Contractor after termination for convenience shall not exceed the amounts due and owing under the Agreement at time of termination, including the following:
1. Any actual costs incurred by the Contractor for restocking charges or other costs reasonably incurred in negotiating termination of subcontracts and/or supply contracts;
 2. The cost of the Work for protecting the Work in any manner, if any, as directed by the City; and
 3. The cost of settling and paying Claims arising out of the termination of the Work under subcontract agreements or orders with the City's approval, as specified above, exclusive of the amounts paid or payable on account of goods delivered or Work furnished by subcontractor prior to the effective date of the termination; and
 4. The cost of the Work and Fee allocable to the portion of the Work properly performed or goods supplied by the Contractor as of the date of termination, as determined in accordance with the Contract Documents, reduced by any sums previously paid to the Contractor.
- D. The City's right to withhold under Article 12.9, WITHHOLDING OF PAYMENT shall apply to payments made under this article.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Change Orders

10.1.1 Without invalidating the Agreement and without notice to sureties or insurers, the City through the Construction Manager, may at any time or from time to time, order additions, deletions, or revisions in the Work; these will be authorized by Field Directive, Field Order or Change Order. A Change Order will not be issued for a Field Directive unless the Construction Manager agrees that such Field Directive is a change in the scope of the Agreement that causes an increase in the Cost of the Work or an adjustment to the GMP or the Contract Time(s) and therefore warrants development of a Change Order. The Contractor shall comply promptly with the requirements for all Change Orders, Field Orders or Field Directives. The work involved in Change Orders and Field Orders shall be executed under the applicable conditions and requirements of the Contract Documents. By signing a Change Order, the Contractor waives any claim for additional time, not included in the Change Order, for the work covered by that Change Order. Additional or extra work performed by the Contractor without written authorization of a Change Order or Field Order will not entitle the Contractor to an increase in the GMP or an extension of the Contract Time(s).

10.1.2 Extra Work is defined in Contract Documents found in Article 1, DEFINITIONS OF LANGUAGE USED, WORDS AND TERMS. Such work shall be governed by all applicable provisions of the Contract Documents. In giving instructions, the Construction Manager shall have authority to make minor changes in the Work in writing by way of a Field Directive, not involving extra cost, and not inconsistent with the purposes of the Work; but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the City through

the Construction Manager, and no claim for an addition to the GMP and/or Contract Time(s) shall be valid unless so ordered.

10.1.3 In case any authorized change increases or decreases the Work shown in a Change Order, the Contractor shall be paid for the work actually done at a mutually agreed upon adjustment to the GMP, in accordance with the provisions of Section 01 26 00, CONTRACT MODIFICATION PROCEDURES.

10.1.4 If the Contractor refuses to accept a proposed Change Order, the City may issue it unilaterally with a Construction Change Directive in accordance with the provisions of Section 01 26 00, CONTRACT MODIFICATION PROCEDURES. The Contractor shall comply with the requirements of the Construction Change Directive. The City shall provide for an equitable adjustment, if any, to the GMP and/or Contract Time, and compensate the Contractor accordingly. If the Contractor does not agree that the adjustment or refusal to adjust is equitable, it may submit a claim in accordance with ARTICLE 11, DISPUTES.

10.2 Differing Site Conditions

Pursuant to Public Contract Code Section 7104, the Contractor shall promptly, and before such conditions are disturbed, notify the Construction Manager, in writing, of any:

- A. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to Proposers prior to the deadline for submitting bid proposals.
- C. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

The Contractor's written notice must be furnished to Construction Manager within ten (10) calendar days of Contractor discovering the alleged differing site condition. The Contractor agrees that no claim shall be made for any differing site conditions that is not the subject of a written notice submitted to the attention of the Construction Manager within ten (10) calendar days of their occurrence. The City may accept a claim with more than ten (10) calendar days of notice if the City finds that the Contractor was acting in good faith and the City was not Prejudiced by the Contractor's failure to timely provide the required notice.

The City shall promptly investigate the conditions, and if it finds that the conditions do materially 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, the City shall cause to be issued a Change Order under the procedures provided in Article 10.1, CHANGE ORDERS.

In the event that a dispute arises between the City 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 Agreement, but shall proceed with all work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties, Article 11.1, RESOLUTION OF DISPUTES.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required.

10.3 Taxes. A Change Order shall be executed due to any new or increased taxes arising after the date of this Agreement (other than taxes assessed based on the income of Contractor). The Change Order shall consist of the incremental amount of such new or increased taxes only. With respect to reductions in taxes arising after the date of this Agreement (other than taxes assessed based on the income of Contractor), the Change Order shall consist of the difference in amount as a result of such reduced taxes only.

10.4 Permit Fees. With respect to increases or decreases in fees for permits or other governmental certificates or instruments arising after the effective date of this Agreement, a Change Order will be prepared and proposed to Contractor that shall consist of the incremental amount of such increases or decreases. To the extent this Agreement states that a permit or certificate is not required and Contractor is later required to procure such permit or certificate, all out-of-pocket costs reasonably associated therewith shall be included in the Change Order. The fees for permits and related costs associated with permits that was included in the GMP shall be listed in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEES.

ARTICLE 11 - DISPUTES

11.1 Resolution of Disputes

It is the intent of this Agreement that disputes regarding the Agreement be resolved promptly and fairly between the Construction Manager and Contractor. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and City the following provisions are provided for the resolution of disputes which cannot be resolved by the Contractor and Construction Manager.

11.1.1 Notice and Contract Claim. Either party shall provide written notice of disputed or potentially disputed Work to the other party prior to the commencement of and sufficiently in advance of performing the disputed Work to allow both parties joint initial review of the disputed Work. If there is disagreement subsequent to the initial review, the Contractor shall formally request a Contract Interpretation by the Construction Manager in accordance with Article 5.3.9, CONTRACT INTERPRETATION BY THE CONSTRUCTION MANAGER. If the Contractor disagrees with the Construction Manager's decision or in any case where the Contractor deems additional compensation or a time extension to the Contract Time is due the Contractor for work or materials not covered in the Agreement or which the Construction Manager has not recognized as extra work, the Contractor may file a written "Contract Claim" with the Construction Manager within ten (10) days of receipt of the Construction Manager's contract interpretation decision or, if the claim does not involve a Construction Manager contract interpretation decision, within ten (10) days after the date of the occurrence, event or circumstance giving rise to the claim. Additionally, if the claim relates to extra, additional or unforeseen work for which the Contractor intends to demand additional compensation, a time extension, or both, notice shall be given to the Construction Manager prior to the time that the Contractor commences performance of the work giving rise to the potential claim for additional compensation or time extension, and Contractor shall not proceed with that work until so directed by the Construction Manager. A Contract Claim must (a) be in writing, (b) be labeled or clearly indicated as a claim under the Agreement, (c) set forth in detail the reasons why the Contractor believes additional compensation or a time extension is or may be due, the nature of the costs involved, and, insofar as possible, the amount of the claim, and (d) include (or reference earlier provided) documents that support and substantiate the claim as to both entitlement and quantification of time, money, or both. A claim for purposes of this article means a separate demand by the Contractor for (a) a time extension (including a demand for relief from damages or penalties for delay assessed by the City under the Agreement), (b) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (c) an amount the payment of which is disputed by the City.

Additionally, no claim for additional compensation or extension of time for a delay will be considered unless the provisions of Article 9.3, DELAYS, and Article 9.4, TIME EXTENSIONS, are complied with. No untimely claim or claim filed after the date of final payment will be considered.

Unless a timely Contract Claim is properly given, the Contractor shall not recover costs incurred by it as a result of the alleged extra work, changed work or other situation which had proper notice been given would have supported a claim for additional compensation. The Contractor should understand that timely notice of a Contract Claim is of great importance to the Construction Manager and City, and is not merely a formality. Such notice permits the City to consider preventative action, to monitor the Contractor's increased costs resulting from the situation, to marshal facts, and to plan its affairs. Such notice by the Contractor, and the fact that the Construction Manager has kept account of the work in question, shall not in any way be construed as proving the validity of any claim.

11.1.2 Processing of Claims, Generally. This Agreement provides for three types of Contract Claims, which will be processed and resolved under different terms as described below. Any claim for money or damages of \$375,000 or less or for a time extension (i.e., any claim subject to Public Contract Code section 20104) shall be processed and resolved in accordance with Article 11.1.3. Any claim for money or damages of more than \$375,000 (i.e., any claim not subject to Public Contract Code section 9204 or 20104) shall be processed and resolved in accordance with Article 11.1.4. Any Contract Claim sent to City by registered mail or certified mail with return receipt requested (i.e., any claim subject to Public Contract Code section 9204) shall be processed and resolved pursuant to Article 11.1.5.

11.1.3 Claims for \$375,000 or Less or for Time Extension and Not Sent by Registered or Certified Mail.

11.1.3.1 Application. This article applies to all claims (not sent by registered or certified mail) for \$375,000 or less in value, including any claim for a time extension or for a time extension that includes claimed delay damages of \$375,000 or less.

11.1.3.2 City Response to Contract Claim. The Construction Manager shall respond in writing to the Contract Claim within 60 days of receipt of the claim (or within 45 days of receipt for claims of less than \$50,000), or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this article, upon mutual agreement of the Construction Manager and the Contractor. The Construction Manager's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt (or 20 days after receipt for claims of less than \$50,000) of the further documentation. The City shall not fail to pay money as to any portion of a Contract Claim that is undisputed except as otherwise provided in the Contract Documents.

11.1.3.3 Meet and Confer. If the Contractor disputes the Construction Manager's written response, or the Construction Manager fails to respond within the time prescribed, the Contractor may notify the City, in writing, either within 15 days of receipt of the Construction Manager's response or within 15 days of the Construction Manager's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such a demand, the City shall schedule a meet and confer conference within 30 days for the parties to consider settlement of the dispute. If the Contractor fails to timely demand a meet and confer conference within the applicable 15-day period, then the Contractor shall be deemed not to dispute the Construction Manager's written response to the Contract Claim and the Construction Manager's decision on the Contract Claim shall be final, conclusive and binding, and the Contractor shall be deemed to have waived all its rights to further protest, judicial or otherwise.

11.1.3.4 Government Code Claim. Following the meet and confer conference, if the Contract Claim or any portion remains in dispute, the Contractor may file a Government Code Claim as provided in Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910). The running of the period of time within which Contractor must file a Government Code Claim shall be tolled from the time the Contractor submits a timely Contract Claim pursuant to Article 11.1.1, NOTICE AND CONTRACT CLAIM until the time that the Contract Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. The City shall respond to any Government Code Claim in accordance with the Government Claims Act.

11.1.3.5 Lawsuit. If the claim is not resolved pursuant to Article 11.1.3.4, GOVERNMENT CODE CLAIM, the Contractor may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Contractor fails to timely file a lawsuit within the limitations period of the Government Claims Act, then the City's response to the Government Code Claim shall be final, conclusive and binding on the Contractor, and the Contractor thereafter shall be barred from filing a lawsuit on the claim.

11.1.3.6 Mediation. If the Contractor timely files a lawsuit, then within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation (unless waived by mutual stipulation of both parties). The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator. The mediator's fees and expenses shall be split and paid equally between the parties. The court may, upon request by any party, order any witnesses to participate in the mediation process.

11.1.3.7 Arbitration. If the matter remains in dispute following the mediation or if the parties waive the mediation, then the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10), notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986 (Code of Civil Procedure part 4, title 3, chapter 3, article 3 (commencing with section 2016)) shall apply to any proceeding brought under this article consistent with the rules pertaining to judicial arbitration. The arbitrator shall be experienced in public works construction law. The arbitrator's fees and expenses shall be split and paid equally by the parties, except where the arbitrator, for good cause, determines a different division. The court may, upon request by any party, order any witnesses to participate in the arbitration process. Any party who, after receiving an arbitration award, requests a trial de novo but does not obtain a more favorable judgment shall (in addition to payment of any costs and fees under Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with section 1141.10)) pay the attorney's fees of the other party arising out of the trial de novo.

11.1.3.8 Interest. In any lawsuit filed under this article, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the lawsuit is filed in court.

11.1.4 Claims for More Than \$375,000 and Not Sent by Registered or Certified Mail

11.1.4.1 Application. This article applies to all claims (not sent by registered or certified mail) that exceed \$375,000 in value, including any claim for a time extension that includes claimed delay damages exceeding \$375,000.

11.1.4.2 City's Response to Contract Claim. The Construction Manager shall respond in writing to the Contract Claim within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this article, upon mutual agreement of the Construction Manager and the Contractor. The Construction Manager's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation. If the Contractor fails to timely dispute the Construction Manager's decision on the matter in accordance with Article 11.1.4.3, GOVERNMENT CODE CLAIM, then the Contractor shall be deemed not to dispute the Construction Manager's written response to the Contract Claim and the Construction Manager's decision shall be final, conclusive and binding, and the Contractor shall be deemed to have waived all its rights to further protest, judicial or otherwise.

11.1.4.3 Government Code Claim. If the Contractor disputes the Construction Manager's written response to the Contract Claim, the Contractor may file a Government Code Claim as provided in Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910). The City shall respond to any Government Code Claim in accordance with the California Government Claims Act.

11.1.4.4 Lawsuit. If the claim is not resolved pursuant to Article 11.1.4.3, GOVERNMENT CODE CLAIM, the Contractor may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Contractor fails to timely file a lawsuit within the limitations period of the Government Claims Act, then the City's response to the Government Code Claim shall be final, conclusive and binding on the Contractor, and the Contractor thereafter shall be barred from filing a lawsuit on the claim.

11.1.4.5 Judicial Reference. If the Contractor timely files a lawsuit, the case shall be submitted to judicial reference pursuant to California Code of Civil Procedure Sections 638 and 640 through 645.1 (or any successor statute) and California Rules of Court title 3, division 9 (commencing with section 3.900). As authorized by Code of Civil Procedure section 638, a referee will consider and decide all factual and legal issues in the action. Each party acknowledges that it will not have any right to a jury trial or to have any judicial officer besides the referee hear or decide the action. When Contractor initiates the superior court lawsuit, it will, at the same time it files the complaint in the action, also file a motion for appointment of a single referee.

- A. Appointment of a referee shall be by mutual agreement within 30 days between the parties, and if unsuccessful, then by the court and will be governed by Code of Civil Procedure Section 640, and subject to objection by either party as provided by Code of Civil Procedure Section 641. The referee must be a retired judge or a licensed attorney with at least ten (10) years substantive experience in public works construction matters.
- B. The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as a superior court judge. The referee shall have the authority to consider and rule on appropriate pre-hearing and post-hearing motions in the same manner as a superior court judge. The referee will have the authority to set a briefing and hearing schedule for any such motion or for a hearing on the merits.
- C. The referee's statement of decision shall include findings of fact and conclusions of law. The statement of decision will stand as the decision of the superior court and, upon filing of the statement with the clerk of the court, judgment may be entered pursuant to Code of Civil Procedure Section 644, subsection (a). The parties will have rights to appeal the final judgment so entered.
- D. (d) Each party will pay half of the costs of the referee and the administrative fees of the reference proceeding, and each party will bear its own costs, expenses and attorney fees for the reference proceeding.

11.1.5 Claims Subject to Public Contract Code Section 9204

11.1.5.1 This article applies to all Contract Claims sent by registered or certified mail with return receipt requested. The Contract Claim will be processed and resolved pursuant to Public Contract Code Section 9204, which is summarized here:

- E. City's Review of Claim. Within 45 days after receiving a complete Contract Claim, City shall review the claim and provide the Contractor a written statement identifying what

portion of the claim is disputed and what portion is undisputed. The City will pay any undisputed portion of the claim within 60 days from the date of the written statement. If the City fails to timely issue a written statement, then the claim shall be deemed rejected in its entirety.

- F. **Meet and Confer Conference.** If the Contractor disputes the City's written statement or if the Contract Claim is deemed rejected, the Contractor may demand and the parties will conduct an informal conference to meet and confer regarding settlement in accordance with Section 9204, subsection (d)(2). Within 10 business days following the conclusion of the meet and confer conference, the City shall provide Contractor a written statement identifying the portion (if any) of the claim remaining in dispute and any undisputed portion will be paid by the City within 60 days after this written statement.
- G. **Non-Binding Mediation.** Any remaining disputed portion of the claim shall be submitted to nonbinding mediation in accordance with Section 9204, subsection (d)(2).
- H. **Interest.** Any amount not paid in a timely manner as required by this article shall bear interest at a rate of 7 percent per annum until paid.

The foregoing is a summary of section 9204. In the event of any conflict between the summary and section 9204, the statute will govern.

11.1.5.2 **Lawsuit and Reference.** If mediation is unsuccessful and all or parts of the Contract Claim remain in dispute, then the Contractor may pursue a lawsuit (with judicial reference) in accordance with the procedures set forth at Articles 11.1.4.4 through 11.1.4.5. Any lawsuit under this Article 11.1.5 will be subject to judicial reference in the same manner as under Article 11.1.4.

11.1.6 **Contract Work Pending Claim Resolution.** Unless otherwise directed in writing by the Construction Manager, pending resolution of a claim under this article, the Contractor shall continue to diligently prosecute the Work in accordance with the Contract Documents and the instructions of the Construction Manager.

11.1.7 **Records of Disputed Work.** In proceeding with a disputed portion of the Work, the Contractor shall keep accurate daily records of all costs, including a summary of the hours and classification of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services that are used. Such information shall be submitted to the Construction Manager on a daily basis, receipt of which shall not be construed as an authorization for or acceptance of the disputed work. Failure to comply with this paragraph shall constitute a waiver of the Contractor's claim for additional compensation or a time extension as to that day.

11.1.8 **Submission of Claim Costs.** Within thirty (30) days after incurring the last cost of work for which the Contractor contends it is due additional compensation is incurred, but if costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth day and every month thereafter, the Contractor shall submit to the Construction Manager, as best the Contractor is able, its costs incurred for the claimed matter. Claims shall be made in itemized detail, and should the Construction Manager be dissatisfied with the format or detail of presentation, upon request for more or different information, the Contractor will promptly comply, to the satisfaction of the Construction Manager. If the additional costs are not fully ascertainable, they shall be estimated with as much accuracy as possible in the circumstances. The Construction Manager shall have the right as provided in Section 01 26 00-3.4, **COST PRICING DATA AND ACCESS TO RECORDS**, to review the Contractor's records pertaining to a submitted claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Section 01 26 00, **CONTRACT MODIFICATION PROCEDURES**.

11.1.9 Claim Meetings. From time to time the Contractor may request or the Construction Manager may call a special meeting to discuss outstanding claims should it deem this a means of possible help in the resolution of the claim. The Contractor shall cooperate and attend prepared to discuss its claims, and make available the personnel, subcontractors and suppliers necessary for resolution, of the claim. In addition, the Contractor shall timely provide all documents relevant to the claim which may reasonably be requested by the Construction Manager.

11.1.10 Tort Claims. The provisions of this Article 11.1 apply only to contract-based claims and they shall not apply to tort claims, and nothing in this Article 11.1 is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Government Code title 1, division 3.6, part 3, chapters 1 (commencing with section 900) and 2 (commencing with section 910).

ARTICLE 12 - PAYMENT AND COMPLETION

12.1 Guaranteed Maximum Price (GMP). The City shall pay for Contractor's performance under this Agreement the Cost of the Work and Fee (as defined in Exhibit C, GUARANTEED MAXIMUM PRICE, COST OF WORK AND FEE, hereto), provided, however, that the sum of the Cost of the Work and Fee shall not exceed the GMP, as adjusted by Change Order and/or Field Order in accordance with the Contract Documents.

12.2 Not Used.

12.3 Applications for Payment. Within ten (10) business days following execution of this Agreement, the City and Contractor shall meet to discuss the format, cost breakdown and level of detail required in each Contractor Payment Application. The cost breakdown shall be generally in the same format as typical CSI Document Divisions and Subdivisions, with major items of work listed individually. The cost breakdown shall be by structure, civil, landscaping, or other logical divisions of work. The cost breakdown for architectural, structural, mechanical, and electrical work shall include separate items for identifiable portions of the structures. The cost breakdown shall include separate items for all testing and startup work required. The cost breakdown shall also have separate items for all mobilization costs, direct job overhead costs, bonds, builder's risk insurance, supervision, subcontractors, special services and major suppliers.

The Contractor's cost breakdown and accounting system to produce the Contractor's Application for Payment must provide the City the means to efficiently substantiate the Cost of the Work completed each month and to date for the timely processing for payment to the Contractor.

Contractor shall deliver to City not more than once each month an Application for Payment covering the Cost of Work and Fee applicable to the Work performed during the immediately preceding month. With each Application for Payment Contractor shall submit a line item detailed billing to demonstrate costs incurred on account of Cost of the Work during such month.

Each progress payment request and the final payment request shall be deemed "proper" only if it is submitted on the form approved by the City, with all of the requested information completely and accurately provided by the Contractor and such completed progress payment request form or final payment request form is accompanied by: (i) certified payrolls of the Contractor and all subcontractors, of any tier, for laborers performing any portion of the Work for which a progress payment or final payment is requested; (ii) duly completed and executed Conditional Waiver and Release Upon Progress Payment or Final Payment forms in accordance with California Civil Code §§ 8132 and 8136 for all subcontractors of any tier, and material suppliers covering the progress payment or final payment requested; (iii) duly completed and executed Unconditional Waiver and Release Upon Progress Payment forms in accordance with California Civil Code §§ 8134 and 8138 for all subcontractors of any tier, and material suppliers covering the progress payment received by the Contractor under the prior progress payment request.

City may reject requests for payment, or portions thereof, for Work, or portions thereof, not performed or completed.

City may request additional detail or breakdown of costs to meet Funding Agency reimbursement requirements.

12.4 Amount of Progress Payments. City shall pay Contractor the actual Cost of the Work and Fee through the period covered by the Application for Payment, less Retention as set forth in Article 12.5, EFFECT OF PAYMENT below. City may additionally withhold from progress payments such amounts pursuant to stop notice claims as required by law and pursuant to Article 12.9, WITHHOLDING OF PAYMENTS.

12.5 Effect of Payment. Payment will be made by City based on the Construction Manager's observations at the Site and the data comprising the progress payment request. Payment will not be a representation that the City has:

- A. Made exhaustive or continuous on-site inspections to check the quality or quantity of Work;
- B. Reviewed construction means, methods, techniques, sequences or procedures;
- C. Reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by City to substantiate Contractor's right to payment;
- D. Made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum; or
- E. Accepted all or part of the Work.

12.6 Retention; Escrow Agreement; Final Payment. Five percent (5%) Retention shall be withheld from each progress payment until the expiration of 35 days following City's filing of the Notice of Completion for the Project or as required in California Public Contract Code Section 7107, whichever is earlier; provided, however, City shall continue to retain such amount as required by law and City's right to withhold in accordance with Article 12.9, WITHHOLDING OF PAYMENT, herein.

For any retention of amount earned by the Contractor as provided for in this article, the Contractor may substitute securities as provided in Section 22300 of the Public Contract Code, as amended, which states in part as follows:

"Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract, provided that substitution of securities provisions shall not be required where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay those monies to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor."

"Alternatively, the contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the contractor, the contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this Article for securities deposited by the Contractor. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the City, pursuant to the terms of this Article. The Contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of the Contractor."

"The Contractor shall be the beneficial City of any securities substituted for money withheld and shall receive any interest thereon."

Securities eligible for investment under Section 22300 shall be limited to those listed in Section 16430 of the Government Code and to bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.

The escrow agreement used hereunder shall be null, void, and unenforceable unless it is substantially similar to the form in Exhibit J, ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION. Release of Retention monies shall constitute the Final Payment.

12.7 Not Used.

12.8 Title to Construction Work. Title to all Work covered by an Application for Payment shall pass to City no later than the time of payment. Upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from City shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, material suppliers, or other persons or entities, except work, labor, materials or services that are the subject of a Claim.

No material, supplies, or equipment for the Work under this Agreement shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by the Contractor, to the City free from any third party claims, liens, security interests, or charges.

Nothing contained in this article, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the City.

12.9 Withholding of Payment. City may withhold payment on account of an Application for Payment if required or authorized by any Applicable Law, or to the extent necessary to protect City from loss because of the following:

- A. Defective Work not remedied, irrespective of when any such work be found to be defective.
- B. Non adherence to Funding Agency requirements including, but not limited to, the Iron and Steel Requirements.
- C. Damage to another contractor or third party, or to property that Contractor has failed to resolve within 30 days after receiving written notice of the damage.
- D. A reasonable amount for failure of the Contractor to maintain Record Drawings current as required in Section 01 33 23, AS-BUILT DRAWINGS.
- E. Cost of insurance arranged by the City due to cancellation or reduction of the Contractor's insurance.
- F. Failure to submit, revise, resubmit or otherwise conform to the requirements herein for preparing and maintaining a construction schedule as required in Section 01 32 16, PROGRESS SCHEDULES AND REPORTS.
- G. Failure to provide the required payment documentation, including required waivers, releases, and Funding Agency documentation.

- H. Payments due the City from the Contractor as provided for in the Contract Documents.
- I. Failure to comply with environmental and other regulatory requirements that Contractor has failed to resolve within 30 days after receiving written notice of the noncompliance.
- J. Failure to comply with equipment storage requirements and/or equipment installation guidelines.
- K. Provisions of law that enable or require the City to withhold such payments in whole or in part, including, but not limited to California Public Contract Code
- L. Stop Payment Notice claims filed by Contractor's subcontractors of any tier, or its material suppliers.
- M. Contractor's failure to timely complete its Work, including Punch List items in the time required and issuance of operations and maintenance (O&M) manuals.
- N. Any other breach of a material provision of this Agreement if Contractor has failed to respond to the City's written Notice of the alleged breach within 10 days.

When the above reasons for withheld amounts are removed, payment will be made to the Contractor for amount withheld because of them.

12.10 Failure of Payment. In accordance with Public Contract Code § 20104.50, City shall pay Contractor interest on any progress payment, which is made by City more than thirty (30) days after City receives an undisputed and properly submitted written payment request. Any written request for a progress payment which City determines not to be a proper payment request suitable for payment shall be returned to the Contractor within seven (7) days after receipt by City, along with a written statement of the reason or reasons why such request is not proper.

12.11 Occupancy by City Prior to Final Completion. The City reserves the right to Beneficial Occupancy without charge by Contractor. In those areas of the Work, which are deemed substantially completed the City may store materials, equipment, and supplies, and may perform partial operation.

12.12 Substantial Completion. When the Contractor considers the entire Work substantially complete, or a portion of the Work substantially complete as defined by the Contract Milestones or as needed for Beneficial Occupancy is complete and ready for its intended use, the Contractor shall certify in writing to the City through the Construction Manager that the entire Work, or a portion of the Work as defined by the Contract Milestones or needed for Beneficial Occupancy is substantially complete and provide the City with a Certificate of Substantial Completion. If the Construction Manager agrees that an inspection to determine the status of completion is warranted, the City, Construction Manager and Contractor shall make an inspection of the Work to determine the status of completion. Substantial Completion shall be defined as completion of Work in accordance with the Contract Documents, including Extra Work, except for minor punch list items, and suitable for the City's Beneficial Occupancy. Issuance of Substantial Completion requires submittal of associate as-built drawings, operations and maintenance manuals, asset management data and other related submittals for the portion of Work being assessed for Substantial Completion.

If the City does not consider the Work substantially complete, the Construction Manager will notify the Contractor in writing identifying the parts of the Work that the City contends are not substantially complete. If the City considers the Work is substantially complete, the City will accept a corresponding partial Certificate of Substantial Completion. There shall be attached to the Certificate a punch list of items to be completed or corrected before Final Completion and Final Payment.

Upon verification that the Work is substantially complete the Construction Manager shall prepare a Certificate of Substantial Completion and the Punch List. The Certificate shall establish the date of Substantial Completion and the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, warranties as defined by the Contract Documents, and shall fix the time, not to exceed 30 days, within which the Contractor shall finish all items on the Punch List or remaining work or administrative requirements accompanying the Certificate. When the preceding provisions have been approved by both the City and the Contractor, they shall sign the Certificate to acknowledge their written acceptance of the responsibilities assigned to them in such Certificate.

12.13 Final Completion. When all the Work is fully completed, Contractor shall provide City with a Certificate of Final Completion and shall request final inspection in writing. Additionally, Contractor shall provide legally effective releases or waivers satisfactory to City of all stop payment notice and payment bond claim rights in connection with the Work. Within ten (10) calendar days of receipt of such completed request form, City shall make final inspection. If following final inspection City determines that the Work (including all punch list items) has been fully completed and performed in accordance with the Contract Documents, the City will accept the Work as finally complete. Acceptance of the Project for Final Completion requires formal acceptance by the City's Representative. If the City's Representative determines that the Work is not complete after receipt of certification, the Contractor shall be notified in writing of deficiencies. After the deficiencies have been corrected, the procedure for final inspection as set forth above shall again be initiated by Contractor.

12.13.1 Waiver of Claims at Final Payment. Acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor, except those previously made in writing and identified as unsettled at the time of final payment or those related to final payment or items of Work that are incomplete at the time of Final Completion.

12.14 Warranties and Bonds

12.14.1 The Contractor hereby agrees to make, at its sole expense, all repairs or replacements necessitated by defects in materials or workmanship, supplied under terms of the Contract Documents, and pay for any damage to other works resulting from such defects, which becomes evident within the warranty period. Unless otherwise provided in Contract Documents, the one (1) year warranty period is the shortest duration and such duration may be a longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The Contractor further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components. The Contractor also agrees to indemnify, defend, and hold the City harmless from liability of any kind arising from damage due to said defects.

12.14.2 The Contractor shall execute and submit a warranties for the Work, and any portion of the Work possessed in accordance with Article 6.4, CITY'S RIGHT TO USE AND OCCUPY. The warranties shall be submitted within five (5) days of Substantial Completion.

12.14.3 The Contractor shall, upon the receipt of notice in writing from the City, promptly make all repairs arising out of defective materials, workmanship, or equipment. The City is hereby authorized to make such repairs, and the Contractor and its Surety shall be liable for the cost thereof, if ten (10) days after the City giving of such notice to the Contractor, the Contractor has failed to make or undertake the repairs with due diligence. In case of emergency, where in the opinion of the City delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the expense in connection therewith shall be charged to the Contractor, and/or its Surety shall be liable for the cost thereof.

12.14.4 Prior to the expiration of the warranty period, the City reserves the right to hold a meeting and require the attendance of the Contractor. The purpose of the meeting is to review warranties, bonds and maintenance requirements and determine required repair or replacement of defective items.

12.14.5 For the purpose of this paragraph, acceptance of the Work or a portion of the Work by the City, shall not extinguish any covenant or agreement on the part of the Contractor to be performed or fulfilled

under this Agreement which has not, in fact, been performed or fulfilled at the time of such acceptance. All covenants and agreements shall continue to be binding on the Contractor until they have been fulfilled.

12.14.6 The City and the Contractor agree that warranty on the parts of the Work possessed and used by the City in accordance with Article 6.4, CITY'S RIGHT TO USE OR OCCUPY, shall commence on the date that the City takes possession of such work and so notifies the Contractor in writing. The City and Contractor further agree that such possession, and use of the Work shall not be deemed the Work as receiving Final Acceptance.

12.14.7 If, after installation, the operation or use of the materials or equipment furnished under the Contract Documents proves to be unsatisfactory to the Construction Manager or the City, the City shall have the right to operate and use such materials or equipment until it can, without damage to the City, be taken out of service for correction or replacement. Such period of use of the defective materials or equipment pending correction or replacement shall in no way decrease the warranty period. The warranty period for equipment shall be extended by the number of days from the date the equipment is found by the City to be non-functional or defective to the date the Contractor repairs and makes fully operational the same equipment.

12.14.8 Nothing in the Contract Documents shall be construed to limit, relieve or release the Contractor's, subcontractor's and/or equipment supplier's liability to the City for damages sustained as the result of latent defects in the equipment furnished or work performed. Further, nothing in the Contract Documents shall be deemed to be a waiver by the City of any rights or remedies, or time limits in which to enforce such rights or remedies, that it may have against the Contractor, subcontractors, suppliers of the equipment and Work performed under the Contract Documents.

12.15 Audits and Access to Records. The Contractor must maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work in accordance with generally accepted accounting principles and practices. The Contractor must also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's estimate, any Change Order, Dispute, Claim, Pay Application, or other request for equitable adjustment. City and its representatives will have access upon five (5) business days advanced written notice, during normal business hours, to all Contractor's books, summary reports, records, accounts, estimates, documents, detailed financial information, certified payroll records, AIS records and all other information and documentation relevant to the Work for the purposes of inspection, audit, and copying. The Contractor will, at no cost to City, provide reasonable facilities for such access, and inspection purposes. The City will arrange for and pay all costs of copying.

The Contractor agrees to include and make the requirements of this article, applicable to all subcontractors listed in Exhibit E, DESIGNATION OF SUBCONTRACTORS.

Audits conducted pursuant to this article, will be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.

The Contractor agrees to provide requested information and reports resulting from access to records to City, subject to execution of an appropriate confidentiality order if requested.

Records must be maintained and made available during the performance of the Work and for four (4) years after Final Payment, and until final settlement of all Disputes or Claims, whichever occurs later.

The right of access provisions of this article, applies to all financial records pertaining to the Agreement:

- A. To the extent the records pertain directly to Agreement performance;
- B. To the extent required for verification of the costs incurred where such costs are the basis for billings pursuant to the Agreement including Change Orders;

- C. To the extent there is credible evidence that Contractor has violated the federal False Claims Act and the California False Claims Act or that fraud, gross abuse, or corrupt practices may be involved; and
- D. If the Agreement is terminated for default or convenience.

Access to records is not limited to the required retention periods. City's Authorized Representative or designee must be granted access to records at any reasonable time for as long as the records are required to be maintained.

In the event that City's audit determines that Contractor has billed for any costs that are ineligible for reimbursement or for any reason should not have been paid, or the Contractor's fee has been improperly applied or calculated, Contractor shall promptly refund all improper payments following receipt of City's written notice and explanation of the alleged overpayments or improper fee and shall be responsible to pay City for the City's reasonable costs to perform the audit unless the Contractor establishes that the overpayment or improper fee was the result of an unintentional, inadvertent clerical error.

12.16 Cash Flow Projection. A cash flow projection covering the entire construction period shall be prepared by the Contractor and submitted to the Construction Manager prior to commencement of the Work. Additional cash flow projections shall be submitted upon request by the Construction Manager if there is a material change in the scope of the Work or a material change in the duration of the Work or if the Construction Manager reasonably believes that the Contractor's financial status has materially changed.

12.17 False Claims Act. All claims for payment from the Contractor to the City shall in all respects be a true and correct representation of services rendered and/or materials delivered to the City pursuant to the California False Claims Act. The penalties under the Federal False Claims Act and the State of California False Claims Act are non-exclusive, and are in addition to any other remedies which the City may have either under contract or law.

12.18 Shared Savings. The Contractor shall be compensated for actual work completed based on the Cost of the Work and Fee up to the amount of the GMP. If the Contractor's actual total Cost of the Work and Fee is less than the GMP upon Final Completion, the Contractor shall receive forty percent (40%) of the GMP Savings. "GMP Savings" shall mean the positive difference, if any, when the Actual Total Cost of the Work is subtracted from the GMP; provided, however, that unused Allowance monies, if any, shall not be subject to shared savings.

ARTICLE 13 - INSURANCE AND INDEMNIFICATION

13.1 Insurance

Contractor shall maintain, at its own expense, all the insurance required by this article and submit coverage verification for approval by the City prior to the City's execution of this Agreement, which shall be included in Exhibit L, CONTRACTOR INSURANCE CERTIFICATES of this Agreement.

This Agreement will not be executed by the City, and the Contractor shall not commence Work, until such insurance has been approved by the City. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the Final Completion thereof. In addition, the commercial general liability insurance shall be maintained for a minimum of three (3) years after Final Completion of the Work. The City's issuance of the Notice to Proceed does not relieve the Contractor of the duty to obtain such insurance as required herein.

The Contractor shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by the Contractor and submitted to the Construction Manager for the City's review and records. Subcontractors shall furnish original certificates and required endorsements as verification of insurance coverage. At a minimum amount of coverage, the

insurance liability limits specified in Article 13.1.1.a(2) herein, shall apply for all subcontractors who execute a subcontract with the Contractor for portions of the Work.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII or equivalent and that are admitted to do business and in good standing in California, unless otherwise approved by the City. In the case of workers' compensation and employer's liability insurance, coverage provided by the California State Compensation Insurance Fund is acceptable.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City by the insurance carrier. Should the insurance carrier refuse to provide this notice, the Contractor shall be obligated to provide to the City thirty (30) days prior written notice of any insurance coverage being suspended, voided, reduced or canceled by either party, or any reduction in coverage or in limits.

The Contractor shall include all costs for insurance in its GMP.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from its operations under this Agreement. For any claims related to Contractor's Work, as opposed to work City has contracted to parties other than Contractor, the Contractor's insurance coverage shall be primary insurance as respects the City, Construction Manager, Engineer, Funding Agencies and their directors, officers, elected officials, employees, agents, and volunteers. For any claims related to Contractor's Work, any insurance or self-insurance maintained by the City, Construction Manager, Engineer, Funding Agencies and their directors, elected officials, officers, officials, employees, agents, consultants or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Any failure of the Contractor to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, Construction Manager, Engineer, Funding Agencies and their directors, elected officials, officers, officials, employees, agents, consultants or volunteers.

The Contractor shall take out, pay for, and maintain throughout the duration of this Agreement and for such additional periods as more specifically required herein the following insurance against claims for injuries to persons or damages to property which may be caused by the performance of the Work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors, or from operations under this Agreement.

13.1.1 Commercial General Liability and Automobile Liability Insurance – This insurance shall protect the Contractor from claims for bodily injury, personal injury and property damage which may be caused by the performance of the Work hereunder by the Contractor, the Contractor's agents, representatives, employees or subcontractors, or from operations under this Agreement. The commercial general liability insurance shall be maintained for three (3) years after Final Completion of the Work and shall provide coverage on an occurrence basis.

- A. Additional Insureds – The commercial general liability and automobile policies of insurance shall include as additional insureds or be endorsed to contain the following provisions: the City, Construction Manager, Engineer, Funding Agencies and their directors, elected officials, officers, officials, employees, agents, consultants and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor and or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, Construction Manager, Engineer, Funding Agency and their directors, elected officials, officers, officials, employees, agents or volunteers and coverage provided to such additional insured. This policy shall provide coverage to each of the said additional

insureds with respect to said work. Said policy shall provide primary coverage to the full limit of liability stated in the declarations.

- B. Amount of Coverage (General Contractor) – The bodily injury, personal injury and property damage liability of the Commercial General Liability insurance shall provide coverage in the following minimum limits of liability: \$5,000,000 on account of any one occurrence for bodily injury and property damage, \$5,000,000 personal and advertising injury limit with an annual general aggregate limit of not less than \$10,000,000, and \$5,000,000 products and completed operations aggregate, combined single limit, with excess coverage of \$10,000,000 per occurrence and in the aggregate. The Automobile Liability insurance policy shall provide minimum limits of \$5,000,000 per accident as a combined single limit arising out of the ownership, maintenance, or use of any owned or non-owned vehicles, with excess coverage of \$10,000,000 per occurrence and in the aggregate, including coverage for products and completed operation. Any deductibles or self-insured retentions must be declared to and approved by the City.
- C. Minimum Amount of Coverage for all Listed Subcontractors included in Exhibit E - The bodily injury, personal injury and property damage liability of the Commercial General Liability insurance shall provide coverage in the following limits of liability: \$5,000,000 on account of any one occurrence for bodily injury and property damage, \$5,000,000 personal and advertising injury limit with an annual general aggregate limit of not less than \$10,000,000, and \$5,000,000 products and completed operations aggregate, combined single limit. The Automobile Liability insurance policy shall provide minimum limits of \$5,000,000 per accident as a combined single limit arising out of the ownership, maintenance, or use of any owned or non-owned vehicles. These minimum amounts of insurance coverage do not preclude the Contractor from requiring higher limits or additional insurance coverage as it deems necessary.
1. Minimum Amount of Coverage for Subcontractors NOT included in Exhibit E - The bodily injury, personal injury and property damage liability of the Commercial General Liability insurance shall provide coverage in the following limits of liability: \$2,000,000 on account of any one occurrence for bodily injury and property damage, \$2,000,000 personal and advertising injury limit with an annual general aggregate limit of not less than \$4,000,000, and \$2,000,000 products and completed operations aggregate, combined single limit. The Automobile Liability insurance policy shall provide minimum limits of \$1,000,000 per accident as a combined single limit arising out of the ownership, maintenance, or use of any owned or non-owned vehicles. These minimum amounts of insurance coverage do not preclude the Contractor from requiring higher limits or additional insurance coverage as it deems necessary.
- D. Subcontractors – The bodily injury and property damage liability insurance shall not be deemed to require the Contractor to have its subcontractors named as additional insureds in the Contractor's policy, but the policy shall protect the Contractor from contingent liability which may arise from operations of its subcontractors.
- E. Included Coverage – The above commercial general liability insurance shall also include the following coverages:
- Premises – Operations
 - Independent Contractors
 - Products - Completed Operations
 - Personal Injury - False Arrest, Libel, Wrongful Eviction, etc.

- Advertising Injury
 - Broad Form Property Damage - Including, Completed Operations
 - Separation of Insureds/Cross-Liability Provision
 - Duty to Defend all Insureds
 - Deletion of any Limitation on Coverage for Bodily Injury or Property Damage Arising out of Subsidence or Soil or Earth Movement
 - Separate Aggregate – A provision that the annual general aggregate shall apply separately to each project for which Contractor provides services away from premises owned by or rented to Contractor.
 - XCU – Explosion, Collapse, Underground Damage
 - Blanket Contractual Liability – Provisions or endorsements shall state that the insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under this Agreement, including, without limitation, insurable liabilities set forth in the indemnity articles of this Agreement.
1. Umbrella Policy – The Contractor may use an umbrella or excess policy to meet the limits requirement of Article 13.1.1.B, and subcontractors may use an umbrella or excess policy to meet the limit of requirements of Article 13.1.1.C. However, any such umbrella/excess policy must be approved by the City and maintain an A.M. Best Rating of no less than A:VII.

13.1.2 Workers' Compensation Insurance – In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860) and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the Labor Code of the State of California, the Contractor is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance. In accordance with California Labor Code Section 1861, the Contractor shall sign and include Exhibit K, WORKER'S COMPENSATION INSURANCE CERTIFICATE with this Agreement. If the Contractor, in the sole discretion of the City, satisfies the City of its responsibility and capacity under the applicable Workers' Compensation Laws, if any, to act as self-insurer, the Contractor may so act, and in such case, the insurance required by this article need not be provided.

The Contractor is advised of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and shall comply with such provisions and have employers' liability limits of \$1,000,000 per accident and per employee, and in the aggregate for injury by disease, before commencing the performance of the Work of this Agreement.

Before the Notice to Proceed with the Work under this Agreement is issued, the Contractor shall submit written evidence that the Contractor has obtained for the period of the contract workers' compensation and employer's liability insurance as required for all persons whom it employs or may employ in carrying out the Work under this Agreement. Such evidence of coverage shall be accompanied by an endorsement from the insurer agreeing to waive all rights of subrogation against the City, Construction Manager, Engineer, Funding Agencies and their directors, elected officials, officers, officials, employees, agents and volunteers which might arise by reason of any payment under the policy. This insurance shall be in accordance with the requirements of the most current and applicable State Workers' Compensation Insurance Laws.

13.1.3 Professional Liability Insurance – All submittals required of the Contractor which are to be prepared by a licensed California engineer shall be prepared only by a licensed engineer who is covered by a professional liability insurance policy issued by a California-admitted carrier or a carrier authorized to

do business in California with a Best's rating of A-VII or better, with an limit per claim of at least \$2,000,000, and a \$4,000,000 in the aggregate for errors and omissions. Such insurance shall be maintained in effect by said engineer at all times while performing Work on the Project and for at least three (3) years after Final Completion of the Project. Contractor shall submit an insurance certificate for such engineer prior to beginning Work for approval by the City.

13.1.4 Builder's Risk Insurance – Contractor shall provide "Special Form" Builder's Risk Insurance on the replacement cost basis as listed below:

- A. Amount of Coverage - Equal to the full replacement cost on a completed value basis, without deduction for depreciation and shall also provide coverage for "soft costs" such as but not limited to design and engineering fees and inspection costs caused by an insured peril, up to a maximum total for all soft costs of \$350,000. The builder's risk insurance may contain sub-limits not less than the following:
 - Debris removal - \$100,000.
 - Pollution Clean-up cost - \$25,000.
- B. Additional Insureds/Loss Payees - This insurance shall name the City, Engineer, Construction Manager, the Funding Agencies and Contractor as insureds/loss payees, as their interests may appear. Builder's risk insurance policies shall contain the following provisions:
 - 1) The City, Contractor and subcontractors of every tier shall be named as insureds.
 - 2) Each insured shall waive all rights of subrogation against each of the other insureds.
- C. Included Coverage – The above builder's risk insurance shall include the following coverages:
 - 1) Including, but not by way of limitation, for all damages of loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Site, to construction plant and temporary structures.
 - 2) Such insurance shall cover, but shall not be limited to, the perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and flood.
 - 3) The policy shall cover the costs of debris removal, including demolition as may be made reasonably necessary by the application of any law, ordinance, or regulation.
 - 4) Start-up & testing, and machinery breakdown including electrical arcing which are very important coverages and usually have to be requested.
 - 5) The policy shall provide the City the right to occupy the premises without termination of the policy until Final Completion of the Project.
- D. Deductibles - Builder's risk insurance may have a deductible clause not to exceed the amounts below. Contractor shall be responsible for paying any and all deductible costs.
- E. All Other Perils - \$100,000.
- F. Application of Loss Proceeds - In the event of a covered loss, proceeds of builder's risk insurance shall be applied first to reimburse actual costs of demolition, debris removal, reconstruction, and repair or replacement incurred in the discharge of the Contractor's obligations of repair or replacement under this Agreement. Insurance proceeds shall be deposited in a separate account in a local bank satisfactory to the City and shall be withdrawn only with the City's written approval to reimburse such actual costs as the builder's risk carrier has agreed to reimburse. The City shall have no liability for failure of the builder's risk carrier to pay for any particular cost of repairs. In the event of the termination of the Contractor for default, the Contractor shall forfeit all rights to builder's risk insurance proceeds and City may expend such proceeds to complete the Project as if they were unpaid contract monies.

13.1.5 Contractor's Pollution Liability Insurance. The Contractor shall obtain Pollution Liability Insurance. This insurance shall be written in comprehensive form either as a separate policy or as an endorsement to Contractor's general liability coverage and shall cover liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of any Work to be performed under the Agreement, including liability for and defense of lawsuits and regulatory actions. Coverage shall be provided for both Work performed on Site, as well as during the transport of hazardous materials. Coverage shall apply to sudden as well as gradual pollution conditions, including without limitation conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. The liability limits shall be not less than:

- Combined Single Limit for each occurrence: \$2,000,000.
- General Aggregate: \$2,000,000.

If the coverage required is written on a claims-made coverage form:

- The retroactive date must be shown, and this date must be before the award date of the Agreement.
- Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after final payment.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement award date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after Final Payment.
- A copy of the claims reporting requirements must be submitted to the City for review.

13.1.6 Proof of Coverage – Before execution this Agreement, the Contractor shall furnish the City with certificate(s) evidencing issuance of all insurance mentioned herein, copies of the policy declaration or information page(s) and additional insured endorsements, which shall be included as Exhibit L, CONTRACTOR'S INSURANCE CERTIFICATES. The certificate(s) and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on endorsement forms acceptable to the City. The certificate(s), policy declaration or information page(s), and endorsements are to be received and approved by the City before Work commences. Except for the waiver of subrogation rights endorsements, as required herein, no other endorsements are required for workers compensation or excess liability insurance. Such certificates of insurance shall provide that the insurance policy shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or limits except after thirty (30) days prior written notice has been given to the City. The Contractor shall also provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance.

For all insurance policy renewals during the term of this Agreement, Contractor shall send insurance certificates reflecting the policy renewals directly to EBIX via email at roseville@ebix.com, or via fax to (770) 325-5727.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either:

- The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, Construction Manager, Engineer, Funding Agencies and their directors, elected officials, officers, officials, employees, agents and volunteers; or
- The Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

In the event of the breach of any provision of this article, or in the event of any notices received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, declare a material breach of this Agreement and suspend all further work pursuant to this Agreement until Contractor has provided evidence that its insurance coverage meets the requirements of the Contract Documents.

13.1.7 Third Party Insurance Requirements - The Work, as contemplated by the Contract Documents, does not specifically require an encroachment permit from other public agencies or utilities. However, in the event the Contractor chooses a means and method of construction that results in Work requiring an encroachment permit from a public utility, or any other local, state, federal or public agency, Contractor shall ensure that the insurance it obtains in accordance therewith complies with all requirements mandated by each permitting agency from whom permits shall be obtained for the Work and any other third parties from whom third party agreements are necessary to perform the Work (collectively, the "Third Party(ies)"). To the extent there is a conflict between the Third Party(ies)'s Insurance Requirements and those set forth by the City herein, the requirement(s) providing the more protective coverage for both the City and the Third Party(ies) shall control and be purchased and maintained by Contractor.

Contractor shall be responsible to determine what insurance requirements exist as a condition precedent to obtaining permit(s) for the Work, if any. Contractor shall be solely responsible for any delay(s) arising from its failure and/or its subcontractors' failure to timely obtain all required insurance.

All required third party insurance shall be submitted to the City at the same time Contractor submits all other contractually required insurance, which is no later than ten (10) days after Notice of Intent to Award, unless otherwise agreed to in writing by the City prior to this deadline.

13.1.8 Insurance During Guarantee Period - For all work the Contractor or its subcontractors perform during the guarantee period, workers compensation and commercial general liability insurance in the amounts and format required herein shall remain in force and be maintained for three (3) years after Final Completion of the Work.

The Contractor shall be responsible for paying any and all deductible costs for claims against its workers compensation and commercial general liability insurance.

13.2 General Indemnification Obligations

- A. The Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, at the Contractor's expense, the City, and their directors, elected officials, officers, officials, employees, agents, consultants, design engineers, Funding Agencies and each of them (collectively the "Indemnified Parties"), from and against any and all liability, loss, damage, claims, actions, causes of action, expenses and costs (including, without limitation, reasonable City staff attorney fees and outside attorney fees, and costs and fees of litigation) (collectively, "Liability") of every nature to the extent caused by Contractor's negligent performance of the Work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except that such obligation to defend and indemnify does not apply to the extent such Liability was caused by the active negligence, sole negligence or willful misconduct of the Indemnified Parties. Such indemnification by the Contractor shall include, but not be limited to, the following:
1. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Contractor, its subcontractors, employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction, or by or on account of any act or omission of the Contractor, its employees, or agents;
 2. Liability or claims arising directly or indirectly from Contractor's negligent acts that cause bodily injury, occupational sickness or disease, or death of the Contractor's, or supplier's own

employees, or agents engaged in the Work resulting in actions brought against the Indemnified Parties;

3. Liability or claims arising directly or indirectly from or based on the violation of any laws or regulations, whether by the Contractor, its subcontractors, employees, or agents;
 4. Liability or claims arising directly or indirectly from the negligent or legally unauthorized use or manufacture by the Contractor, its subcontractors, employees, or agents in the performance of this Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specified stipulated in this Agreement.
 5. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the City or any other parties by the Contractor, its subcontractors, employees, or agents;
 6. Liability or claims arising directly or indirectly from the willful misconduct of the Contractor, its subcontractors, employees, or agents;
 7. Liability or claims arising directly or indirectly from any breach of the obligations assumed in this Agreement by the Contractor;
 8. Liability or claims arising directly or indirectly from, relating to, or resulting from a hazardous condition created by the Contractor, subcontractors, suppliers, or any of their employees or agents due to Contractor's negligence or breach of any obligation in this Agreement;
 9. Liability or claims arising directly, or indirectly, or consequentially out of any action, legal or equitable, brought against the Indemnified Parties, their consultants, subconsultants, and the directors, officers, elected officials, employees, agents and volunteers of each or any of them, to the extent caused by the Contractor's negligent or improper use of any premises acquired by permits, rights of way, or easements, the Site, or any land or area contiguous hereto or its performance of the Work thereon;
 10. Liability arising directly or indirectly from exposure to hazards in violation of the California Labor Code that may be asserted by any person or entity, including, but not limited to, the Contractor, arising out of or in connection with the negligent activities of the Contractor, its agents, employees or privities pursuant to this Agreement, whether or not there is concurrent negligence on the part of the Indemnified Parties;
 11. Liability or claims arising directly or indirectly from the failure of the Contractor to comply with the Section 01 11 80, ENVIRONMENTAL CONDITIONS, Section 01 12 16, WORK SEQUENCE or Section 01 35 43, ENVIRONMENTAL PROCEDURES; and
 12. Liability or claims arising out of the Contractor's performance of the Work.
- B. The Contractor shall reimburse the Indemnified Parties for all costs and expenses, (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other consultants and professionals and court costs of appeal) incurred by said Indemnified Parties arising out of or in enforcing the provisions of this article.
- C. The indemnification obligation under this Article 13.2 shall not be limited in any way by any limitation on the amount or type of insurance carried by Contractor or by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- D. Pursuant to California Public Contract Code Section 9201, City shall timely notify Contractor of receipt of any third-party claim relating to this Agreement.
- E. The Contractor's obligations pursuant to this provision will survive the expiration or earlier termination of this Agreement.
- F. The Contractor hereby agrees at its expense promptly to assume the defense of and to defend, with counsel acceptable to the City, against any indemnified Claim, suit or other proceeding brought thereon, and promptly to pay any and all costs, charges, attorney's fees, and other expenses and any and all judgments that may be incurred against the City, and each elected officials, officers, representatives, agents, consultants, design engineers or employees, or any of them to the extent arising from any negligent act, error, or omission, or from any willful misconduct of the Contractor in the performance of the Contractor's obligations under this Agreement.
- G. The only limitations on this provision shall be those imposed by Civil Code section 2782.

13.3 Hazardous Substance Indemnifications Obligations

Neither the Contractor nor its subcontractors or suppliers shall use, generate, manufacture, store or dispose of on, under or about the Site, or transport to, from, along or across the Site, any flammable, explosive radioactive material, toxic substance, hazardous waste, hazardous material, hazardous substance, or the equivalent, as those terms may now or in the future be defined by common practice or by any federal, state or local statute, ordinance or regulation or any governmental body or agency (hereinafter "Hazardous Substance").

- A. Without limiting any remedies the City may have, in the event any disposal, release, discharge or spill of a Hazardous Substance or other contamination occurs within the Site at any time during, or as a result of, the Contractor's use of the Site, except such spills or contamination to the extent directly caused by the sole negligence or willful misconduct of the City, its contractors, officers, representatives, agents, consultants, design engineers or employees, the Contractor shall immediately notify City and take all action to mitigate the effects of such disposal, release, discharge, spill or contamination. The Contractor shall at the Contractor's own expense, unless otherwise directed by the City, remediate such disposal, release, discharge of spill or contamination in compliance with all applicable laws, rules and regulations. The City shall have the option to perform the remediation itself or through any contractor if the Contractor fails to do so. The Contractor shall cooperate with the City to complete the remediation and shall reimburse the City for all costs and expenses incurred in connection with the remediation.
- B. In the event that the Contractor observes any material that the Contractor believes or has reason to believe may be a Hazardous Substance or encounters any unknown physical condition of any unusual nature within the Site, other than disposals, releases, discharges, spills or contamination covered in paragraph A, above, the Contractor shall, without disturbing the condition, immediately cease all use of the Site and notify the City. The City shall investigate the condition and take any clean-up or other remedial action City deems necessary in its sole discretion.
- C. In the event the City or its contractor elects to perform remediation work, the Contractor shall upon notice from the City, cease use of the Site as directed in the notice. The City will notify the Contractor when the condition has been resolved, at which time, but not before, the Contractor may resume its use of the Site.
- D. The Contractor agrees to assume liability for and to defend and hold harmless the Indemnified Parties from and against all injuries or death to any person and damage to any property, and all related expense, including without limitation attorneys' fees, investigators' fees, administrative charges, litigation expenses and any judgments, fines, penalties or other charges assessed against Indemnified Parties, resulting from the Contractor's failure to comply with this article and any laws,

rules or regulations concerning the subject matter hereof. The provisions of this article shall survive the expiration and termination of this Agreement.

The obligations and liabilities arising under the Article 13.3, HAZARDOUS SUBSTANCE INDEMNIFICATIONS OBLIGATIONS, shall be in addition to and independent of those obligations and/or liabilities arising under the other provisions of this Agreement and shall in no way limit, alter, reduce or eliminate the effect of such other provisions.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 Governing Law. This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Placer, State of California, and governed by California law (excluding choice of law rules).

14.2 Assignment. The Contractor will not assign any rights or delegate duties under this Agreement without the written consent of the City, which consent will not unreasonably be withheld, including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. City has consented to Contractor's use of subcontractors listed in Exhibit E, DESIGNATION OF SUBCONTRACTORS.

14.3 Severability. If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or articles contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

14.4 Contractor Licensing. For the duration of the Agreement, the Contractor shall possess a valid State of California Class A - General Engineering Contractor's License.

14.5 Permits and Licenses. For the duration of the Agreement, the Contractor shall have a local business license for the work contemplated. All subcontractors will be required to secure the appropriate local business license before they commence Work on the Project. The Contractor shall have all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature legally required for Contractor to practice its profession or provide any Work or services under this Agreement. Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for Contractor to practice its profession or provide such Work or services.

14.6 Whole Agreement. This Agreement, the Exhibits hereto, and the other Contract Documents, Specifications and Drawings represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

14.7 Conflict of Interest. Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City or that would in any way hinder Contractor's performance of Work under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of the City. Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the City at all times during the performance of this Agreement. If Contractor is or employs a former officer or employee of the City, Contractor and any such employee(s) shall both immediately notify the City's

Representative and both shall comply with any City requests pertaining to appearances before the City Council or any City department, board, commission or committee.

14.8 Contractor Not Agent. Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

14.9 No Waiver. Neither the inspection by City or its agents, nor any order or certificate for payment of money, nor payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach.

14.10 Contractor Shall Assume Risks. Until the Final Completion by City of all Work under this Agreement, the Work shall be under Contractor's responsible care and charge. Contractor shall rebuild, repair, restore and make good all injuries, damages, corrections, and repairs occasioned or rendered necessary by accidental causes of any nature except earthquake or flood, to all or any portions of the Work, except as otherwise stipulated and/or as compensated by insurance.

14.11 General Liability of Contractor. Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as limitation or restriction of any general liability or duty of Contractor and, any reference to any specific duty or liability shall be construed to be the purpose of explanation.

14.12 Not Used.

14.13 Penalty for Collusion. If, at any time, it is found that the person, firm, or corporation to whom this Agreement has been awarded has, in presenting any proposal, bid or bids, colluded with any other party or parties, then this Agreement shall be null and void, and the Contractor and its sureties shall be liable for loss or damage which the City may suffer thereby.

14.14 Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

No action or failure to act by the City, the Engineer, or the Construction Manager shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

14.15 Rights of Action. No right of action shall accrue upon or by reason of this Agreement to or for the use or benefit of anyone other than the parties to this Agreement, except where a third party is identified as an express intended beneficiary of the Contractor's obligations owed to City, including, but not limited to, the indemnification and additional insured requirements contained in the Contract Documents. The parties to this Agreement are the Contractor and the City.

14.16 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement or the other Contract Documents shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this article. All such notices shall be sent by:

- A. Personal delivery, in which case notice is effective upon delivery;
- B. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

- C. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- D. Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. 19-475, adopted by the Council of the City of Roseville on the 6th day of November, 2019, and CONTRACTOR is duly authorized and has caused this Agreement to be executed.

CONTRACTOR

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

DATE October 10, 2019

BY [Signature]

Anthony M. Mueller

Print Name

Asst. Vice President

Title [Signature]

BY [Signature]

Ruben Moreno, Jr.

Print Name

Secretary

Title

1000001448

DIR Registration #

77-0004110

Federal ID#

309-6519-8

State ID#

00841298

City of Roseville Business License Number (City will not award Agreement until Business License Number is obtained)

Type of Business Entity (*check one*):

☐ Individual/Sole Proprietor

☐ Partnership

☒ Corporation

☐ Limited Liability Company

☐ Other (*please specify*: _____)

If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

CITY OF ROSEVILLE
a municipal corporation

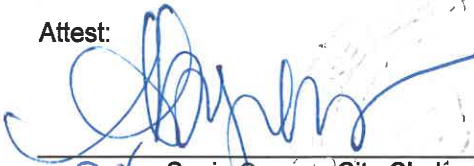
DATE: 11/7/19

BY 
Dominick Casey, City Manager

Original Approved As To Form:


Robert R. Schmitt, City Attorney

Attest:


Sonia Orozco, City Clerk

Original Approved As To Substance:


Richard D. Plecker, Director of Environmental Utilities

Notices to the Parties shall be given at the following addresses and fax numbers:

City:

City Clerk of City of Roseville
311 Vernon Street
Roseville, CA 95678
Fax Number: 916-786-9175

Contractor:

W. M. Lyles Co.
P. O. Box 4377
Fresno, CA 93744
Fax Number: (559) 487-7949

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EXHIBIT A

**CONTRACTOR'S SOPQ DATED APRIL 1, 2019
(excluding the financial statements and appendices)**

Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

STATEMENT OF PRE-QUALIFICATION

**PLEASANT GROVE WASTEWATER TREATMENT
PLANT EXPANSION PROJECT
AND/OR
PLEASANT GROVE WASTEWATER TREATMENT
PLANT ENERGY RECOVERY PROJECT
AND/OR
BOTH ABOVE PROJECTS INDEPENDENTLY**



W. M. LYLES CO.

CONTRACTOR

Since 1945

Progress Through Performance®

*Strength Through Diversification, an integral part of the Lyles Construction Group
W. M. Lyles Co. - New England Sheet Metal and Mechanical Co. - American Paving Co.*



Corporate Office
P.O. Box 4377
Fresno, CA 93744-4377
Telephone (559) 441-1900
Fax (559) 487-7958

www.wmlyles.com
An Equal Opportunity Employer

April 1, 2019

Tracie Mueller, P.E.
City of Roseville Environmental Utilities – Engineering
2005 Hilltop Circle
Roseville, CA 95747

Reference: Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

Dear Ms. Mueller,

W. M. Lyles Co. is pleased to provide the enclosed information in response to your Request for Statement of Pre-Qualification for the above referenced projects.

We are proud to be an integral part of the construction industry since our founding in 1945 and consider the professional relationships we have developed over the years to be stronger than those of our competitors. We currently operate five construction divisions throughout the State of California from Sacramento to Temecula. Our strategic locations provide our customers better service and outstanding centralized construction quality.

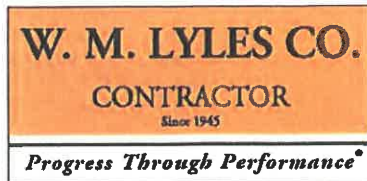
W. M. Lyles Co. is a member of Lyles Construction Group (LCG), which is comprised of W. M. Lyles Co., New England Sheet Metal and Mechanical Co., and American Paving Co. LCG is listed in ENR's Top 400 Contractors and Top 200 Environmental Firms and provides contracting services for individual projects up to \$200 million. Over the past five years, LCG has averaged over 1 million craft manhours. The companies within LCG have the capacity to self-perform the following types of work: pipelines, earthwork, grading, paving, concrete flatwork, wet and dry utilities, structural concrete, mechanical and civil piping, HVAC, refrigeration, plumbing, and equipment installation.

W. M. Lyles Co. has the financial resources and risk management structure to successfully and responsibly complete major projects. Our bonding limits are \$1 billion single project and \$2 billion aggregate, and we have ample available bonding capacity to include new projects in our construction portfolio.

Safety is a priority and our experienced safety professionals provide the necessary training and inspection for our management staff and field crews to safely meet the varied demands of our industry. As a result of this commitment to safety we maintain an insurance modification rate of 0.78, which is well below the industry average.

Corporate Office: 1210 W. Olive, Fresno, CA 93728

Bakersfield (661) 387-1600 | Fresno (559) 268-1540 | Temecula (951) 973-7393 | Sacramento (916) 375-1833 | Visalia (559) 651-1450



California Contractor's License No. 422390

Corporate Office
P.O. Box 4377
Fresno, CA 93744-4377
Telephone (559) 441-1900
Fax (559) 487-7958

www.wmlyles.com
An Equal Opportunity Employer

Thank you for considering W. M. Lyles Co. Please do not hesitate to contact me should you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Lawrence", is written over the word "Sincerely,".

Joseph B. Lawrence
Asst. Vice President

Corporate Office: 1210 W. Olive, Fresno, CA 93728

Bakersfield (661) 387-1600 | Fresno (559) 268-1540 | Temecula (951) 973-7393 | Sacramento (916) 375-1833 | Visalia (559) 651-1450

W. M. LYLES CO.

CONTRACTOR

Since 1945

Progress Through Performance®

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STATEMENT OF PRE-QUALIFICATION

**PLEASANT GROVE WASTEWATER TREATMENT
PLANT EXPANSION PROJECT**

AND/OR

**PLEASANT GROVE WASTEWATER TREATMENT
PLANT ENERGY RECOVERY PROJECT**

AND/OR

BOTH ABOVE PROJECTS INDEPENDENTLY

TAB

Addendum Acknowledgement

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Statement of Pre-Qualification with Submittal Form

2

Part I - Essential Requirements for Pre-Qualification

3

**Part II – Organization, History, Organizational Performance,
Compliance with Civil and Criminal Laws**

4

Part III – Recent Construction Projects Completed

5

Attachment A – Prospective Proposer's Certification

6

Conflict of Interest Statement

7

Letter of Intent to Insure

8

EMR Letter

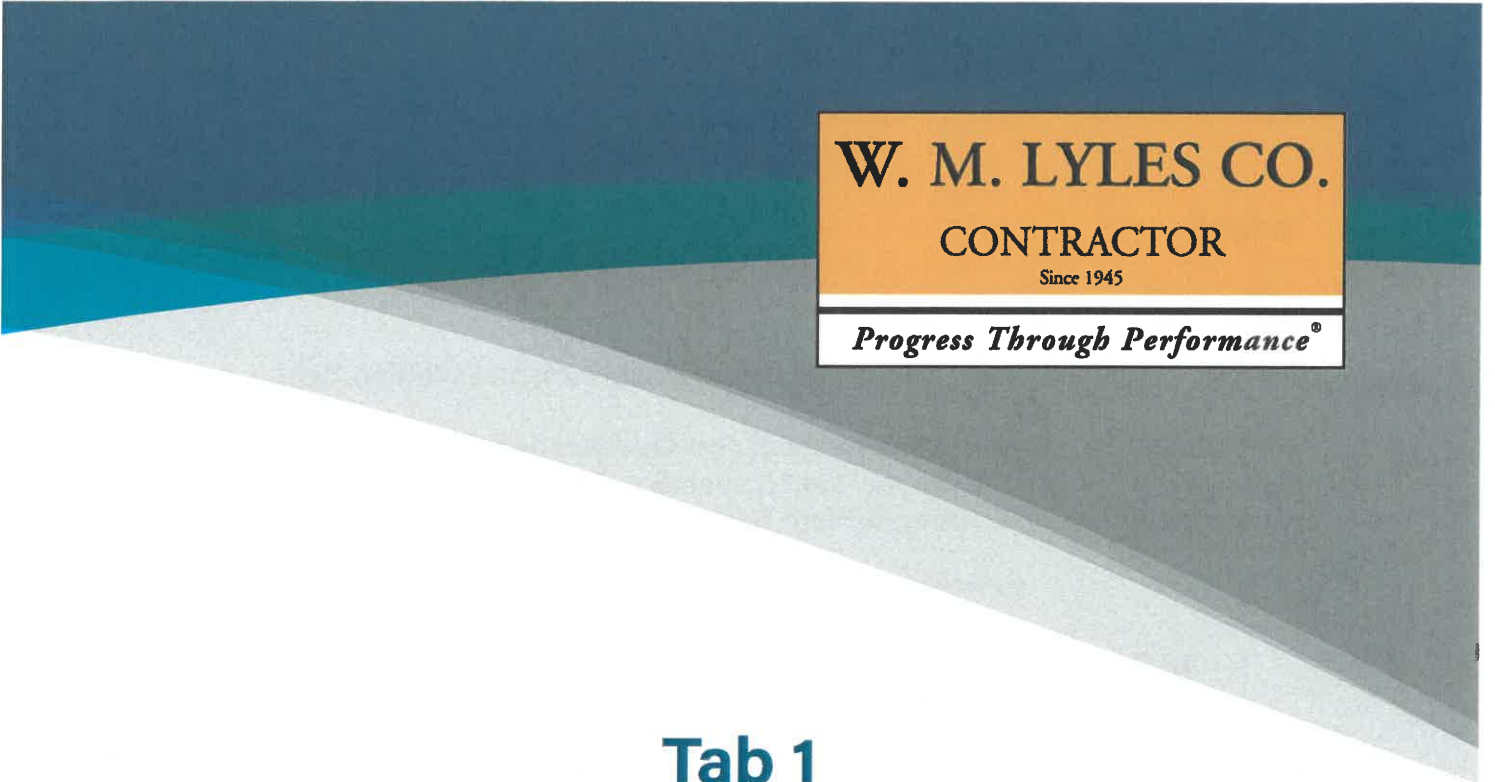
9

Notarized Bonding Capacity Letter

10

Appendix A - F

11



W. M. LYLES CO.

CONTRACTOR

Since 1945

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Tab 1

Addendum Acknowledgement

IMPORTANT

3/20/19

TO: Proposers

FROM: Tracie Mueller, Senior Engineer, Environmental Utilities Dept.

RE: 08-050 Contractor Statements of Pre-Qualification for the Pleasant Grove Wastewater Treatment Plant Expansion Project and/or Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

*****ADDENDUM ONE*****

- Adding Mandatory Pre-SOPQ Meeting Agenda document for download from Public Purchase
- Adding Mandatory Pre-SOPQ Meeting Slide Deck for download from Public Purchase
- Adding Mandatory Pre-SOPQ Meeting Sign-In List for download from Public Purchase

Please note the following revisions, which represent one attachment:

1. REVISIONS TO TABLE OF CONTENTS, PAGE I

Revise the list of Appendices as shown below:

APPENDIX A- PGWWTP EXPANSION PROJECT DESCRIPTION
APPENDIX B- CONTRACTOR PRE-QUALIFICATION SCORING
APPENDIX C- PGWWTP EXPANSION SITE PLAN
APPENDIX D- BONDS AND INSURANCE
APPENDIX E- PGWWTP ERP DESCRIPTION
APPENDIX F- PGWWTP ERP SITE PLAN
APPENDIX G – PROSPECTIVE PROPOSER'S CERTIFICATION

2. REVISION SECTION 1.3, PAGE 3

Revise the text at the top of page 3 as shown below:

choose to submit qualifications for a specific branch /division, the scoring requirements for Part II B-~~CF~~ of the SOPQ, as well as all other submitted information shall be branch/division specific. Financial statements should still be for the total company and parent company even if a Prospective Proposer submits the scoring requirements specific to a company branch or division.

3. REPLACEMENT PAGES FOR THE SOPQ SUBMITTAL FORM WITH SECTION 3

Replace pages 12, 13, 14, 15, 16 and 20 of the RFPQ with the corresponding attached Addendum 1 pages. The attached pages listed below shall be used in lieu of the original page 12, 23, 14, 15, 16 and 20 and included within the SOPQ Submittal package. Note that these pages have "Addendum 1 page #" included in the footer. The changes within the attached replacement sheets are summarized below:

- Addendum 1 page 12 – Within the first sentence on the top of page 12 for Part I stating "An answer of "No" to any of the Questions 1 through 9..." has been revised to remove question 9.
- Addendum 1 page 13 –
 - Within Part I, question 7 at the top of the page the "Date of financial statement must be 2018." has been revised to "Date of financial statement must be December 2017 or later."
 - Within Part 1, question 9 has been eliminated and replace with the text "NOT USED."
- Addendum 1 page 14 – PART I(A) second sentence from bottom of page stating "Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work and also self-performed all structural concrete on each of the projects listed in Part III, Item 39(A)" has been revise to remove the "and also self-performed all structural concrete".
- Addendum 1 page 15 – PART I(B) second sentence from bottom of page stating "Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work and also self-performed all structural concrete on each of the projects listed in Part III, Item 39(B)" has been revise to remove the "and also self-performed all structural concrete".
- Addendum 1 page 16 – PART I(C) second sentence from bottom of page stating "Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work and also self-performed all structural concrete on each of the projects listed in Part III, Item 39(B)" has been revise to remove the "and also self-performed all structural concrete".
- Addendum 1 page 20 - Part II, B, question 3 bold note that states "NOTE: All Prospective Proposers will be required to submit non-

collusion affidavits" has been revised to require Prospective Proposers to properly execute and submit the certification added as Appendix G within this addendum as Attachment A of the SOPQ Submittal.

4. ADD APPENDIX G, PROSPECTIVE PROPOSER'S CERTIFICATION AS PAGE 86

Add the attached Appendix G cover sheet and Prospective Proposer's Certification form attached as Appendix G to the RFPQ.

5. MANDATORY PRE-SOPQ SUBMITTAL MEETING STATEMENTS AND RESPONSES TO QUESTIONS

General statements made by the City after the City team's presentation, and questions presented at the March 18, 2019 Mandatory Pre-SOPQ Submittal Meeting with City responses are included below:

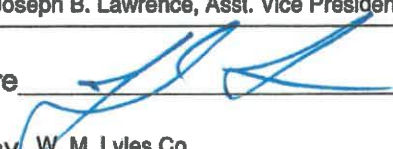
- A. City Statement: A Prospective Proposer shall check all three boxes in the "Declaration of PGWWTP Project(s) SOPQ submission" to be considered for the possibility of being awarded both projects and they must fill out all of the three SOPQ options in the submission packet.
- B. City Statement: The timeline for the financial statements will be revised as some contractors will not have their 2018 documents certified in time for the SOPQ Submittal.
- C. Question: Has the SRF funding award been received?
Response: Not yet, but the PGWWTP projects moving into construction are not dependent on receiving these funds.
- D. Question: What will the California Energy Commission requirements be?
Response: Those requirements are still being developed and will be included in the Request for Bid Proposals.
- E. Question: On page 3 it states scoring requirements are for Part II B-F, but is there a D, E and F?
Response: No, this text will be revised via addendum as this was a revision that was not caught and is an error.
- F. Question: Is May 13th 2019 a hard date for RFP to be posted?
Response: No, as stated in the RFPQ and presentation it is tentative.

- G. Question: Is April 1, 2019 a hard submittal date for the SOPQ Submittal?
Response: Yes, April 1, 2019 by 3:00 PM is still the required SOPQ Submittal due date. The City does not see a reason at this time to extend this deadline.
- H. Question: What will be required in the Request for Bid Proposals?
Response: Two envelopes will be required. The first will be the technical project approach which will include things like team description and safety pass/fail exhibits, etc. The second envelope will be for the commercial terms including a Guaranteed Maximum Price (GMP), markups for overhead and profit, proposed cost savings percentages, etc. Envelope 1 will be scored and recorded first and then envelope 2 will be opened and scored.
- I. Question: How do we access the Public Purchase website?
Response: www.publicpurchase.com
- J. Question: How much will the GMP count in the scoring?
Response: The scoring is still being developed and will be included in the Request for Bid Proposals, but the GMP itself (not including other scoring within the second envelope) will likely not be more than 50%.
- K. Question: How complete are the design drawings?
Response: The designs are both at or close to complete and will be provided in the Request for Bid Proposals for Prospective Proposers to review and determine.
- L. Does the City use this Design Assist process all the time?
Response: No, but we have used it in the past including most recently for our recent Dry Creek Wastewater Treatment Plant improvement projects that are currently under construction.

Please include a signed copy of the addendum with your proposal.

I acknowledge receipt of Addendum One

Name Joseph B. Lawrence, Asst. Vice President

Signature 

Company W. M. Lyles Co.

Date April 1, 2019

IMPORTANT

3/20/19

TO: Proposers

FROM: Tracie Mueller, Senior Engineer, Environmental Utilities Department

RE: 08-050 Contractor Statements of Pre-Qualification for the Pleasant Grove Wastewater Treatment Plant Expansion Project and/or Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

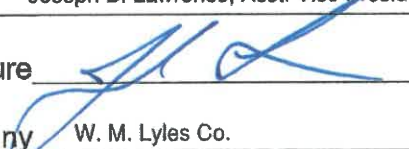
*******ADDENDUM TWO*******

- Attached are pages 12, 13, 14, 15, 16 and 20 which were inadvertently left out of Addendum 1

Please include a signed copy of Addenda One and Two with your proposal.

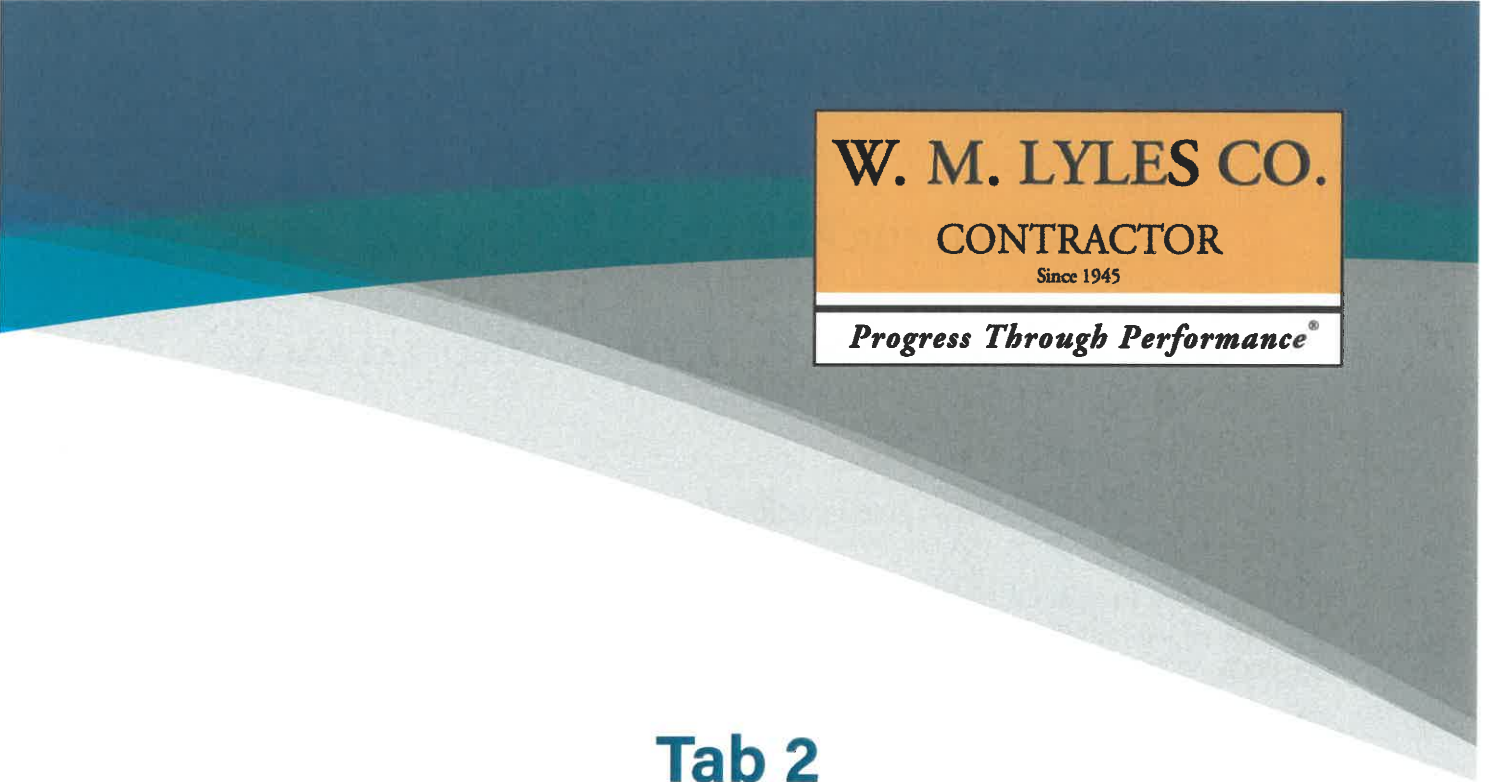
I acknowledge receipt of Addendum Two

Name Joseph B. Lawrence, Asst. Vice President

Signature 

Company W. M. Lyles Co.

Date April 1, 2019



W. M. LYLES CO.

CONTRACTOR

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Tab 2

Statement of Pre-Qualification with Submittal Form

SECTION 1

INSTRUCTIONS FOR PREPARATION AND SUBMISSION

OF

STATEMENT OF PRE-QUALIFICATION (SOPQ) PACKAGES

1.1 DEFINITIONS

For the purpose of this Statement of Pre-qualification (SOPQ) submittal, the following definitions shall apply:

Statement of Pre-qualification (“SOPQ”) - The documents requested by the City and the information submitted by the Prospective Proposers that form the Pre-Qualification package for the PGWWTP Expansion and/or the PGWWTP ERP and/or both PGWWTP projects.

Prospective Proposer - Any individual, partnership, corporation, limited liability company, or other combination thereof who submits an SOPQ to the City for consideration of contract award for completing the PGWWTP Expansion and/or the PGWWTP ERP and/or both PGWWTP projects, acting directly or through an authorized representative.

City- The City of Roseville, employees acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Pleasant Grove Wastewater Treatment Plant Expansion Project (“PGWWTP Expansion”)
The project generally consists of construction of four new primary clarifiers with odor control facilities and an electrical building, a solids thickening building, sludge pumping systems, two anaerobic digesters and a digester control building, a ferric chloride dosage and storage facility, a waste gas burner, two boilers, conversion of two waste activated sludge holding tanks to a centrate storage and digested sludge holding tank, a centrate wet well and associated pump system and all other miscellaneous improvements in support of the project, including asset management, start up and testing to provide a complete and operational system in all respects. A more detailed description of the PGWWTP Expansion is included in Appendix A - PGWWTP Expansion Project Description. PGWWTP Expansion Site Plans are included in Appendix C.

Pleasant Grove Wastewater Treatment Plant Energy Recovery Project (“PGWWTP ERP”)
The completed PGWWTP ERP will provide compressed natural gas (CNG) to be utilized by City vehicles, generate heat and power for the plant, and receive trucked high strength waste materials from local industry. The project will be constructed on undeveloped City-Owned land adjacent to and immediately south of the existing PGWWTP. A new CNG fueling station will be installed to fuel the City’s solid waste fleet. The facility includes all the compressors, dispensers, high pressure storage, and fuel management systems required for a fully operational fast-fill station. The CNG vehicle fuel will be derived from biomethane from a new biogas upgrading system. On an as-needed basis, pipeline natural gas may be utilized to supplement CNG demand. The new biogas upgrading system will treat the City’s digester gas (from anaerobic digesters constructed as part of the PGWWTP Expansion) to meet CNG engine fuel quality requirements. A new microturbine cogeneration facility will use digester gas or a blend of biogas-upgrading tail gas and natural gas

to produce electricity and heat. A new high strength waste receiving station will allow for offloading of trucked material to be fed to the anaerobic digesters.

A more detailed description of the PGWWTP ERP is included in Appendix E - PGWWTP ERP Project Description. A PGWWTP ERP Site Plan is included in Appendix F.

1.2 DELIVERY OF SUBMITTAL

A total of four (4) bound hard copies of the SOPQ and one electronic (PDF) copy on a USB flash drive shall be submitted no later than **3:00 PM April 1, 2019** to:

City of Roseville
City Clerk Department
311 Vernon Street
Roseville, CA 95678

Re: Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

Attention: Tracie Mueller, P.E., Environmental Utilities- Engineering

SOPQ packages shall be submitted in sealed envelopes marked “Confidential” and shall include the following title on the front of the package, “Contractor SOPQ for the PGWWTP Expansion and/or the PGWWTP ERP and/or both PGWWTP projects”.

1.3 PREPARATION OF SUBMITTAL

The bound copies of the SOPQ package shall be assembled in separate binders with a title page, table of contents, and section dividers. The SOPQ package submittal information shall be presented in the same order as in this RFPQ; submitting the whole document beginning with page 1. All pages shall be 3-hole punched and printing shall be arranged so that punching does not obliterate any data. Only one financial statement shall be submitted. A single hard copy of a reviewed or audited company financial statement shall also be provided in a separate sealed envelope with the original SOPQ package submittal.

It is mandatory that all Prospective Proposers who desire to submit a proposal for the PGWWTP Expansion or the PGWWTP ERP or both PGWWTP projects, fully complete the SOPQ questionnaire, provide all materials requested herein, and be approved by the City to be on the final pre-qualified contractors list for each or both PGWWTP projects. Proposals will be rejected from a Prospective Proposer that has failed to comply with these requirements.

The City recognizes that large construction companies (e.g. revenues in excess of \$250 million per year) have multiple branches/divisions for geographic and/or type of construction coverages. In such cases, the Prospective Proposer may elect to submit a set of qualifications for a specific company branch or division which shall be clearly identified in a cover letter for the SOPQ package submittal. As such, should a Prospective Proposer

choose to submit qualifications for a specific branch /division, the scoring requirements for Part II B-F of the SOPQ, as well as all other submitted information shall be branch/division specific. Financial statements should still be for the total company and parent company even if a Prospective Proposer submits the scoring requirements specific to a company branch or division.

1.4 WITHDRAWAL OF SUBMITTAL

A SOPQ may be withdrawn by written request to Tracie Mueller, P.E., Environmental Utilities- Engineering, 2005 Hilltop Circle, Roseville, CA 95747 within five business days of submittal.

1.5 LATE SUBMITTAL

Any SOPQ stamped by the City Clerk's office after the scheduled receipt date and time will not be considered and will be returned to the Prospective Proposer unopened.

1.6 INTERPRETATION OF INFORMATION

This RFPQ includes a description of the scope of Pre-Qualification, qualification requirements, and instructions for submitting the SOPQ. Failure to follow these instructions may result in rejection of the Prospective Proposer's SOPQ.

The deadline for questions regarding the RFPQ is per Milestone Table in Notice to General Contractors Section.

No oral representations or interpretations will be made to any proposer as to the meaning of this RFPQ. Direct all inquiries regarding this RFPQ via <https://www.publicpurchase.com/>.

In the event that it becomes necessary to revise any part of this RFPQ, a written addenda will be issued. Any amendment to this RFPQ is valid only if it is in writing and issued by the Environmental Utilities Department via Public Purchase.

All addenda for this RFPQ will be distributed to Prospective Proposers who have registered with <https://www.publicpurchase.com/> and who have downloaded the RFPQ. It is the Prospective Proposer's sole responsibility to monitor this website for possible addenda to this RFPQ. Failure of Prospective Proposer to retrieve addenda from this site shall not relieve the Prospective Proposer of the requirements contained therein. Additionally, failure of the Prospective Proposer to return a signed addendum, with the submittal, will be cause for rejection of the submittal.

1.7 DETERMINATION

Answers to questions contained in the attached questionnaire, information about current bonding capacity, notarized statement from surety, and the most recent reviewed or audited financial statements, with accompanying notes and supplemental information, are required. The City reserves the right to check other sources available. The City's decision will be based on objective evaluation criteria.

The City will determine the Pre-Qualification status of each Prospective Proposer based on the responses to the information requested in Section 3. The City shall be the sole judge as to the adequacy of each Prospective Proposer to perform work on the PGWWTP Expansion or the PGWWTP ERP or both PGWWTP projects, and City's decision shall be final.

The City reserves the right to waive minor irregularities and omissions in the information contained in the SOPQ submitted, and to make all final determinations.

The anticipated schedule for Prospective Proposer Pre-Qualification determination is provided in the Notice to Contractors.

Where a timely and completed application results in a rating below that which is required for Pre-Qualification, an appeal can be made. An appeal is begun by the Prospective Proposer delivering notice to the City Clerk of its appeal of the decision with respect to its Pre-Qualification rating, no later than five business days following notification of not being prequalified. Without a timely appeal, the Prospective Proposer waives any and all rights to challenge the decision of the City, whether by administrative process, judicial process or any other legal process or proceeding.

If the Prospective Proposer gives the required notice of appeal and requests a hearing, an appeals panel hearing shall be conducted. The hearing shall be an informal process conducted by a panel to hear such appeals. At/or prior to the hearing, the Prospective Proposer will be advised of the basis for the City's Pre-Qualification determination. The Prospective Proposer will be given the opportunity to present information and present reasons in opposition to the rating. Within five business days of the conclusion of the hearing, the appeals panel will render its decision.

The list of prequalified contractors will be posted to the City of Roseville's Public Purchase website at: <https://www.publicpurchase.com/>

Prospective Proposers opposing any other firms on the prequalified list, (based on potential for proposal collusion only), shall deliver written notice to the City within five business days of posting. The City will establish a review panel and conduct a hearing in the same process as identified above for the appeals process. Within five business days of the conclusion of the hearing, the review panel will render its decision.

The City reserves the right to adjust, increase, limit, suspend or rescind the Pre-Qualification rating based on subsequently learned information. Prospective Proposers whose rating decrease enough to disqualify them will be notified, and given an opportunity for a hearing consistent with the hearing procedures described above for appealing a Pre-Qualification rating.

1.8 EXCLUSION OF COST QUOTATIONS

The SOPQ submittal is a request for information, not a cost proposal. Prospective Proposers are advised that a formal or informal cost quotation for either PGWWTP project is not requested by the City and should not be included with the submittal. Any such information furnished will not be considered.

SECTION 2

SCOPE OF PRE-QUALIFICATION

2.1 INTENT

The Pre-Qualification procedure will be used to determine responsible Prospective Proposers for the PGWWTP Expansion, the PGWWTP ERP, and both PGWWTP projects. However, Pre-Qualification is not a conclusive determination of responsiveness and responsibility and a prequalified proposer may be rejected as nonresponsive or non-responsible by the City during the subsequent request for proposal process for each or both PGWWTP projects. In all cases, the Prospective Proposer ultimately awarded the contract shall comply with the requirements of the construction contract documents for each or both respective PGWWTP projects.

2.2 EXPERIENCE REQUIREMENT

The Pre-Qualification procedure involves the review and evaluation of information regarding the proven experience of the Prospective Proposers to construct each or both PGWWTP projects in a manner acceptable to the City. The experience of the Prospective Proposer will be evaluated on the basis of the SOPQ submittal and information gathered by the City from the references (provided by the Prospective Proposer) of related projects. Proven experience is defined as the actual performance of the Prospective Proposer on previous construction projects of a similar nature (see Part III of Section 3 for experience requirements) as corroborated by said references.

The City is not obligated to prequalify or accept a Prospective Proposer with no or unsatisfactory related experience.

2.3 CONFLICT OF INTEREST

The Prospective Proposer shall warrant that no official or employee of the City has an interest, has been employed or retained to solicit or aid in the procuring of the contract for either PGWWTP project contained in this RFPQ, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City. Prospective Proposers submitting a SOPQ in response to this RFPQ must disclose any actual, apparent, direct, indirect, or potential conflicts of interest that may exist with respect to the Prospective Proposer or the Prospective Proposer's management or employees relative to the services to be provided to the City. Conflict of interest issues may require consultation with legal counsel. If a Prospective Proposer has no conflicts of interest, a statement to that effect must be included in the SOPQ submittal. Violation of this section shall disqualify the Prospective Proposer.

2.4 PROHIBITIONS AGAINST INTEREST IN MORE THAN ONE PROPOSAL ON A SINGLE PROJECT AND PROPOSER COLLUSION

A company, corporation, LLC, or other entity is not permitted to submit more than one proposal on a single project or have a financial interest in more than one proposal on a single project.

If a company, corporation, LLC, or other entity seeking to prequalify is a direct or indirect parent or subsidiary, or otherwise affiliated with another company, corporation or other entity also seeking to prequalify, neither is eligible to prequalify unless they prove to the satisfaction of the City that they satisfy the foregoing requirements by operating separately and independently from each other and that they do not currently, and will not in the future, have any direct interest in the other's proposal or performance of the contract. To so prove, each affiliated company, corporation, LLC, or other entity seeking to prequalify must provide the information required under Part II.B.3-4 and submit such additional documentation as is sufficient to prove to the satisfaction of the City that the foregoing requirements are satisfied. Affiliated companies not providing enough proof will be notified and will be allowed to rescind SOPQ submittal(s) to allow one of the affiliated firms to prequalify.

SECTION 3

SUBMITTAL INFORMATION

3.1 GENERAL

The SOPQ submittal prepared and delivered by a Prospective Proposer shall include as a minimum the information listed herein. Each Prospective Proposer shall review the requirements of this RFPQ Document and provide whatever additional information may be required to allow complete determination of conformance with the evaluation criteria utilized for the basis of determination (Section 4). Incomplete or unclear information may be grounds for rejection of a submittal as nonresponsive.

STATEMENT OF PRE-QUALIFICATION SUBMITTAL FORM	PAGE 9
PART I	PAGE 12
PART II	PAGE 17
PART III	PAGE 30

STATEMENT OF PRE-QUALIFICATION SUBMITTAL FORM

TO: Tracie Mueller, P.E.
City of Roseville Environmental Utilities- Engineering
2005 Hilltop Circle
Roseville, CA 95747

FOR: PLEASANT GROVE WASTEWATER TREATMENT PLANT EXPANSION PROJECT
and/or
PLEASANT GROVE WASTEWATER TREATMENT PLANT ENERGY RECOVERY
PROJECT
and/or
BOTH ABOVE PROJECTS INDEPENDENTLY

STATEMENT OF PRE-QUALIFICATION FOR GENERAL CONTRACTORS

THE UNDERSIGNED PROSPECTIVE PROPOSER HEREBY AGREES AND DECLARES
THAT:

DETERMINATION OF PRE-QUALIFICATION

Receipt of this submittal by the City does not constitute either a direct or implied guarantee to the Prospective Proposer that Pre-Qualification is or will be granted. The undersigned agrees to the procedures and conditions of the Pre-Qualification requirements described in the RFPQ.

COMPLETENESS AND ACCURACY

All Prospective Proposer statements and information contained in the SOPQ shall be complete and accurate. The submittal contains no false or deliberately misleading information.

DECLARATION OF PGWWTP PROJECT(S) SOPQ SUBMISSION

The undersigned Prospective Proposer is submitting the following SOPQ submission to the City. The Prospective Proposer may submit on Item 1, Item 2, Items 1 & 2, and also Items 1, 2 & 3.

1. SOPQ submission for PGWWTP Expansion by completing Part III, Item 39(A).

☒ Yes ☐ No

2. SOPQ submission for PGWWTP ERP by completing Part III, Item 39(B).

☒ Yes ☐ No

3. SOPQ submission for both above PGWWTP projects independently by completing Part III, Item 39(C).

☒ Yes ☐ No

Important Note to Prospective Proposer:

The City will evaluate received SOPQs for the PGWWTP Expansion and the PGWWTP ERP independently. After such independent evaluations, if (during the Request for Proposals and Award Phase), the City determines that the Proposals received from the same Contractor obtained the highest score for each project, the City can only award both projects to this Contractor if the Contractor marks "Yes" to item 3 above and was pre-qualified by the City for both projects. If a Prospective Proposer marks "No" to item 3 above, and submits a Proposal for each of the PGWWTP projects, the City can only award one of the two projects to this Contractor, even if the Contractor received the highest score on each project.

CLOSING STATEMENT

- A. The undersigned is a legally authorized representative of the contractor.

Legal name of Prospective Proposer:	<u>W. M. Lyles Co.</u>
	<u>(as it appears on license)</u>
Contact:	<u>Joseph B. Lawrence</u>
Phone:	<u>(559) 441-1900</u>
Business address:	<u>1210 W. Olive Avenue</u>
	<u>Fresno, CA 93728</u>
Fax:	<u>(559) 487-7949</u>
E-Mail Address	<u>jlawrence@wmlylesco.com</u>

Proposer's Valid California Contractor's License No.	<u>422390</u>
--	---------------

Classification(s) A, B

- B. Addenda:

The undersigned acknowledges receipt of the following Addenda Nos.: 1, 2

Failure to acknowledge Addenda will result in the rejection of the Prospective Proposer's SOPQ submittal.

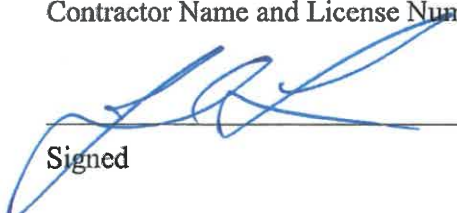
The submission of a SOPQ package shall constitute an acknowledgment upon which the City may rely that the Prospective Proposer has thoroughly examined and is familiar with the RFPQ and that the Prospective Proposer has waived any objections or contentions regarding the SOPQ document and/or the Pre-Qualification requirements set by the City to determine if a Prospective Proposer is approved to submit a proposal for either or both the PGWWTP projects.

By my signature below, I acknowledge receipt of this document and agree to be bound by its terms and agree to submit it as part of the SOPQ package submittal to the City.

I, the undersigned, certify and declare that I have read all of the answers to this SOPQ questionnaire and I know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief and I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

W. M. Lyles Co., License No. 422390

Contractor Name and License Number


Signed

Joseph B. Lawrence

Printed Name

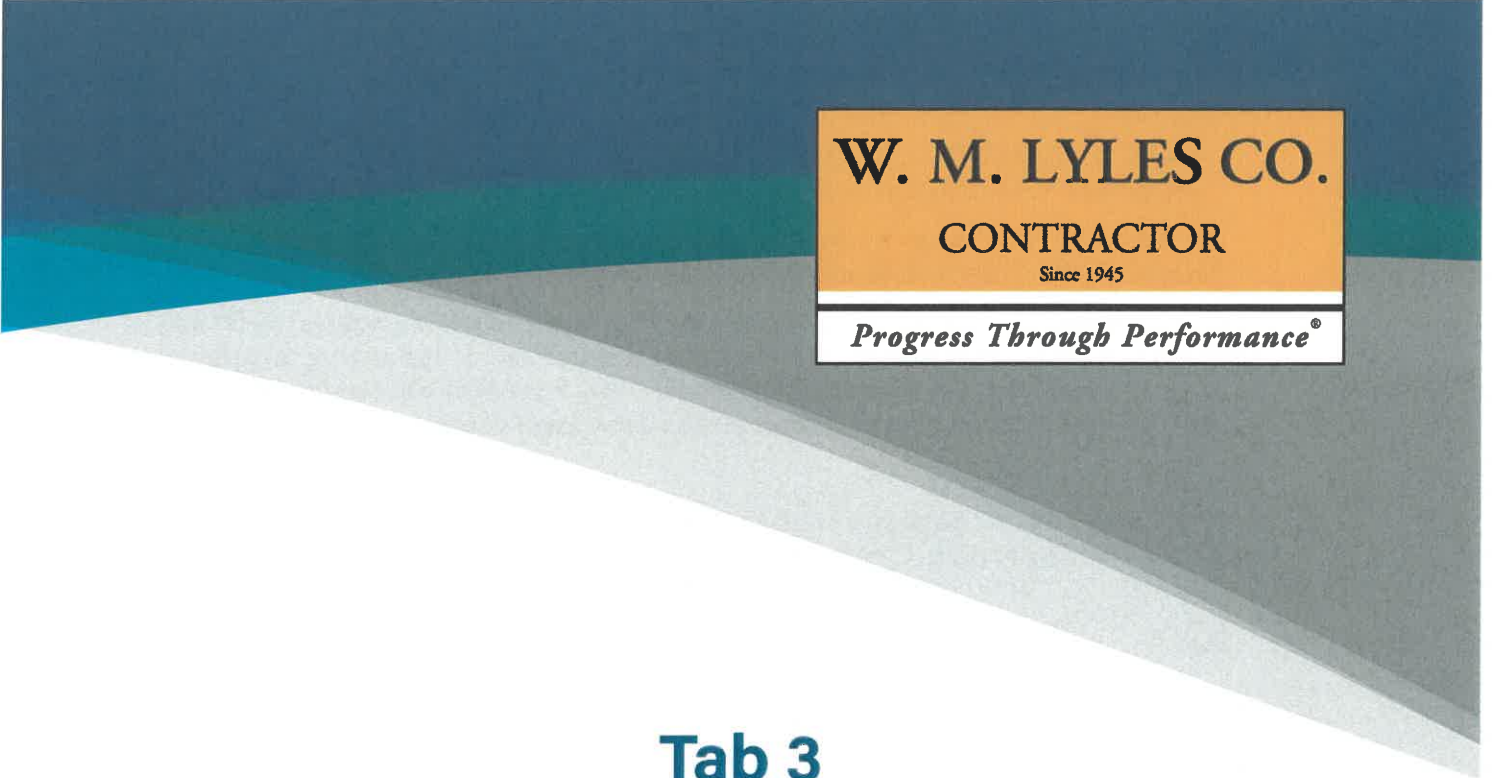
Asst. Vice President

Title

April 1, 2019

Date

****END OF FORM****



W. M. LYLES CO.

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Tab 3

Part I Essential Requirements for Pre-Qualification

**PART I. ESSENTIAL REQUIREMENTS FOR PRE-QUALIFICATION FOR
PGWWTP EXPANSION and PGWWTP ERP and both PGWWTP projects**

An answer of "No" to any of the Questions 1 through 8 will be rated a "Fail" and the Prospective Proposer will be immediately disqualified.

An answer of "Yes" to any of the Questions 10 through 13 will be rated a "Fail" and the Prospective Proposer will be immediately disqualified. If the answer to question 12 is "yes," and if debarment would be the sole reason for denial of Pre-Qualification, any Pre-Qualification issued will exclude the debarment period.

1. Prospective Proposer possesses a valid and current California Contractor's license (Class A, General Engineering Contractor) for the project for which it intends to submit a Proposal.

☒ Yes ☐ No

2. Prospective Proposer is registered with the California Department of Industrial Relations pursuant to California Labor Code Section 1725.5.

☒ Yes ☐ No

3. Prospective Proposer has not had a surety finish the work on any contract in the past five years:

☒ Yes ☐ No

4. Prospective Proposer will comply with and provide all insurance as defined in **Appendix D, Bonds and Insurance.**

See tab 8

☒ Yes ☐ No

Note: Prospective Proposer shall provide as part of its SOPQ package submittal a notarized statement, from the insurance carrier(s) or insurance broker that the Prospective Proposer will utilize on the PGWWTP project(s), certifying that the specified insurance requirements will be met. Please note that these are preliminary insurance requirements and are subject to change. The contractor will be required to provide insurance as provided for in the PGWWTP projects contract documents.

5. Prospective Proposer has current workers' compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et. seq.

☒ Yes ☐ No

☐ Prospective Proposer is exempt from this requirement because it has no employees.

6. Prospective Proposer's Three-Year Average Experience Modification Rate (EMR) is less than or equal to 1.25 (125%) and Prospective Proposer has furnished a letter from its insurance carrier for verification of its three-year average EMR. See Part II- Item 32.

☒ Yes ☐ No See tab 9

7. Has the Prospective Proposer attached the latest complete copy of a reviewed or audited financial statement with all accompanying notes and supplemental information? Date of financial statement must be December 2017 or later. If Prospective Proposer is a wholly owned subsidiary of another company, Prospective Proposer must also furnish a reviewed or audited financial statement of the parent company with accompanying notes and supplemental information.
- ☒ Yes ☐ No See separate sealed envelope

NOTE: A financial statement that is not either reviewed or audited is not acceptable and reason for disqualification. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statement.

8. Has the Prospective Proposer attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California, which states: (a) that your current bonding capacity is sufficient for the project for which you seek Pre-Qualification, and (b) your current available bonding capacity?
- ☒ Yes ☐ No See tab 10

NOTE: Notarized statement must be from the surety company, not an agent or broker.

9. **NOT USED.**

10. Has the Prospective Proposer's contractor's license been revoked at any time in the last five years?
- ☐ Yes ☒ No
11. Has a surety firm completed a contract on the Prospective Proposer's behalf, or paid for completion because the Prospective Proposer's firm was default terminated by the project owner within the last five years?
- ☐ Yes ☒ No
12. At the time of submitting this SOPQ, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7
- ☐ Yes ☒ No

If the answer is "Yes," state the beginning and ending dates of the period of debarment:

13. At any time during the last five years, has your firm or any of its owners or officers been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?

☐ Yes ☒ No

PART I(A). ESSENTIAL REQUIREMENTS FOR PRE-QUALIFICATION FOR PGWWTP EXPANSION

Important Note to Contractor: Only answer this question and complete Part III, Item 39(A) if you are submitting an SOPQ for the PGWWTP Expansion.

An answer of "No" to any of the Question 1 will be rated a "Fail" and the Prospective Proposer will be immediately disqualified.

1. In accordance with Part III, Item 39(A), Prospective Proposer has listed no more than **six** projects completed since **January 1, 2009** with a combined **\$150 million** in construction value on the following types of projects:
- a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract; or
 - b. Industrial and/or municipal wastewater treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract.

The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of **November 1, 2018** on uncompleted project(s) can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than **six** projects of the types listed above, that combined, will add up to at least **\$150 million** in completed value of work. In addition, one of the six projects must have a construction value of at least **\$45 million**.

Any projects listed in Part III, Item 39(A), which are not as defined above will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects and pump station projects are not considered a treatment plant project and would not be eligible.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work on each of the projects listed in Part III, Item 39(A). The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule and safety.

☒ Yes ☐ No

*Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project*

PART I(B). ESSENTIAL REQUIREMENTS FOR PRE-QUALIFICATION FOR PGWWTP ERP

Important Note to Contractor: Only answer this question and complete Part III, Item 39(B) if you are submitting an SOPQ for the PGWWTP ERP.

An answer of “No” to any of the Question 1 will be rated a “Fail” and the Prospective Proposer will be immediately disqualified.

1. In accordance with Part III, Item 39(B), Prospective Proposer has listed no more than six projects completed since **January 1, 2009** with a combined **\$80 million** in construction value on the following types of projects:
 - a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor’s contract; or
 - b. Industrial and/or municipal wastewater treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor’s contract.

The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of **November 1, 2018** on uncompleted project(s) can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than six projects of the types listed above, that combined, will add up to at least **\$80 million** in completed value of work. In addition, one of the six projects must have a construction value of at least **\$20 million**.

Any projects listed in Part III, Item 39(B), which are not as defined above will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects and pump station projects are not considered a treatment plant project and would not be eligible.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work on each of the projects listed in Part III, Item 39(B). The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule and safety.

☒ Yes ☐ No

PART I(C). ESSENTIAL REQUIREMENTS FOR PRE-QUALIFICATION FOR BOTH THE PGWWTP EXPANSION PROJECT AND THE PGWWTP ENERGY RECOVERY PROJECT

Important Note to Contractor: Only answer this question and complete Part III, Item 39(C) if you are submitting an SOPQ for the both above PGWWTP projects.

An answer of “No” to any of the Question 1 will be rated a “Fail” and the Prospective Proposer will be immediately disqualified.

1. In accordance with Part III, Item 39(C), Prospective Proposer has listed no more than six projects completed since January 1, 2009 with a combined \$200 million in construction value on the following types of projects:
 - a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor’s contract;
or
 - b. Industrial and/or municipal wastewater treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor’s contract.

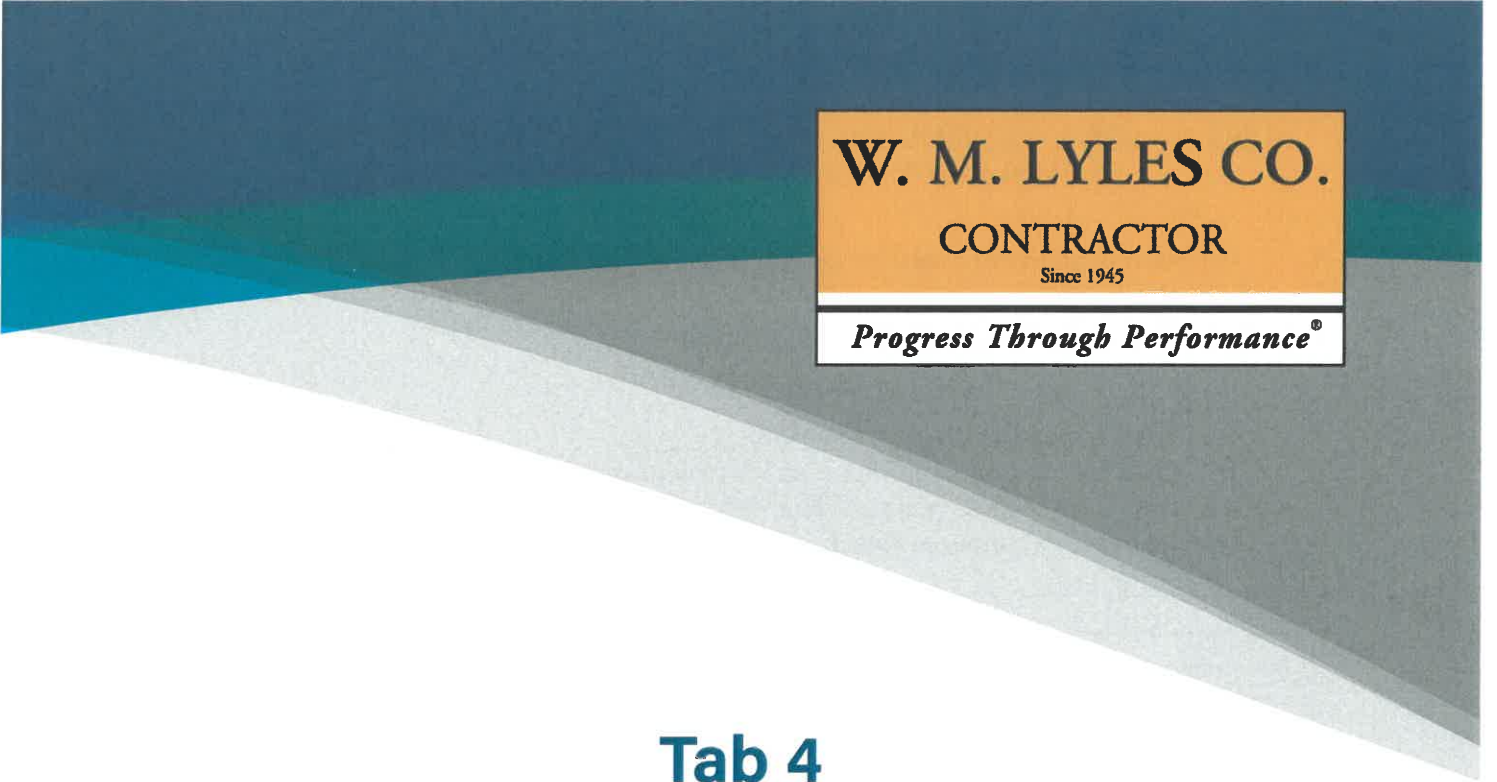
The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of November 1, 2018 on uncompleted project(s) can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than six projects of the types listed above, that combined, will add up to at least \$200 million in completed value of work. In addition, one of the six projects must have a construction value of at least \$65 million.

Any projects listed in Part III, Item 39(C), which are not as defined above will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects and pump station projects are not considered a treatment plant project and would not be eligible.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the work on each of the projects listed in Part III, Item 39(C). The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule and safety.

☒ Yes

☐ No



W. M. LYLES CO.

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Tab 4

Part II

Organization, History, Organizational Performance, Compliance with Civil and Criminal Laws

PART II. ORGANIZATION, HISTORY, ORGANIZATIONAL PERFORMANCE, COMPLIANCE WITH CIVIL AND CRIMINAL LAWS

A. Current Organization and Structure of the Business

For Prospective Proposers that are Corporations:

- 1a. Date incorporated: 5/6/1982
- 1b. Under the laws of what state: California
- 1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

Name	Position	Years with Co.	% Ownership
See attached			

- 1d. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm
N/A		

A. Current Organization and Structure of the Business
For Prospective Proposers that are Corporations:

- 1c. Provide all the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock.

W. M. Lyles Co. List of Officers

<u>Name</u>	<u>Position</u>	<u>Years with</u> <u>Co.</u>	<u>%</u> <u>Ownership</u>
Stanley H. Simmons	President/CEO/ Treasurer (CFO)	26	0
Kenneth D. Strosnider	Executive Vice President	29	0
Robert P. Saleen	Senior Vice President	29	0
David H. O'Dear	Asst. Vice President/Asst. Secretary	23	0
Joseph B. Lawrence	Asst. Vice President	16	0
Kevin R. Shigematsu	Asst. Vice President	17	0
Anthony M. Mueller	Asst. Vice President	15	0
Ruben Moreno, Jr.	Secretary	12	0
Scott R. Fults	Asst. Secretary	13	0
Chanel L. Prince	Asst. Secretary	13	0

For Prospective Proposers that are Limited Liability Companies (LLC): N/A

- 1a. State the name of the LLC exactly as it appears on it appears on file with the California Secretary of State, including the entity ending (ex: “Jones & Company, LLC” or “Smith Construction, a Limited Liability Company”).

LLC Name: _____

- 1b. Date LLC was formed: _____

- 1c. Under the laws of what state: _____

- 1d. State the tax classification of LLC by checking the appropriate box below:

- ☐ - Single Entity LLC
☐ - C Corporation LLC
☐ - S Corporation LLC
☐ - Partnership LLC

- 1e. Provide all the following information for each person who is either (a) an officer of the LLC (president, vice president, secretary, treasurer), or (b) partner of the LLC, or (c) the owner of at least ten percent of the LLC’s stock.

Name	Position	Years with Co.	% Ownership

- 1f. If a Partnership LLC, provide the name of the Managing Partner.

Managing Partner’s Full Name: _____

- 1g. Identify every construction firm that any person listed above has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person's Name	Construction Firm	Dates of Person's Participation with Firm

For Prospective Proposers that are Partnerships: N/A

- 1a. Date of formation: _____
- 1b. Under the laws of what state: _____
- 1c. Provide all the following information for each partner who owns ten percent or more of the firm.

Name	Position	Years with Co.	% Ownership

- 1d. Identify every construction company that any partner has been associated with (as owner, general partner, limited partner or officer) at any time during the last five years.

NOTE: For this question, "owner" and "partner" refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person's Name	Construction Company	Dates of Person's Participation with Company

For Prospective Proposers that are Sole Proprietorships: N/A

- 1a. Date of commencement of business. _____
- 1b. Identify every construction firm that the business owner has been associated with (as owner, general partner, limited partner or officer) at any time during the last 5 years.

NOTE: For this question, “owner” and “partner” refer to ownership of ten percent or more of the business, or ten percent or more of its stock, if the business is a corporation.

Person’s Name	Construction Company	Dates of Person’s Participation with Company

B. History of the Business and Organizational Performance

2. Has there been any change in ownership of the firm at any time during the last three years?

NOTE: A corporation whose shares are publicly traded is not required to answer this question.

☐ Yes ☒ No

If “yes,” explain on a separate signed page.

3. Is the company, corporation, LLC, or other entity seeking to prequalify a parent, subsidiary, in a holding company relationship, or otherwise an affiliate of any other construction company, corporation, LLC, or other entity?

NOTE: All Prospective Proposers will be required to properly execute and submit the Prospective Proposer’s Certification included in Appendix G as Attachment A to the SOPQ Submittal.

☒ Yes ☐ No

See attached.

If “yes,” on a separate signed page, please provide a complete corporate tree showing percentage of ownership. In addition, if any such affiliated company, corporation, LLC, or other entity is seeking to prequalify as well, identify such entity and submit proof satisfactory to the City that the requirements of Section 2.4 are satisfied.

B. History of the Business and Organizational Performance

3. Is the company, corporation, LLC or other entity seeking to prequalify a parent, subsidiary, in a holding company relationship, or otherwise an affiliate of any other construction company, corporation, LLC, or other entity?

Lyles Diversified, Inc. - Parent Company

W.M. Lyles Co., New England Sheet Metal and Mechanical Co., and American Paving Co. - Wholly owned, qualified Subchapter S Subsidiaries of Lyles Diversified, Inc.



Joseph B. Lawrence, Asst. Vice President

4. Are any of your directors, officers, partners or owners also an officer, director, partner or owner of another construction company, corporation, LLC, or other entity?

☐ Yes ☒ No

If “yes,” on a separate signed page, please identify such person(s) and the other construction company involved. In addition, if such other construction company is seeking to prequalify as well, submit proof satisfactory to the City that the requirements of Section 2.4 are satisfied.

5. State your firm’s gross revenues for each of the last three years:

<u>\$211,632,837</u>	<u>\$229,996,064</u>	<u>\$243,891,673</u>
2018	2017	2016

6. How many years has your organization been in business as a contractor under your present business name and license number? 36 years

7. Is your firm currently the debtor in a bankruptcy case?

☐ Yes ☒ No

If “yes,” please attach a copy of the bankruptcy petition, showing the case number, and the date on which the petition was filed.

8. Was your firm in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 7, above)

☐ Yes ☒ No

If “yes,” please attach a copy of the bankruptcy petition, showing the case number and the date on which the petition was filed, and a copy of the Bankruptcy Court’s discharge order, or of any other document that ended the case, if no discharge order was issued.

Licenses

9. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by your firm:

CSLB No. 422390 / Class A, B / Expiration 5/31/2020

10. If any of your firm's license(s) are held in the name of a corporation, LLC, or partnership, list below the names of the qualifying individual(s) listed on the CSLB records whom meet(s) the experience and examination requirements for each license.

Kenneth Strosnider, RMO

11. Has your firm changed names or license number in the past five years?

☐ Yes ☒ No

If "yes," explain on a separate signed page, including the reason for the change.

12. Has any owner, partner or (for corporations, LLC) officer of your firm operated a construction firm under any other name in the last five years?

☐ Yes ☒ No

If "yes," explain on a separate signed page, including the reason for the change.

13. Has any CSLB license held by your firm or its Responsible Managing Employee or Responsible Managing Officer been suspended within the last five years?

☐ Yes ☒ No

If "yes," please explain on a separate signed sheet.

Disputes

The City recognizes that large construction companies (e.g. revenues in excess of \$250 million per year) have multiple branches/divisions for geographic and/or type of construction coverages. In such cases, the Prospective Proposer may elect to submit a set of qualifications for a specific company branch or division which shall be clearly identified in a cover letter to the SOPQ package submittal. As such, should a Prospective Proposer choose to submit qualifications for a specific branch /division, the scoring requirements for Part II B-C of the SOPQ, as well as all other submitted information shall be branch/division specific. Financial statements should still be for the total company and parent company even if a Prospective Proposer submits the scoring requirements specific to a company branch or division.

14. At any time in the last five years, has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

☐ Yes ☒ No

If yes, explain on a separate signed page, identifying all such projects by owner, owner's address, the date of completion of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

15. In the last five years has your firm, or any firm with which any of your company's owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: "Associated with" refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 1c or 1d on this form.

☐ Yes ☒ No

If "yes," explain on a separate signed page. State whether the firm involved was the firm applying for Pre-Qualification here or another firm. Identify by name of the company, the name of the person within your firm who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

16. In the last 5 years has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

☐ Yes ☒ No

If "yes," explain on a separate signed page. Identify the year of the event, the owner, the project and the basis for the finding by the public agency.

* * * * *

NOTE: The following two questions refer only to disputes between your firm and the owner of a project. You need not include information about disputes between your firm and a supplier, another contractor, or subcontractor. You need not include information about "pass-through" disputes in which the actual dispute is between a sub-contractor and a project owner. Also, you may omit reference to all disputes about amounts of less than \$50,000.

17. In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

☒ Yes ☐ No See attached

If "yes," on separate signed sheets of paper identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution). See attached.

18. In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

☒ Yes ☐ No See attached.

If “yes,” on separate signed sheets of paper identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

19. At any time during the past five years, has any surety company made any payments on your firm’s behalf as a result of a default, to satisfy any claims made against a performance or payment bond issued on your firm’s behalf, in connection with a construction project, either public or private?

☐ Yes ☒ No

If “yes,” explain on a separate signed page the amount of each such claim, the name and telephone number of the claimant, the date of the claim, the grounds for the claim, the present status of the claim, the date of resolution of such claim if resolved, the method by which such was resolved if resolved, the nature of the resolution and the amount, if any, at which the claim was resolved.

20. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

☐ Yes ☒ No

If “yes,” explain on a separate signed page. Name the insurance carrier, the form of insurance and the year of the refusal.

Criminal Matters and Related Civil Suits

21. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

☐ Yes ☒ No

If “yes,” explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

22. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

☐ Yes ☒ No

B. History of the Business and Organizational Performance

- 17 In the past five years has any claim against your firm concerning your firm's work on a construction project been filed in court or arbitration?

Project Name: Tulare Industrial Wastewater Treatment Plant Expansion completed 3/5/10

Completed: 3/5/2010

Date of Claim: 3/28/15

Claimant: City of Tulare vs. Xylem Water Solutions USA, Inc., FKA Sanitaire, W. M. Lyles Co., et al

Filed in Tulare County Superior Court

Claim Status: Settled

Brief:

City of Tulare claimed Breach of Contract, Breach of Warranty and Damages against the parties for failure of the diffuser system lock rings installed in the plant expansion project. Causation was not determined by the Plaintiff. W. M. Lyles Co. did not perform design, or choose the equipment system. Rather, W. M. Lyles Co. installed the equipment that was pre-selected/sole sourced by the Owner as directed and approved by the Manufacturer, and according to the Project specifications. This claim was dismissed as the Parties settled the matter in July 2016.

- 18 In the past five years has your firm made any claim against a project owner concerning work on a project or payment for a contract and filed that claim in court or arbitration?

Project Name: Tulare Industrial Wastewater Treatment Plant Expansion

Completed: 3/5/2010

Date of Claim: 11/2/2015

Cross Complainant: W. M. Lyles Co.. vs. City of Tulare, Xylem Water Solutions USA, Inc., FKA Sanitaire, et al

Court Filed: Tulare County Superior Court

Claim Status: Settled

Brief: See above.

There are no current claims against W. M. Lyles Co. that if we should lose the claim, would adversely affect our financial position, or our ability to meet our obligations if awarded the contract for this project.

W.M. Lyles Co.



Joseph B. Lawrence, Asst. Vice President

If “yes,” explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

23. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

☐ Yes ☒ No

If “yes,” identify on a separate signed page the person or persons convicted, the court (the county if a state court, the Agency or location of the federal court), the year and the criminal conduct.

Bonding

24. Bonding capacity: Provide documentation from your surety identifying the following:

Name of bonding company/surety: Liberty Mutual Insurance Company

Name of surety agent, address and telephone number:

Alliant Insurance Services, Inc., Steve Edwards, 9 E. Riverpark Place East, Suite 310, Fresno, CA 93720, (559)374-3560

25. If your firm was required to pay a premium of more than one percent for a performance and payment bond on any project(s) on which your firm worked at any time during the last three years, state the percentage that your firm was required to pay. You may provide an explanation for a percentage rate higher than one percent, if you wish to do so.

N/A

26. List all other sureties (name and full address) that have written bonds for your firm during the last five years, including the dates during which each wrote the bonds:

N/A

27. During the last five years, has your firm ever been denied bond coverage by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required?

☐ Yes ☒ No

If yes, provide details on a separate signed sheet indicating the date when your firm was denied coverage and the name of the company or companies which denied coverage; and the period during which you had no surety bond in place.

C. Compliance with Occupational Safety and Health Laws and with Other Labor Legislation

28. Has CAL OSHA cited and assessed penalties against your firm for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

☐ Yes ☒ No

If “yes,” attach a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

29. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☐ Yes ☒ No

If “yes,” attach a separate signed page describing each citation.

30. Has the EPA or any Air Quality Management Agency or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

☒ Yes ☐ No

If “yes,” attach a separate signed page describing each citation. See attached.

B. History of the Business and Organizational Performance

- 30 Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

On approximately 8/22/2018, W.M. Lyles Co. ("WML") received a Notice of Violation from the San Joaquin Valley Unified Air Pollution Control District ("SJVUAPCD") related to a Carryout and Trackout violation citing, "Failure to prevent carryout and trackout extending over 50 ft. or more from the nearest unpaved surface exit point of a site within an urban area. This was the first offense incurred by WML in its long seventy four (74) year history and the fine incurred was \$1,200.00, which has been fully satisfied. No further sanctions and/or clouds have been placed upon WML's CSLB license in regard to this incident and it will have no impact whatsoever upon WML's ability to perform its current work or to provide future services.



Joseph B. Lawrence, Asst. Vice President

31. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project? weekly
32. Experience Modification Rate (EMR): Prospective Proposers shall obtain a letter from your insurance carrier (or state fund if applicable) with your interstate EMR's for the current year, previous year and year prior to previous year. If you do not have an interstate rating, obtain your intrastate EMR's. Attach the letter as part of this SOPQ Package Submittal. The Prospective Proposer shall list below the Experience Modification Rate for the current year, previous year and year prior to previous year as provided by your insurance carrier.

<u>Year</u>	<u>EMR</u>
Current year	<u>2018: 0.78</u>
Previous year	<u>2017: 0.91</u>
Year prior to previous year	<u>2016: 1.02</u>
Three Year Average	<u>0.91</u>
Are the above rates interstate or intrastate?	<u>intrastate</u>
If intrastate, which state?	<u>California</u>

NOTE: Any of the following methods of “obtaining a letter” are acceptable:

- Furnish a letter from your insurance agent, insurance carrier or state fund (on their letterhead) verifying the EMR data listed above; or See tab 9
- Furnish a Photostat of the applicable Experience Rating Calculation Sheets, which your insurance carrier should forward to you annually.

A Prospective Proposer will be immediately disqualified if its Three-Year Average EMR is greater than 1.25 (125%).

33. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

☐ Yes ☒ No

If “yes,” please explain the reason for the absence of workers' compensation insurance on a separate signed page. If “No,” please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record

34. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

☐ Yes ☒ No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

35. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the **federal Davis-Bacon** prevailing wage requirements?

☐ Yes ☒ No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

36. Provide the **name, address and telephone number** of the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to your company for use on any public work project for which you are awarded a contract by the Owner.

See attached.

37. If your firm operates its own State-approved apprenticeship program:

- (a) Identify the craft or crafts in which your firm provided apprenticeship training in the past year.
- (b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).

Apprentice Program**Office Location and Phone Number**

Northern California Carpenters	2350 Santa Rita Road Pleasanton, CA 94566 Phone: (925) 462-9640
Northern California Cement Masons	2350 Santa Rita Road Pleasanton, CA 94566 Phone: (925) 484-2271
Northern California Laborers	1001 Westside Drive San Ramon, CA 94583 Phone: (925) 556-0858
Northern California Operating Engineers	14738 Cantova Way Sloughhouse, CA 95683 Phone: (916) 354-2029

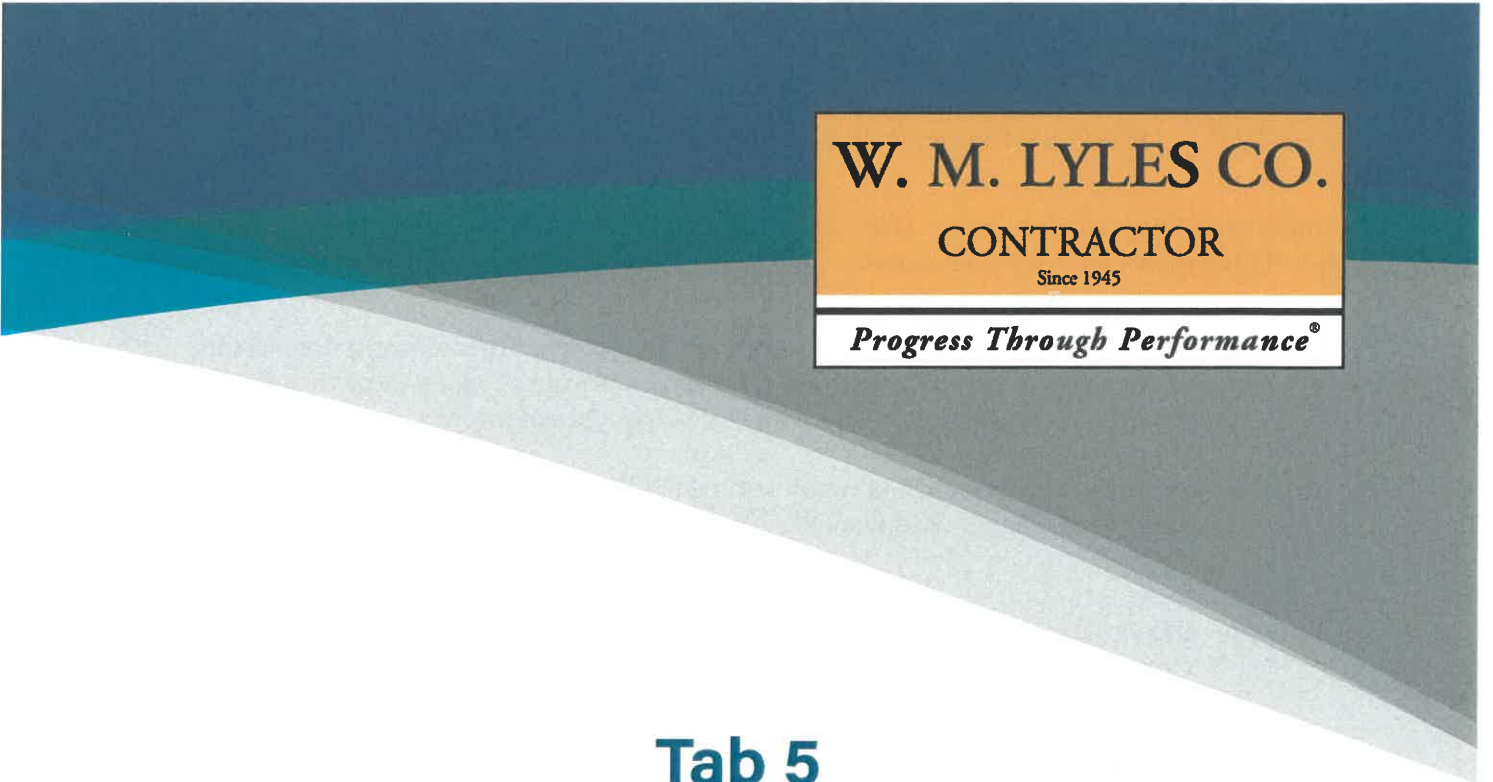
- (c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three years, completed apprenticeships in each craft while employed by your firm.

N/A

38. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

☐ Yes ☒ No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).



W. M. LYLES CO.

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Tab 5

Part III

Recent Construction Projects Completed

PART III. RECENT CONSTRUCTION PROJECTS COMPLETED

Important Note to Contractor: Only complete Part III, Item 39(A) if you are submitting an SOPQ for the PGWWTP Expansion.

39(A) In accordance with Part I, Question 9, and the Prospective Proposer must demonstrate that it has performed at least **\$150 million** in construction volume on no more than **six** projects completed since **January 1, 2009** on the following types of projects:

- a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract;
or
- b. Industrial and/or municipal wastewater treatment plants where structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract.

The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of **November 1, 2018** on uncompleted projects can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than **six** projects of the types listed above, that combined, will add up to at least **\$150 million** in completed value of work. **In addition, one of the six projects must have a construction value of at least \$45 million.**

Any projects listed below, which are not as defined above, will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects, and/or pump station projects are not considered an equivalent project.

An industrial and/or municipal water or wastewater treatment plant project is defined as a project that was engineered and constructed for an industrial or municipally owned and operated facility which is designed to remove contaminants, specific constituents, and/or particulates in water and/or wastewater as required by a State issued discharge permit.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the Work on each of the projects listed below. The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule, and safety.

Prospective Proposers are to complete this form and not attach their own form to their SOPQ submission.

Qualifying Project # 1 Name: Wastewater Treatment Plant Secondary and Tertiary Improvements Project

Prime Contractor: AECOM & WML, a Joint Venture

Project Manager: John Lunsford

Owner: City of Davis

Construction Cost: \$ 32,619,341.00

Construction Time: 1,493 Calendar Days

Owner's Representative: Diana Jensen

Owner's Representative Telephone No.: (530) 757-5686

Engineer or On-Site Construction Mgr.: AECOM

Engineer or On-Site CM's Telephone No.: Scott Thibault (978) 905-3217

Date of Substantial Completion: September 28, 2018

Qualifying Project # 2 Name: Southeast Surface Water Treatment Facility - Phase Two

Prime Contractor: W. M. Lyles Co.

Project Manager: Tony Mueller

Owner: City of Fresno

Construction Cost: \$ 162,089,360.00

Construction Time: 1,000 Calendar Days

Owner's Representative: Glenn Knapp

Owner's Representative Telephone No.: (559) 621-1624

Engineer or On-Site Construction Mgr.: Carollo Engineers

Engineer or On-Site CM's Telephone No.: Chris Johnson (208) 376-2288

Date of Substantial Completion: August 7, 2018

Qualifying Project # 3 Name: Water Conservation Plant Upgrades

Prime Contractor: W. M. Lyles Co.

Project Manager: Ruben Moreno, Jr.

Owner: City of Visalia

Construction Cost: \$ 103,499,235.00

Construction Time: 1,607 Calendar Days

Owner's Representative: Jim Ross

Owner's Representative Telephone No.: (559) 713-4533

Engineer or On-Site Construction Mgr.: Parsons

Engineer or On-Site CM's Telephone No.: Satish Kamath (626) 440-3364

Date of Substantial Completion: March 31, 2017

Qualifying Project # 4 Name: Primary Treatment Renovations

Prime Contractor: W. M. Lyles Co.

Project Manager: John Lunsford

Owner: Central Contra Costa Sanitary District

Construction Cost: \$ 11,441,946.00

Construction Time: 1,227 Calendar Days

Owner's Representative: Craig Mizutani

Owner's Representative Telephone No.: (925) 229-7361

Engineer or On-Site Construction Mgr.: Central Contra Costa Sanitary District

Engineer or On-Site CM's Telephone No.: Nathan Morales (925) 229-7126

Date of Substantial Completion: January 22, 2016

Qualifying Project # 5 Name: Wastewater Treatment Plant Upgrade and Expansion Project

Prime Contractor: W. M. Lyles Co. (formerly known as Kaweah Construction Co.)

Project Manager: Matt Cain

Owner: Linda County Water District

Construction Cost: \$ 29,547,940.00

Construction Time: 247 Calendar Days

Owner's Representative: Brian Davis

Owner's Representative Telephone No.: (530) 743-2043

Engineer or On-Site Construction Mgr.: Kennedy Jenks Engineering

Engineer or On-Site CM's Telephone No.: Don Barraza (916) 858-2700

Date of Substantial Completion: May 23, 2012

Qualifying Project # 6 Name: Palmdale Water Reclamation Plant Stage 5 Plant Expansion, Phase 1

Prime Contractor: W. M. Lyles Co.

Project Manager: Grant Gourley

Owner: County Sanitation District No. 20 of Los Angeles County

Construction Cost: \$ 116,079,180.00

Construction Time: 1,559 Calendar Days

Owner's Representative: Ted Brodeur

Owner's Representative Telephone No.: (626) 962-8605

Engineer or On-Site Construction Mgr.: Los Angeles County Sanitation District

Engineer or On-Site CM's Telephone No.: Jenny Hsu (562) 908-4288

Date of Substantial Completion: June 16, 2012

Total Construction Cost of listed Qualifying Project(s) above: \$ 455,277,002.00

Important Note to Prospective Proposer: Only complete Part III, Item 39(B) if you are submitting an SOPQ for the PGWWTP ERP.

39(B) In accordance with Part I, Question 9, and the Prospective Proposer must demonstrate that it has performed at least **\$80 million** in construction volume on no more than **six** projects completed since **January 1, 2009** on the following types of projects:

- a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract; or
- b. Industrial and/or municipal wastewater treatment plants where structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract.

The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of **November 1, 2018** on uncompleted projects can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than **six** projects of the types listed above, that combined, will add up to at least **\$80 million** in completed value of work. **In addition, one of the six projects must have a construction value of at least \$20 million.**

Any projects listed below, which are not as defined above, will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects, and/or pump station projects are not considered an equivalent project.

An industrial and/or municipal water or wastewater treatment plant project is defined as a project that was engineered and constructed for an industrial or municipally owned and operated facility which is designed to remove contaminants, specific constituents, and/or particulates in water and/or wastewater as required by a State issued discharge permit.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the Work on each of the projects listed below. The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule, and safety.

Prospective Proposers are to complete this form and not attach their own form to their SOPQ submission.

Qualifying Project # 1 Name: CR&R Riverside County Environmental Center

Prime Contractor: W. M. Lyles Co.

Project Manager: Dave O'Dear

Owner: CR & R Incorporated

Construction Cost: \$ 34,734,495.33

Construction Time: 1,387 Calendar Days

Owner's Representative: Michael J. Silva

Owner's Representative Telephone No.: (714) 826-9046

Engineer or On-Site Construction Mgr.: J.R. Miller & Associates

Engineer or On-Site CM's Telephone No.: Aric Vanderzee (714) 524-1870

Date of Substantial Completion: March 5, 2018

Qualifying Project # 2 Name: Southeast Surface Water Treatment Facility

Prime Contractor: W. M. Lyles Co.

Project Manager: Tony Mueller

Owner: City of Fresno

Construction Cost: \$ 162,089,360

Construction Time: 1,000 Calendar Days

Owner's Representative: Glenn Knapp

Owner's Representative Telephone No.: (559) 621-1624

Engineer or On-Site Construction Mgr.: Carollo Engineers

Engineer or On-Site CM's Telephone No.: Chris Johnson (208) 376-2288

Date of Substantial Completion: August 7, 2018

*Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project*

Request for Contractor Pre-Qualifications

Qualifying Project # 3 Name: Water Conservation Plant Upgrades

Prime Contractor: W. M. Lyles Co.

Project Manager: Ruben Moreno, Jr.

Owner: City of Visalia

Construction Cost: \$ 103,499,235.00

Construction Time: 1,607 Calendar Days

Owner's Representative: Jim Ross

Owner's Representative Telephone No.: (559) 713-4533

Engineer or On-Site Construction Mgr.: Parsons

Engineer or On-Site CM's Telephone No.: Satish Kamath (626) 440-3364

Date of Substantial Completion: March 31, 2017

Qualifying Project # 4 Name: Wastewater Treatment Plant Upgrade Project

Prime Contractor: W. M. Lyles Co.

Project Manager: Jeff Mathiowetz

Owner: City of El Paso de Robles

Construction Cost: \$ 38,051,687.00

Construction Time: 1,352 Calendar Days

Owner's Representative: Matt Thompson

Owner's Representative Telephone No.: (805) 227-7200

Engineer or On-Site Construction Mgr.: Black & Veatch

Engineer or On-Site CM's Telephone No.: Ashu Shirolkar (916) 851-0260

Date of Substantial Completion: April 12, 2016

Qualifying Project # 5 Name: Victor Valley Wastewater Plant Biogas Facility

Prime Contractor: W. M. Lyles Co.

Project Manager: Grant Gourley

Owner: Victor Valley Wastewater Reclamation Authority

Construction Cost: \$ 2,029,315.17

Construction Time: 617 Calendar Days

Owner's Representative: Logan Olds

Owner's Representative Telephone No.: (760) 246-8638

Engineer or On-Site Construction Mgr.: Water Synergy, Inc.

Engineer or On-Site CM's Telephone No.: Don Bunts (760) 533-4086

Date of Substantial Completion: 7/31/2014

Qualifying Project # 6 Name: Moreno Valley RWRP Preliminary Treatment and Acid Phase Anaerobic Digestion

Prime Contractor: W. M. Lyles Co.

Project Manager: Tony Mueller

Owner: Eastern Municipal Water District

Construction Cost: \$ 30,925,370.00

Construction Time: 1,233 Calendar Days

Owner's Representative: Bruce Mitzel

Owner's Representative Telephone No.: (951) 928-3777

Engineer or On-Site Construction Mgr.: Carollo Engineers

Engineer or On-Site CM's Telephone No.: Rick Doeve (909) 915-8405

Date of Substantial Completion: March 16, 2012

Total Construction Cost of listed Qualifying Project(s) above: \$ 371,329,462.50

Important Note to Contractor: Only complete Part III, Item 39(C) if you are submitting an SOPQ for both the PGWWTP Expansion and PGWWTP ERP independently.

39(C) In accordance with Part I, Question 9, and the Prospective Proposer must demonstrate that it has performed at least **\$200 million** in construction volume on no more than **six** projects completed since **January 1, 2009** on the following types of projects:

- a. Industrial and/or municipal water treatment plants where the structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract; or
- b. Industrial and/or municipal wastewater treatment plants where structural concrete, excavation, backfill, mechanical and electrical were part of the contractor's contract.

The list of projects may include projects currently under construction, but only the total amount paid by the owner(s) as of **November 1, 2018** on uncompleted projects can be included in this summation of construction value. The Prospective Proposer is allowed to list no more than **six** projects of the types listed above, that combined, will add up to at least **\$200 million** in completed value of work. **In addition, one of the six projects must have a construction value of at least \$65 million.**

Any projects listed below, which are not as defined above, will not be considered by the City in meeting this pre-requisite experience requirement. For example, pipeline projects, and/or pump station projects are not considered an equivalent project.

An industrial and/or municipal water or wastewater treatment plant project is defined as a project that was engineered and constructed for an industrial or municipally owned and operated facility which is designed to remove contaminants, specific constituents, and/or particulates in water and/or wastewater as required by a State issued discharge permit.

Prospective Proposer also certifies that Prospective Proposer self-performed at least 40% of the Work on each of the projects listed below. The City considers this level of past self-performance demonstrates a benefit to the Project in terms of better control of cost, schedule, and safety.

Prospective Proposers are to complete this form and not attach their own form to their SOPQ submission.

Qualifying Project # 1 Name: CR&R Riverside County Environmental Center

Prime Contractor: W. M. Lyles Co.

Project Manager: Dave O'Dear

Owner: CR&R Incorporated

Construction Cost: \$ 34,734,495.33

Construction Time: 1,387 Calendar Days

Owner's Representative: Michael J. Silva

Owner's Representative Telephone No.: (714) 826-9046

Engineer or On-Site Construction Mgr.: J. R. Miller & Associates

Engineer or On-Site CM's Telephone No.: Aric Vanderzee

Date of Substantial Completion: March 5, 2018

Qualifying Project # 2 Name: Wastewater Treatment Plant Secondary and Tertiary Improvements Project

Prime Contractor: AECOM & WML, a Joint Venture

Project Manager: John Lunsford

Owner: City of Davis

Construction Cost: \$ 32,619,341.00

Construction Time: 1,493 Calendar Days

Owner's Representative: Diana Jensen

Owner's Representative Telephone No.: (530) 757-5686

Engineer or On-Site Construction Mgr.: AECOM

Engineer or On-Site CM's Telephone No.: Scott Thibault (978) 905-3217

Date of Substantial Completion: September 28, 2018

Qualifying Project # 3 Name: Southeast Surface Water Treatment Facility - Phase Two

Prime Contractor: W. M. Lyles Co.

Project Manager: Tony Mueller

Owner: City of Fresno

Construction Cost: \$ 162,089,360.00

Construction Time: 1,000 Calendar Days

Owner's Representative: Glenn Knapp

Owner's Representative Telephone No.: (559) 621-1624

Engineer or On-Site Construction Mgr.: Carollo Engineers

Engineer or On-Site CM's Telephone No.: Chris Johnson (208) 376-2288

Date of Substantial Completion: September 28, 2018

Qualifying Project # 4 Name: Water Conservation Plant Upgrades

Prime Contractor: W. M. Lyles Co.

Project Manager: Ruben Moreno, Jr.

Owner: City of Visalia

Construction Cost: \$ 103,499,235.00

Construction Time: 1,607 Calendar Days

Owner's Representative: Jim Ross

Owner's Representative Telephone No.: (559) 713-4533

Engineer or On-Site Construction Mgr.: Parson

Engineer or On-Site CM's Telephone No.: Satish Kamath (626) 440-3364

Date of Substantial Completion: March 31, 2017

Qualifying Project # 5 Name: Primary Treatment Renovations

Prime Contractor: W. M. Lyles Co.

Project Manager: John Lunsford

Owner: Central Contra Costa Sanitary District

Construction Cost: \$ 11,441,946.00

Construction Time: 1,227 Calendar Days

Owner's Representative: Craig Mizutani

Owner's Representative Telephone No.: (925) 229-7361

Engineer or On-Site Construction Mgr.: Central Contra Costa Sanitary District

Engineer or On-Site CM's Telephone No.: Nathan Morales (925) 229-7126

Date of Substantial Completion: January 22, 2016

Qualifying Project # 6 Name: Wastewater Treatment Plant Upgrade and Expansion Project

Prime Contractor: W. M. Lyles Co.

Project Manager: Matt Cain

Owner: Linda County Water District

Construction Cost: \$ 29,547,940.00

Construction Time: 247 Calendar Days

Owner's Representative: Brian Davis

Owner's Representative Telephone No.: (530) 743-2043

Engineer or On-Site Construction Mgr.: Kennedy Jenks Engineering

Engineer or On-Site CM's Telephone No.: Don Barraza (916) 858-2700

Date of Substantial Completion: May 23, 2012

Total Construction Cost of listed Qualifying Project(s) above: \$ 373,932,317.33

*Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project*

Request for Contractor Pre-Qualifications

SECTION 4

BASIS OF DETERMINATION

4.1 GENERAL

The determination of prequalified Prospective Proposers will be based on an evaluation of the SOPQ and information gathered by the City from the references of related projects. See Appendix B for scoring criteria. The categories that will be evaluated under the basis of determination are responsiveness and capability.

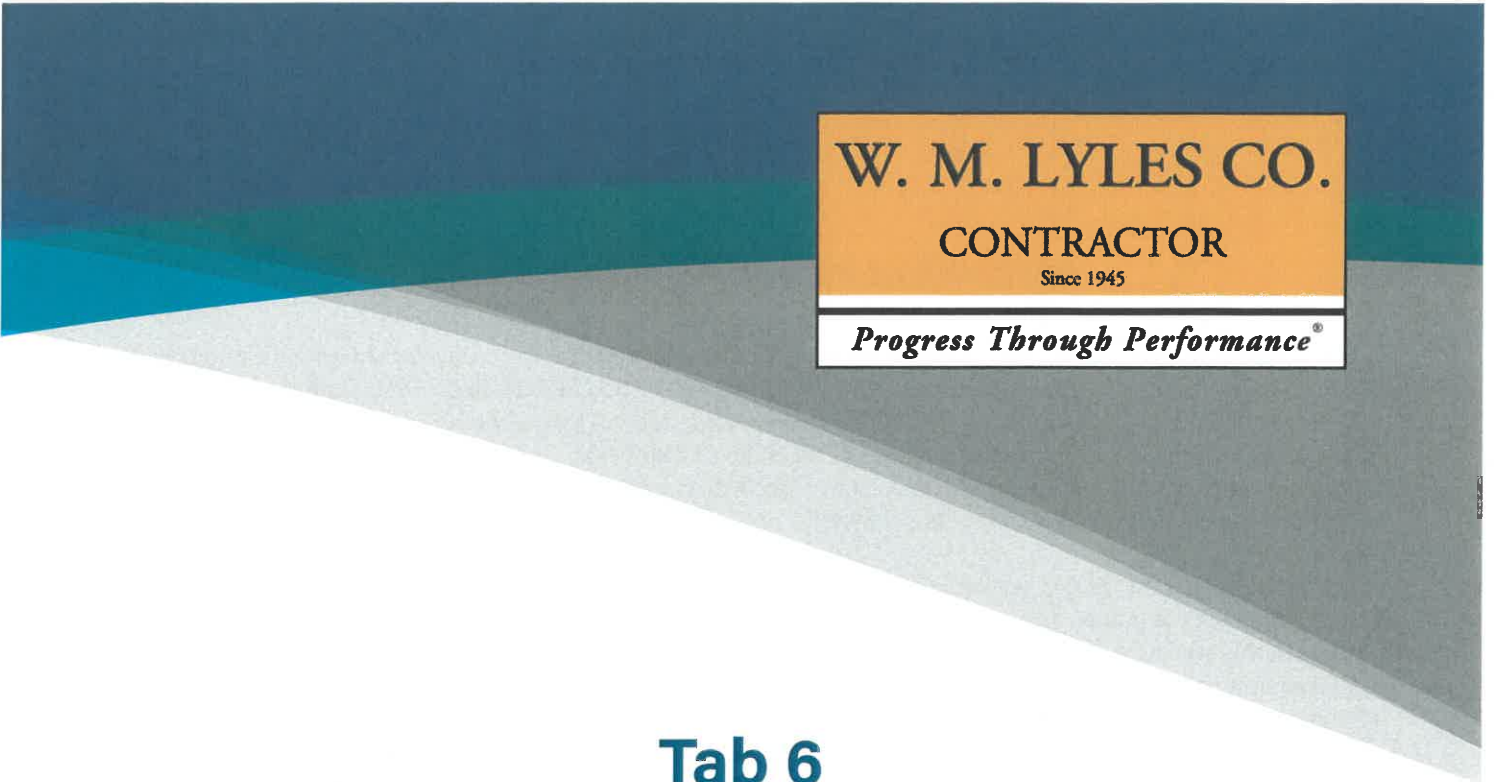
4.2 RESPONSIVENESS

Prospective Proposers must demonstrate they do not have a conflict of interest in the PGWWTP project(s) SOPQ submitted by Prospective Proposer, nor a direct relationship with another prequalifying firm.

Before evaluation of the Prospective Proposer's capability, the responsiveness of the Prospective Proposer will be assessed. The assessment of responsiveness will determine if adequate information or the minimum prerequisites have been submitted to permit an evaluation under the basis of determination. A SOPQ submittal will be rejected as nonresponsive for lack of adequate information due to incompleteness, illegibility, or disregard of the requested format.

4.3 CAPABILITY

The determination by the City of a Prospective Proposer's capability shall assess the Prospective Proposer's ability, capacity, and skill to construct the subject PGWWTP project(s) in a timely and satisfactory manner, based on the responses to the questions in Section 3 and the scoring system described in Appendix B.



W. M. LYLES CO.

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Tab 6

Attachment A Prospective Proposer's Certification

PROSPECTIVE PROPOSER'S CERTIFICATION

I have carefully examined the Request for Statements of Pre-Qualification from Interested General Contractors (RFPQ) and any other documents accompanying or made a part of this Statement of Pre-Qualifications (SOPQ) packet. The information contained in this SOPQ packet is true and correct to the best of my knowledge and is signed under penalty of perjury under the laws of the State of California. I further certify that I am duly authorized to submit this SOPQ packet on behalf of the firm as its authorized agent and that the firm is ready, willing and able to perform if awarded the contract.

I further certify that this SOPQ packet is made without prior understanding, agreement, connection, discussion, or conspiracy with any other person, contractor or corporation submitting a SOPQ packet for the same service; that this SOPQ packet is fair and made without outside control, collusion, fraud or illegal action; that no officer, employee or agent of the City or any other proposer is financially interested in said SOPQ packet; that no undue influence or pressure was used against or in concert with any officer, employee or agent of the City in connection with the pre-qualification process for the Pleasant Grove Wastewater Treatment Plant projects that will be executed as a result of the Request for Bid Proposals; and that the undersigned executed this Prospective Proposer's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

W. M. Lyles Co.

NAME OF GENERAL CONTRACTOR

SIGNATURE

Joseph B. Lawrence, Asst. Vice President

NAME & TITLE, TYPED OR PRINTED

1210 W. Olive Avenue, Fresno, CA 93728

MAILING ADDRESS

(559) 441-1900

TELEPHONE NUMBER

jlawrence@wmlylesco.com

EMAIL

Type of Organization:

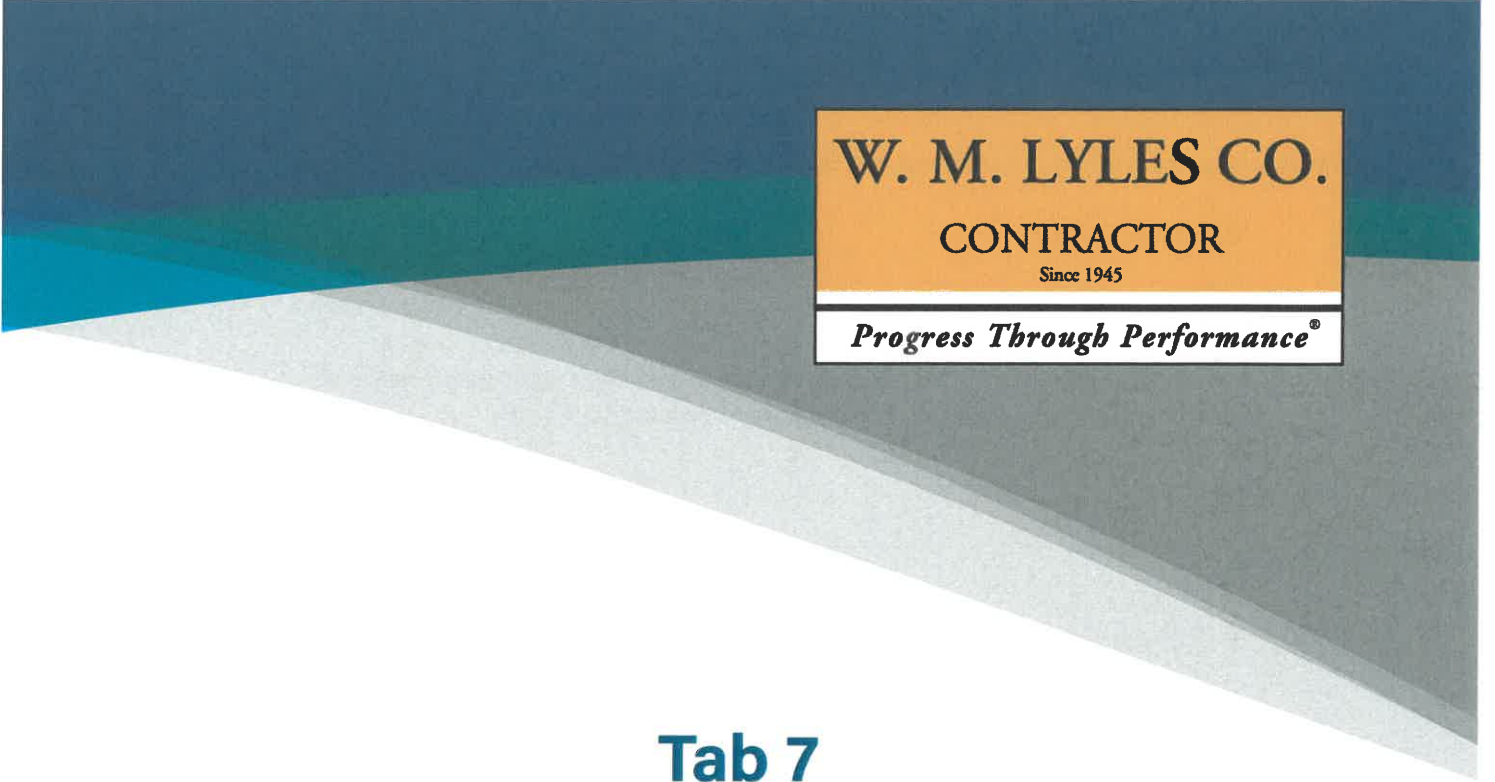
____ Sole Proprietorship

____^x Corporation

____^{CA} State of Incorporation

____ Partnership

____ Limited Liability Company



W. M. LYLES CO.

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Tab 7

Conflict of Interest Statement

Instructions for Preparation and Submission of Statement of Pre-Qualification (SOPQ Packages)

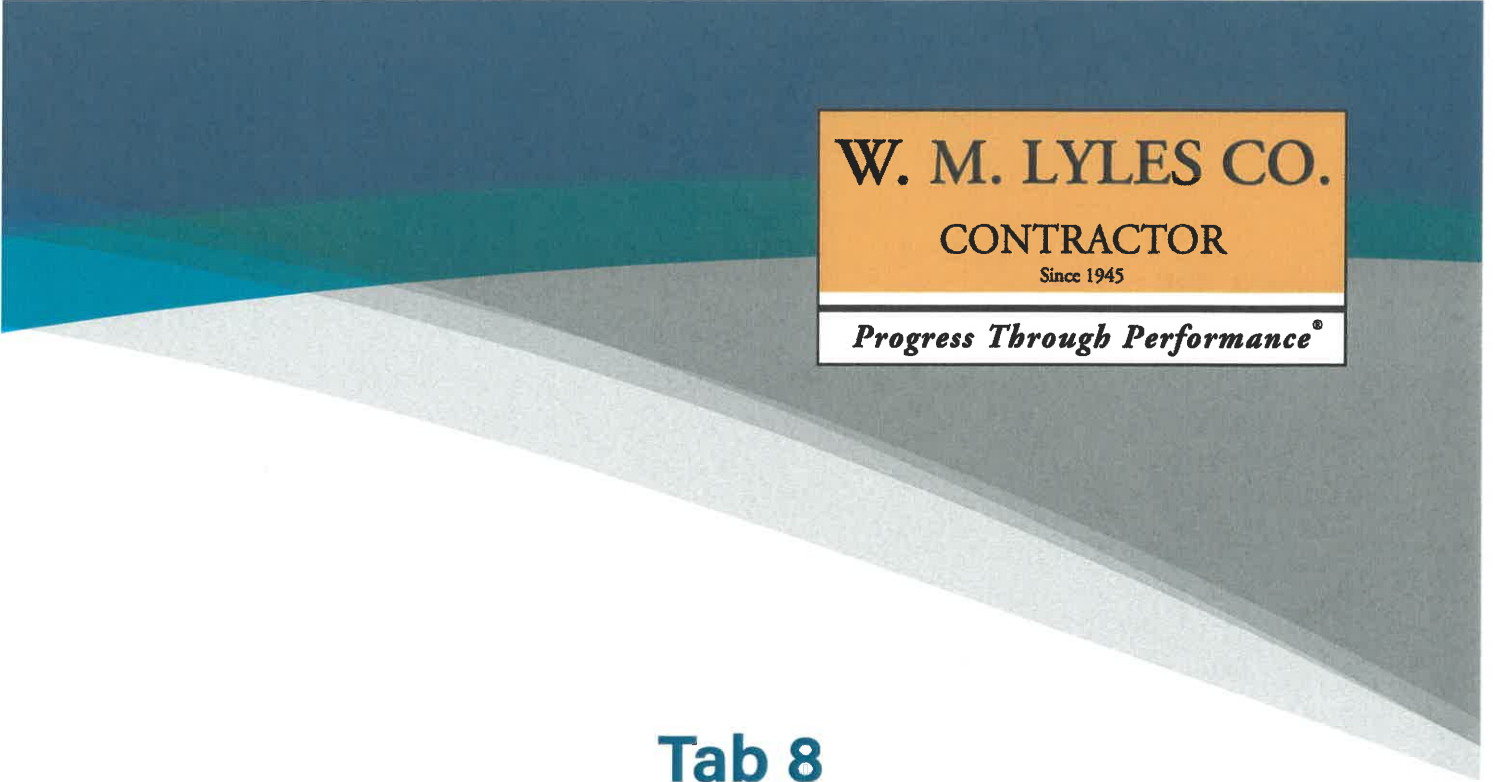
2.3 Conflict of Interest

We hereby warrant that no official or employee of the City has an interest, has been employed or retained to solicit or aid in the procuring of the contract for either PGWWTP Project, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City.

W. M. Lyles Co.

A handwritten signature in blue ink, appearing to read 'J. Lawrence', is written over a horizontal line.

Joseph B. Lawrence, Asst. Vice President



W. M. LYLES CO.

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Tab 8

Letter of Intent to Insure



March 22, 2019

Tracie Mueller, P.E.
City of Roseville
City Clerk Department
311 Vernon Street
Roseville, CA 95678

Re: Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

Dear Ms. Mueller,

W. M. Lyles Co. has submitted herewith a response to the request of Intent to Insure for the above referenced Statement of Prequalification.

The respective insurers are very familiar with W. M. Lyles Co.'s operations and qualifications. Accordingly, upon award of a contract for the above referenced project, based on our standard underwriting practices at that time, the respective insurers anticipate that they would provide the insurance coverages specified in Appendix D, Bonds and Insurance.

Alliant Insurance Services, Inc.
(Representing Old Republic Insurance Company, Allied World Assurance Company, Berkley Assurance Company & Allianz Global US Insurance Co)

A handwritten signature in blue ink, appearing to read "Nick Bellasis".

Nick Bellasis
Sr. Vice President

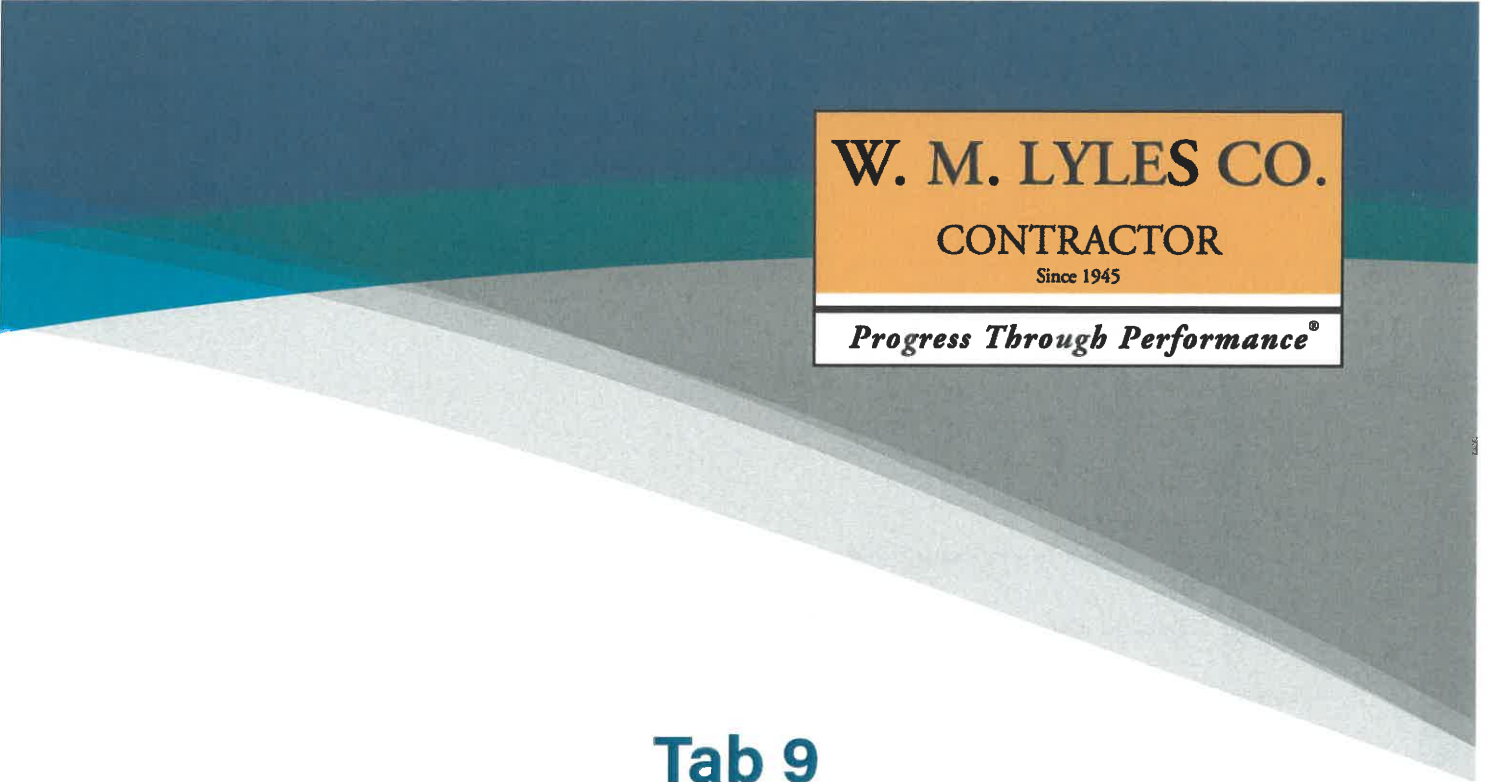
Civil Code § 1189

State of California)
) ss
County of Fresno)

WITNESS my hand and official seal.




Bonnie Gonzalez, Notary Public

The logo is set against a background of stylized, overlapping geometric shapes in shades of blue, teal, and grey, suggesting a landscape or architectural form. The logo itself is a rectangular box with an orange top section and a white bottom section.

W. M. LYLES CO.

CONTRACTOR

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Tab 9

EMR Letter



November 15, 2018

RE: W.M. Lyles Co.
2018 Workers' Compensation Experience Modification Rating

To Whom It May Concern,

Alliant Insurance Services, Inc. is the insurance broker handling all lines of coverage for the Lyles group of companies, which includes workers' compensation.

Included within that organization is W.M. Lyles Co. As an integral part of the larger organization, W.M. Lyles Co. shares in the combined experience modification rating promulgated by the State of California. Alliant produces and calculates an individual modification factor which is based solely on the experience of W.M. Lyles Co. using the identical State Factors and formula, as if there were a standalone entity. This individually calculated experience modification factor is much more reflective of their own safety performance as compared to the overall factor published by the State of CA for combined entities.

The most recent published combined experience modification rating effective 5-31-18 is 78%.

The prior published ratings are as follows:

2017 – Combined 91%/Individual 85%
2016 – Combined 102%/Individual 84%

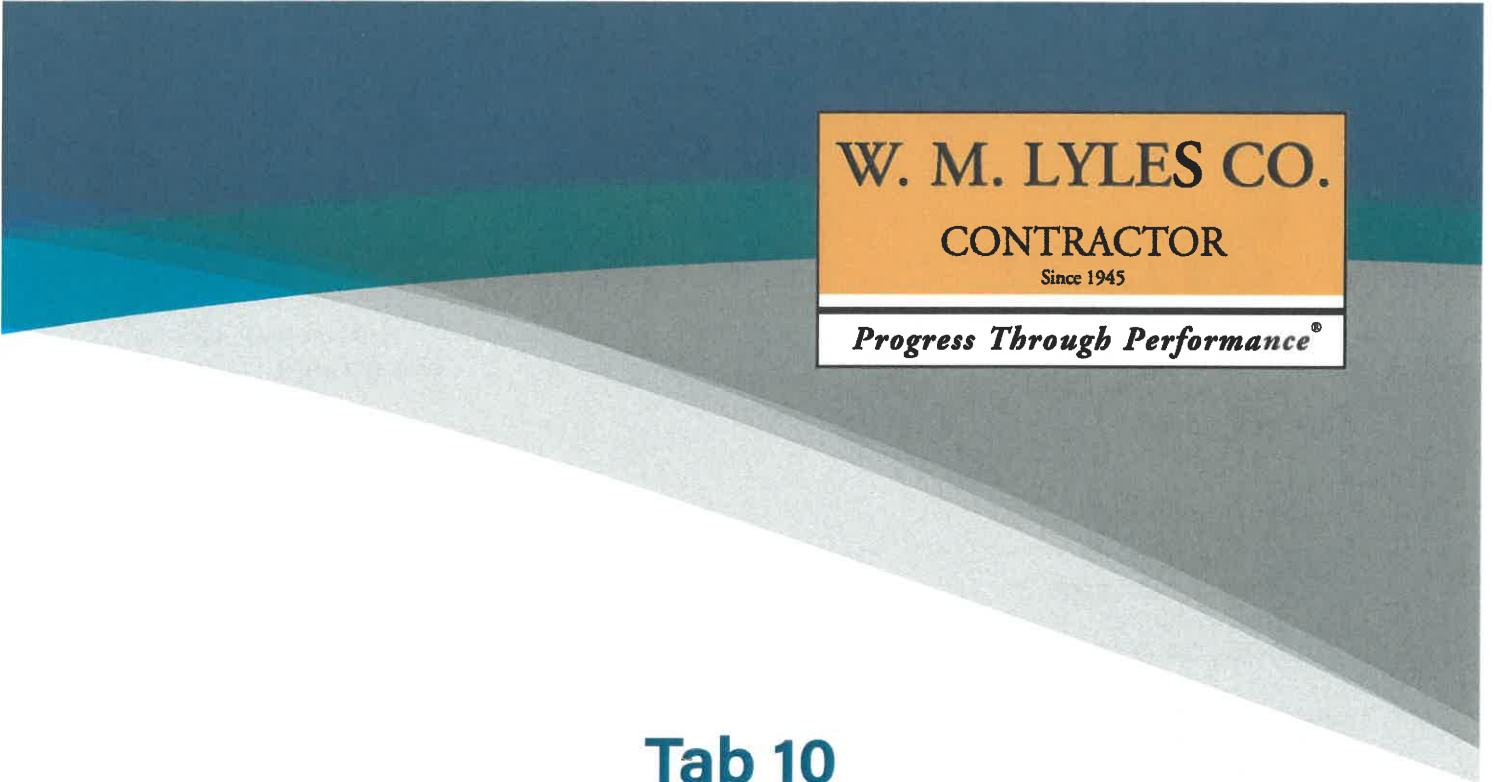
Please advise if you require any further information.

Regards,

A handwritten signature in black ink that reads "Len Howard". Below the signature, the name "Len Howard" is printed in a small, black, sans-serif font.

Len Howard

Vice President, Claims Consultant



W. M. LYLES CO.

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Tab 10

Notarized Bonding Capacity Letter



Liberty Mutual Surety
SAFECO INSURANCE COMPANY OF AMERICA

1340 Treat Blvd., Suite 550
Walnut Creek, CA 94597
(925) 979-6730

March 8, 2019

Tracie Mueller, P.E.
City of Roseville
City Clerk Department
311 Vernon Street
Roseville, CA 95678

Re: Pleasant Grove Wastewater Treatment Plant Expansion Project
Pleasant Grove Wastewater Treatment Plant Energy Recovery Project

Ms. Mueller,

Liberty Mutual Company (Liberty), acts as surety for W.M. Lyles Co. in its contracting matters. Liberty is a major, national provider of contract surety bonds, is listed in the Federal Register as a surety acceptable for Federal projects, and is a licensed, admitted surety in all fifty United States. Liberty enjoys a Bests Guide rating of A (Excellent).

Alliant Insurance Service Inc. 9 E River Park Place East, Suite 310, Fresno, CA 93720 is the current agent. We currently extend to W.M. Lyles Co. bonding capacity in the \$1,000,000,000 per project and \$2,000,000,000 aggregate ranges. Current available capacity is \$1,500,000,000. No claims have been made. Current rate is \$4.00 per thousand.

Should you select W.M. Lyles Co. for the reference project, it is our present intention to provide the required performance and payment bonds, subject to our normal underwriting guidelines. This includes, but is not limited to a review of contract terms, conditions and bond forms.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,
LIBERTY MUTUAL INSURANCE COMPANY

Steven P. Edwards
Attorney in Fact

Member of Liberty Mutual Group

Civil Code § 1189

State of California)
) ss
County of Fresno)

WITNESS my hand and official seal.



e. Bonnie Gonzalez
Bonnie Gonzalez, Notary Public



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8198004-984971

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Cody Lyman, Ralph B. Busch III, John C. Day, Steven P. Edwards, Lyn Genito, Bonnie Gonzalez

all of the city of Fresno state of California each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 20th day of November, 2018.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 20th day of November, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member: Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows.

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5 Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 8 day of March 2019.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.