



LEMOORE CITY COUNCIL
COUNCIL CHAMBER
429 C STREET
April 16, 2019

AGENDA

Please silence all electronic devices as a courtesy to those in attendance. Thank you.

PUBLIC COMMENT

This time is reserved for members of the audience to address the City Council on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Council. It is recommended that speakers limit their comments to 3 minutes each and it is requested that no comments be made during this period on items on the Agenda. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda. Prior to addressing the Council, any handouts for Council will be provided to the City Clerk for distribution to the Council and appropriate staff.

5:30 pm STUDY SESSION

SS-1 Biannual Ethics and Brown Act Training – Part I (VanBindsbergen)

CLOSED SESSION

This item has been set aside for the City Council to meet in a closed session to discuss matters pursuant to Government Code Section 54956.9(d)(4). The Mayor will provide an oral report regarding the Closed Session at the beginning of the next regular City Council meeting.

1. Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)(1)
City of Lemoore v. Holly Andrade Blair
Case No. 19C-0043

In the event that all the items on the closed session agenda have not been deliberated in the time provided, the City Council may continue the closed session at the end of the regularly scheduled Council Meeting.

7:30 pm REGULAR SESSION

- a. CALL TO ORDER
- b. PLEDGE OF ALLEGIANCE
- c. INVOCATION
- d. ROLL CALL
- e. AGENDA APPROVAL, ADDITIONS, AND/OR DELETIONS

PUBLIC COMMENT

This time is reserved for members of the audience to address the City Council on items of interest that are not on the Agenda and are within the subject matter jurisdiction of the Council. It is recommended that speakers limit their comments to 3 minutes each and it is requested that no comments be made during this period on items on the Agenda. The Council is prohibited by law from taking any action on matters discussed that are not on the Agenda. Prior to addressing the Council, any handouts for Council will be provided to the City Clerk for distribution to the Council and appropriate staff.

CEREMONIAL / PRESENTATION – Section 1

No Ceremonial / Presentations

DEPARTMENT AND CITY MANAGER REPORTS – Section 2

2-1 Department & City Manager Reports

CONSENT CALENDAR – Section 3

Items considered routine in nature are placed on the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Council member or member of the public requests individual consideration.

- 3-1 Approval – Minutes – Regular Meeting – April 2, 2019
- 3-2 Approval – Resolution 2019-14 – Senate Bill 1 (SB 1) Road Maintenance and Rehabilitation Account Project List for Fiscal Year 2019-2020

PUBLIC HEARINGS – Section 4

Report, discussion and/or other Council action will be taken.

No Public Hearings

NEW BUSINESS – Section 5

Report, discussion and/or other Council action will be taken.

- 5-1 Report and Recommendation – Award Contract for Design-Build Phase Services to J.R Filanc Construction for Water Treatment Plant (Rivera)
- 5-2 Report and Recommendation – First Reading – Ordinance 2019-01 Amending Article A of Chapter 7 of the City of Lemoore Municipal Code Relation to Water Use and Service (Speer)
- 5-3 Report and Recommendation – Bid Award - CIP 5712 – Lemoore Police Department Dispatch Center (Speer)

CITY COUNCIL REPORTS AND REQUESTS – Section 6

6-1 City Council Reports / Requests

ADJOURNMENT

Upcoming Council Meetings

- City Council Regular Meeting, Tuesday, May 7, 2019
- City Council Regular Meeting, Tuesday, May 21, 2019

Agendas for all City Council meetings are posted at least 72 hours prior to the meeting at the City Hall, 119 Fox St., Written communications from the public for the agenda must be received by the City Clerk's Office no less than seven (7) days prior to the meeting date. The City of Lemoore complies with the Americans with Disabilities Act (ADA of 1990). The Council Chamber is accessible to the physically disabled. Should you need special assistance, please call (559) 924-6705, at least 4 business days prior to the meeting.

PUBLIC NOTIFICATION

I, Marisa Avalos, City Clerk for the City of Lemoore, declare under penalty of perjury that I posted the above City Council Agenda for the meeting of April 16, 2019 at City Hall, 119 Fox Street, Lemoore, CA on April 12, 2019.

Marisa Avalos, City Clerk



119 Fox Street • Lemoore, California 93245 • (559) 924-6700 • Fax (559) 924-9003

Staff Report

Item No: SS-1

To: Lemoore City Council
From: Michelle Speer, Assistant City Manager
Date: April 09, 2019 **Meeting Date:** April 16, 2019
Subject: Biannual Ethics and Brown Act Training – Part I
Strategic Initiative:

- | | |
|--|--|
| <input type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input checked="" type="checkbox"/> Operational Excellence |
| <input type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:
Information Only.

Subject/Discussion:
AB 1234 and Government Code Section §52325 require biannual ethics training for all legislative bodies and public officials. The City Attorney will be providing training on council and board roles and duties, as well as ethics training for all public officials.

Financial Consideration(s):
None noted.

Alternatives or Pros/Cons:
None noted.

Commission/Board Recommendation:
None noted.

Staff Recommendation:
Information Only.

Attachments:

- ☐ Resolution:
- ☐ Ordinance:
- ☐ Map
- ☐ Contract
- ☐ Other
- List:

Review:

- ☒ Asst. City Manager
- ☒ City Attorney
- ☒ City Manager
- ☒ City Clerk

Date:

4/10/19
4/10/19
4/10/19
4/11/19

**April 2, 2019 Minutes
Study Session
City Council Regular Meeting**

CALL TO ORDER:

At 6:03 p.m., the meeting was called to order.

ROLL CALL: Mayor: NEAL
Mayor Pro Tem: BILLINGSLEY
Council Members: BROWN, LYONS
Absent: BLAIR

City Staff and contract employees present: City Manager Nathan Olson; City Attorney Van Bindsbergen; Deputy City Clerk Venegas.

CLOSED SESSION PUBLIC COMMENT

There was no Public Comment.

At 6:04 p.m., Council adjourned to Closed Session.

CLOSED SESSION

1. Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9 (d)(1)
City of Lemoore v. Holly Andrade Blair
Case No. 19C-0043

ADJOURNMENT

At 7:10 p.m., Council adjourned.

**April 2, 2019 Minutes
Lemoore City Council
Regular City Council Meeting**

CALL TO ORDER:

At 7:30 p.m., the meeting was called to order.

ROLL CALL: Mayor: NEAL
Mayor Pro Tem: BILLINGSLEY
Council Members: BLAIR, BROWN, LYONS

City Staff and contract employees present: City Manager Olson; City Attorney Van Bindsbergen; Public Works Director Rivera; Police Chief Smith; Park and Recreation Director Glick; Deputy City Clerk Venegas; Finance Manager Beyersdorf; Officer O'Barr; Community Service Officer Perez.

REPORT OUT OF CLOSED SESSION

There was no report out.

PUBLIC COMMENT

Amy Ward, Lemoore Chamber CEO, invited all to the 19th Annual Pizza Festival and Lemoore Days to be held on April 12, 13 and 14th. Lemoore Days is incorporated in the event to bring back and celebrate as Lemoore has everything that is needed to create pizza. The City, Police Department, Fire Department, Santa Rosa Rancheria and Lemoore Middle College are some of the entities that will be involved.

CEREMONIAL / PRESENTATION – Section 1

There were no Ceremonial / Presentations.

DEPARTMENT AND CITY MANAGER REPORTS – Section 2

2-1 Department & City Manager Reports

Fire Chief German provided the March monthly statistics for the Volunteer Fire Department.

Parks and Recreation Director Glick invited all to the following events:

- April 20 – Annual Easter Egg Hunt at Lions Park at 9:30 a.m.*
- April 27 – Mother Son Campout at Circle T Ranch at 7 p.m.*
- June 14 – Heritage Park, the time capsule that was buried 25 years ago will be dug up*

Parks and Recreation Director Glick is working with retired Parks and Recreation Director Tom Hernandez to bring an RV sale to the youth complex in the fall. Also, attended Prop 68 workshops, with another staff member, to determine eligibility. There are several parks in the city that meet the required criteria and currently developing a schedule to move forward.

City Manager Olson is currently working with legal and city staff to draft a cannabis ordinance. Also, working on budgets. A hiring freeze for all full-time positions has been put in place for the rest of the fiscal year. Reorganization has been completed. There were six positions that have been filled with five current city staff.

CONSENT CALENDAR – Section 3

- 3-1 Approval – Minutes – Regular Meeting – March 19, 2019
- 3-2 Approval – Objection Letter in Regards to the Tribal Land Acquisition Application for APNs 021-380-016-000, 021-380-017-000, and 021-300-007-000
- 3-3 Approval – Letter of Support – Occupational Safety and Health: Valley Fever (AB 203)
- 3-4 Approval – Letter of Support – Roundabouts (AB 634)
- 3-5 Approval – Resolution 2019-13 Recognizing the Importance of the 2020 U.S. Census
- 3-6 Approval – Bid Award – CIP 5700 – Finance Department Remodel and Addition

Council Member Blair pulled Items 3-1, 3-2, 3-3, 3-4, 3-5, and 3-6 for separate consideration.

- 3-1 Approval – Minutes – Regular Meeting – March 19, 2019

Motion by Council Member Brown, seconded by Council Member Lyons, to approve Consent Calendar Item 3-1 as corrected; Item 2-1 \$1,900 corrected to \$19,000.

Ayes: Brown, Lyons, Billingsley, Neal
Noes: Blair

- 3-2 Approval – Objection Letter in Regards to the Tribal Land Acquisition Application for APNs 021-380-016-000, 021-380-017-000, and 021-300-007-000

Tom Reed spoke.

Motion by Council Member Brown, seconded by Council Member Lyons, to approve Consent Calendar Item 3-2.

Ayes: Brown, Lyons, Billingsley, Neal
Noes: Blair

- 3-3 Approval – Letter of Support – Occupational Safety and Health: Valley Fever (AB 203)

Motion by Council Member Brown, seconded by Council Member Lyons, to approve Consent Calendar Item 3-3.

Ayes: Brown, Lyons, Billingsley, Neal
Noes: Blair

- 3-4 Approval – Letter of Support – Roundabouts (AB 634)

Tom Reed spoke.

Motion by Council Member Billingsley, seconded by Council Member Brown, to approve Consent Calendar Item 3-4.

Ayes: Billingsley, Brown, Lyons, Neal
Noes: Blair

- 3-5 Approval – Resolution 2019-13 Recognizing the Importance of the 2020 U.S. Census

Motion by Council Member Brown, seconded by Council Member Lyons, to approve Consent Calendar Item 3-5.

Ayes: Brown, Lyons, Billingsley, Neal
Noes: Blair

3-6 Approval – Bid Award – CIP 5700 – Finance Department Remodel and Addition

Motion by Council Member Lyons, seconded by Council Member Billingsley, to approve Consent Calendar Item 3-6.

Ayes: Lyons, Billingsley, Brown, Neal
Noes: Blair

PUBLIC HEARINGS – Section 4

4-1 Closeout for Community Development Block Grant (CDBG) 14-CDBG-9884 – Lemoore Senior Center Improvement Project (Rivera)

Public Hearing opened at 8:36 p.m.

Spoke: Jan Savage
Richard Rhea, Lemoore Senior Center President
Marge Marsh

Public Hearing closed at 8:47 p.m.

Informational only pursuant to terms of the grant.

4-2 Abatement of Public Nuisances - Property located at 311 C Street (APN 020-094-006) (Rivera)

Public Hearing opened at 8:57 p.m.

Spoke: Tom Reed
Larry Harper

Public Hearing closed at 8:59 p.m.

Motion by Council Member Blair, seconded by Council Member Brown, to table item to the May 7, 2019 meeting.

Ayes: Blair, Brown, Lyons, Billingsley, Neal

NEW BUSINESS – Section 5

There was no New Business.

CITY COUNCIL REPORTS AND REQUESTS – Section 6

6-1 City Council Reports / Requests

Council Member Blair spoke with Mayor Neal prior to the meeting regarding some of the items. Thank you for a cordial conversation and appreciative of the conversation. Mr. Neal is Lemoore's first African American Mayor and we should be proud we are moving forward.

Council Member Brown attended the KCAG and LFACO meetings last month with nothing to report out. Attending the KART meeting and kartbus.org has the proposed service changes, public hearing dates, and where to submit suggestions.

Council Member Lyons attended the Kings County Commission on Aging meeting and having a problem with match money. Met Rebecca Campbell, Kings County Administrative Officer, at the City/County Coordinating meeting last month. Along with Council Member Brown, they are making forward progress. The City/County Coordinating meeting was very informative and also able to reconnect with individuals not seen in many, many years.

Mayor Pro Tem Billingsley attended the City/County Coordinating meeting at the Palace and it was very informative. Attended the Mosquito Abatement meeting and not much movement. Thank them for no mosquitos this summer. Also attended the Kings Economic Development Committee meeting and focus is industrial hemp and it was a very informative meeting on the topic.

Mayor Neal thanked Council Member Blair for making notice. Appreciate other Council Members attending the various Board meetings and appreciate the work they do. The City/County Coordinating meeting was great. Spoke with Leland McGhee previously and Mr. McGhee suggested the meeting be out at the Palace. List of concerns received. Requested staff draft letter of support for renewing the gaming contract as personally in support of renewing the 20 year gaming contract. Consensus was received.

Mayor Neal received a Facebook post regarding how the town looks. This is the reason he would like to re-establish the Tree Committee.

ADJOURNMENT

At 9:15 p.m., Council adjourned.

Approved the 16th day of April 2019.

APPROVED:

Edward Neal, Mayor

ATTEST:

Marisa Avalos, City Clerk



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Staff Report

Item No: 3-2

To: Lemoore City Council

From: Frank Rivera, Public Works Director

Date: April 2, 2019 Meeting Date: April 16, 2019

Subject: Resolution 2019-14 - Senate Bill 1 (SB 1) Road Maintenance and Rehabilitation Account Project List for Fiscal Year 2019-2020

Strategic Initiative:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input type="checkbox"/> Operational Excellence |
| <input type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:

Approve Resolution 2019-14, listing all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1.

Subject/Discussion:

On April 28, 2017, the Governor signed Senate Bill 1, the Road Repair and Accountability Act of 2017. SB 1 increases per gallon fuel excise taxes, diesel fuel sales taxes and vehicle registration fees with inflationary adjustments to tax rates in future years for the purpose of addressing basic road maintenance, rehabilitation and roadway safety needs.

Effective November 2017, the State Controller deposited various portions of this new funding into the newly created Road Maintenance and Rehabilitation Account (RMRA). A percentage of this new RMRA funding is apportioned by formula to eligible cities and counties.

SB 1 emphasizes the importance of accountability and transparency in the delivery of California's transportation programs. Therefore, in order to be eligible for RMRA funding, statute requires cities and counties to provide basic annual RMRA project reporting to the California Transportation Commission (CTC). Per the program's requirements,

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jurisdictions are required to submit to the CTC by May 1, 2019, a resolution documenting the City Council's approval of a project list with locations, schedule, and estimated useful life of the project before they can receive RMRA funds.

QK, the City Engineer, used their pavement management program to advise the City of the roads in greatest need of rehabilitation. The proposed project list is ranked by priority, though the RMRA program does not require that the projects be completed in any specific order. The list is not all inclusive of the City's cost needs but is used as a basis to establish a project list and will be updated annually to meet the need of the City.

Project Description	Project Location	Estimated Useful Life	Anticipated Year of Construction
Cinnamon Dr: 19 1/2 Ave to Holly Ave	Cinnamon Drive from 19 1/2 Avenue to Holly Avenue	8-10 Years	2019/2020
19 1/2 Ave: Castle to Cinnamon	19 1/2 Avenue from Castle Way to Cinnamon Drive	8-10 Years	2019/2020
Hanford-Armona Rd: Hwy 41 to Fox	Hanford-Armona Road from Hwy 41 to Fox Street	8-10 Years	2020/2021
Silverado Dr: 19 1/2 to 19th	Silverado Drive from 19 1/2 Avenue to 19th Avenue	8-10 Years	2020/2021
19 1/2 Ave: Silverado to Bush	19 1/2 Avenue from Silverado Drive to Bush Avenue	8-10 Years	2020/2021
Cedar Lane: 19th to Vine	Cedar Lane from 19th Avenue to Vine Street	8-10 Years	2021/2022
Cinnamon Dr: Balboa to Hanford-Armona	Cinnamon Drive from Balboa to Hanford-Armona Road	8-10 Years	2021/2022

Financial Consideration(s):

The City has received \$239,618.55 of the \$410,570 anticipated for Fiscal Year 2018-2019 and will receive approximately \$428,555 for Fiscal Year 2019-2020. Construction will begin once the City has accumulated enough funds for a project.

Alternatives or Pros/Cons:

City Council could choose to modify the proposed project list.

Commission/Board Recommendation:

Not applicable.

Staff Recommendation:

Staff recommends City Council adopt Resolution 2019-14, approving the Fiscal Year 2019-2020 SB 1 Project List.

Attachments:

- ☒ Resolution: 2019-14
- ☐ Ordinance:
- ☐ Map
- ☐ Contract
- ☐ Other
- List:

Review:

- ☒ Asst. City Manager
- ☒ City Attorney
- ☒ City Clerk
- ☒ City Manger
- ☐ Finance

Date:

- 4/10/19
- 4/10/19
- 4/11/19
- 4/10/19

RESOLUTION NO. 2019-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMOORE
ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2019-2020 FUNDED BY
SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1 by resolution, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$428,555 in RMRA funding in Fiscal Year 2019-2020 from SB 1; and

WHEREAS, this is the third year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1 ; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate streets throughout the City this year and similar projects into the future; and

WHEREAS, this revenue will help us increase the overall quality of our road system; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Lemoore, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of projects is planned to be funded with Road Maintenance and Rehabilitation Account revenues:

Project Description	Project Location	Estimated Useful Life	Anticipated Year of Construction
Cinnamon Dr: 19 1/2 Ave to Holly Ave	Cinnamon Drive from 19 1/2 Avenue to Holly Avenue	8-10 Years	2019/2020
19 1/2 Ave: Castle to Cinnamon	19 1/2 Avenue from Castle Way to Cinnamon Drive	8-10 Years	2019/2020
Hanford-Armona Rd: Hwy 41 to Fox	Hanford-Armona Road from Hwy 41 to Fox Street	8-10 Years	2020/2021
Silverado Dr: 19 1/2 to 19th	Silverado Drive from 19 1/2 Avenue to 19th Avenue	8-10 Years	2020/2021
19 1/2 Ave: Silverado to Bush	19 1/2 Avenue from Silverado Drive to Bush Avenue	8-10 Years	2020/2021
Cedar Lane: 19th to Vine	Cedar Lane from 19th Avenue to Vine Street	8-10 Years	2021/2022
Cinnamon Dr: Balboa to Hanford-Armona	Cinnamon Drive from Balboa to Hanford-Armona Road	8-10 Years	2021/2022

PASSED AND ADOPTED by the City Council of the City of Lemoore at a regular meeting held on the 16th day of April 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

ATTEST:

APPROVED:

Marisa Avalos, City Clerk

Edward Neal, Mayor



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Staff Report

Item No: 5-1

To: Lemoore City Council

From: Frank Rivera, Public Works Director

Date: April 3, 2019 Meeting Date: April 16, 2019

Subject: Award Contract for Design-Build Phase Services to J.R. Filanc Construction for Water Treatment Plant

Strategic Initiative:

- | | |
|---|--|
| <input type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input type="checkbox"/> Operational Excellence |
| <input checked="" type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:

Approve contract with J.R. Filanc Construction to assist the city in the Design-Build of the Water Treatment Plant and authorize for the City Manager to execute required contract documentation.

Subject/Discussion:

The city is seeking a qualified consultant for the design-build of a Water Treatment Plant (WTP). The WTP will process the city's drinking water so that it meets the requirements of Compliance Order (NO. 03-12-14R-004). The City received Compliance Order NO. 03-12-14R-004 dated October 27, 2014 for nonconformance with the Stage 2 Disinfected Byproduct Rule Maximum Contaminant Level for Total Trihalomethanes (TTHM), Section 64533 (a), Title 22, California Code of Regulations. The original order had a compliance deadline of October 31, 2017. Two extensions have been granted and the new deadline for compliance is June 30, 2020. The City completed an extensive piloting program to ensure compliance with the order.

In January 2019, city staff, utilizing standard procurement procedures, distributed a Request for Qualifications (RFQ) for Design-Build Services for a Water Treatment Plant (WTP), which is phase one of a two phase project. Phase one will be the pre-construction phase generally consisting of engineering, geotechnical investigations, and design

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development. Phase two will generally consist of the completion of the projects final design, construction, and performance testing.

The city received three proposals by the March 19, 2019 deadline from the following consultants (listed in alphabetical order):

- Clark Bros. Inc.
- J.R. Filanc Construction
- Meyers & Sons

A review committee consisting of City staff, Vanir Staff and the City of Corcoran's Public Works Director ranked the proposals. The ranking was based on a cumulative score from the following categories: fee proposal, team experience, water/wastewater design-build experience, water treatment plant experience (including experience with the California Department of Drinking Water), safety record, and prevailing wage. Filanc unanimously ranked number one in all categories.

It is imperative the City start work on this project, in order to meet the June 2020 deadline and avoid costly penalties and fines.

Financial Consideration(s):

The contract amount of \$525,260 for phase one will be paid out of Fund 160, CIP 5202 and are bond proceeds **(\$30,303,757.30)** which was authorized by council in Resolution 2019-06.

Pros:

- City becomes compliant with Compliance Order NO. 03-12-14R-004.
- Water quality increases for residents.

Cons:

- None noted.

Commission/Board Recommendation:

Not applicable.

Staff Recommendation:

Staff recommends that City Council approve the contract in the amount of \$525,260 to J.R. Filanc Construction and authorize the City Manager to execute the required contract documents.

Attachments:

- ☒ Resolution: 2019-06
- ☐ Ordinance:
- ☐ Map
- ☒ Contract
- ☒ Other
- List: Filanc Bid Proposal
- Preliminary Schedule

Review:

- ☒ Asst. City Manager
- ☒ City Attorney
- ☒ City Clerk
- ☒ City Manager

Date:

- 04/10/19
- 04/11/19
- 04/11/19
- 04/10/19

Cover Letter

A

City of Lemoore
Public Works/Planning Department
711 W. Cinnamon Drive
Lemoore, CA 93245

Attention: City Clerk
Subject: Statement of Qualifications to Provide Design-Build Services
for the City of Lemoore Water Treatment Plant Project

The City of Lemoore's Station 7 and 11 Water Treatment Plant project includes the critical infrastructure needed to meet potable water quality criteria and improve general water quality for the residents of the City. This project includes many "firsts" for the City including its first water treatment plant and first project delivered by design-build. The treatment process designed and pilot-tested by AdEdge Water Technologies, Inc. (AdEdge) is also the first of its kind for this application. We understand the challenges faced by the City in developing this project to the point of delivery. To ensure success, the City must select a design-build partner that thoroughly understands the technical, permitting and construction challenges that is able to collaborate with you and AdEdge to see it through.

In our prequalification submittal, we demonstrated that the Filanc-Hazen team has the experience, resources, financial and safety qualifications needed for the project. In this statement of qualifications (SOQ) we present additional information regarding our team and qualifications, while also presenting our approach to the project, a preliminary schedule and even our initial cost model that offers confidence that it can be delivered within your cost expectations.

As you review our SOQ, we trust that we clearly demonstrate that our team excels in each of the selection criteria you will use in selecting your design-builder and that the Filanc-Hazen team is the clear choice.

- ✓ **Fee Proposal:** We offer the City a proven design-build team with unmatched skills and resources at a competitive fee for Preconstruction and markup for final design and construction. Through our estimating due diligence, we've shown that the project can be delivered within the City's expected cost range with our fees included. We can meet your project cost expectations.
- ✓ **Proposed project team and experience:** We offer you a team of talented people with industry-leading experience in every aspect of this project – a team that has enjoyed working together on previous design-build projects. We're ready to collaborate and offer you a seamless design-build experience.
- ✓ **Water/wastewater related design-build experience:** Filanc and Hazen and Sawyer have completed three design-build projects together and collaborated on several others. Together and separately, we have done over 100 design-build projects specifically in the water/wastewater field. We are your most experienced choice.

-
- ✓ **Water treatment plant experience including permitting and DDW:** Filanc-Hazen's Signal Hill and Monterey Park groundwater treatment design-build projects both involved complex negotiations with DDW for permits to operate. We will get your new facilities permitted.
 - ✓ **Safety Record:** Filanc is one of the safest general contractors in the water treatment industry with dozens of industry awards to prove it. We will build your plants safely.
 - ✓ **Prevailing wage and apprenticeship compliance record:** Filanc's prevailing wage and apprenticeship compliance record is spotless. We will never fail to comply.

By putting the time and effort into developing a preliminary schedule in Primavera P6 and a fully dimensioned initial cost model for this SOQ, we are primed and ready to begin the Preconstruction phase of the project. We are confident that through this advance work and our experience, we can arrive at an open-book guaranteed maximum price (or lump sum) much sooner than the 115 days allowed in Addendum No. 3.

This SOQ is submitted by J.R. Filanc Construction Company, Inc. (Filanc) as the design-builder in association with Hazen and Sawyer (Hazen) as our subcontracted design firm. We acknowledge receipt of Addenda Nos. 1 – 5 to the request for qualifications (RFQ). Enclosed with this original are six (6) copies of our SOQ. An electronic copy is also provided on a USB flash drive.

Should you have any questions regarding this SOQ, please feel free to contact our authorized representative, Design-Build Project Manager Norbert Schulz [nschulz@filanc.com, (760)466-0505]. We look forward to working with the City in the delivery of this important project and we thank you for your consideration.

Sincerely,

J.R. Filanc Construction Company, Inc.



Robert Zaiser
Vice President, Chief Estimator



Norbert Schulz, DBIA
Vice President/Project Manager

J.R. Filanc Construction Company, Inc.
740 North Andreasen Drive, Escondido, CA 92029
(760) 941-7130 phone | (760) 941-3969 fax

Project Team

B

Embarking on this important project and using design-build delivery for the first time, the City of Lemoore needs an experienced design-build partner that not only has the technical and construction resources required, but proven ability to collaborate to overcome challenges and add value. The Filanc-Hazen and Sawyer Team (Filanc-Hazen) has each of those qualities and more, making us the City's best and safest choice to deliver these projects.

Team Structure

J.R. Filanc Construction Company, Inc. (Filanc) will serve as the Design-Builder for the project, holding the prime contract with the City and single source responsibility for its successful completion. Hazen and Sawyer (Hazen) will be the Lead Design Firm for the project as a subcontractor to Filanc. Hazen will have full responsibility for completing the design of the two water treatment plants in coordination with the City's preselected process designer/equipment supplier AdEdge Water Technologies, Inc. (AdEdge).

FILANC

Prime Contractor

Filanc is an award-winning design-builder of water and wastewater treatment, storage, and conveyance infrastructure. Headquartered in Escondido, CA with a total staff of 230, we also maintain regional offices in Phoenix and Denver. This year Filanc will celebrate our 67th anniversary as a California General Engineering contractor and Design-Builder providing services in the water infrastructure business sector. From the beginning, Filanc has maintained an unwavering focus on being California's leading builder of water infrastructure. The company is consistently ranked by Engineering News-Record (ENR) as among the top performing water and wastewater infrastructure contractors. Over the past 32 years, Filanc has also been a pioneer in the delivery of waterworks by Design-Build; today, over 80 percent of our work is delivered by Design-Build and CMAR.

Hazen

Lead Design Firm

Hazen is deeply rooted in water engineering and has a unique connection to the Hazen-Williams formula. Richard Hazen, co-founder of the company, is the son of Allen Hazen a co-developer of the Hazen-Williams pipe formula in 1905. Since 1951, Hazen has had a singular focus on "All Things Water". By providing excellent engineering to our clients, Hazen has grown to over 1,100 engineering professionals in 66 offices across the United States and around the world. Engineering News Record has listed Hazen as one of the top firms in the nation, focused entirely on the domestic wastewater, recycled water, and potable water market. As a "water-only" firm we bring unique expertise and specialists to each project. One client even suggested that we "do all things water except make it rain!"



BIG SKY ELECTRIC

As a design-build best practice we typically include an expert in electrical construction to our design phase team. Nearly 10 years ago, Filanc founded Big Sky Electric as a separate company to provide a quality partner to complete our skill set providing expert design-build and CMAR project delivery. Together, we've done over \$200 million in design-build. Big Sky will provide electrical constructability input during preconstruction to help improve the overall quality and functionality of the final facility design.

Exhibit B.1 Project Organization Chart

Filanc and Hazen have assembled a team of professionals with industry-leading experience in every aspect of work needed to ensure the success of your project. Each is committed to the project from preconstruction through startup and turnover to the City.



Project Leadership

As your single point of contact, Design-Build Project Manager Norbert Schulz, will have the overall responsibility for project delivery. He will establish and drive a management approach that enables integration across all functions and project phases. Strong collaboration with the City, its advisors and AdEdge will be a key charge to ensure we all share the same goals for project performance, safety and quality. Independent from our design and construction leaders, our quality and safety managers will report directly to him.

DESIGN-BUILD PROJECT MANAGER
Norbert Schulz, DBIA

SAFETY MANAGER | Rick Kaulien
DESIGN QUALITY MANAGER | Ian Mackenzie, PE
CONSTRUCTION QUALITY MANAGER | Edward Chavez, CQC
TECHNICAL | Kevin Alexander, PE
ADVISORS | Gary Silverman, PE, BCEE, DBIA

Kevin Alexander of Hazen and Gary Silverman of Filanc are experienced design-build practitioners with a proven record of success. Their experience is available if and when it is needed to bring value to the City.

Functional Leadership

We have talented leaders for the important elements of design-build, forming the backbone of our delivery team. Tama Snow will be Hazen’s internal Design Manager leading a team of designers to deliver work on time and budget. Adelina Sanchez of Filanc will be our Preconstruction Engineering Manager, assisting Norbert in the management of the value engineering, constructability, scheduling and GMP development activities. Once we get to construction, Vince Diaz will lead Filanc’s self-performing crews and key subcontractors to efficiently build the facilities.

PHASE 1: PRE-CONSTRUCTION

DESIGN MANAGER Tama Snow, PE	PRECONSTRUCTION MANAGER Adelina Sanchez, PE
PROCESS DESIGN Silvana Ghiu, PhD, PE	PRECONSTRUCTION SERVICES/VALUE ENGINEERING Vince Diaz
CIVIL DESIGN Mike Santowasso, PE, CPESC	John Phillips, <i>Big Sky Electric</i>
STRUCTUAL DESIGN Wyatt Dressler, PE	ESTIMATING AND GMP DEVELOPMENT Tony Ruiz
MECHANICAL DESIGN Roy Yu, PE	SCHEDULING Marsha Peterson
ELECTRICAL INSTRUMENTATION & CONTROLS Chris Thunhorst, PE	
DDW PERMITTING Gary Silverman, PE Kevin Alexander, PE	

PHASE 2: CONSTRUCTION

CONSTRUCTION PROJECT MANAGER Vince Diaz	
ONSITE PROJECT MANAGER Aaron Arce	STARTUP & COMMISSIONING Christine Ludlow, PE Jim Dewolf
PROJECT SUPERINTENDENT Jim Buckley	SCHEDULING Marsha Peterson
CONSTRUCTION ENGINEERING/CAD Miguel Sanchez	FINAL DESIGN Hazen Design Team From Phase 1
ELECTRICAL CONSTRUCTION Big Sky Electric	

As illustrated in Exhibit B.1, Team Organization Chart, we have assembled a complete team of seasoned professionals to perform the key functions of design, preconstruction, construction, startup and commissioning of the Station 7 and 11 water treatment plants (WTPs). As shown in Exhibit B.2, our approach to design-build (DB) is founded on the principal of team continuity from start to finish. Having a consistent team participating from the proposal phase through design, construction and acceptance testing, enhances team integration, facilitates communication and reinforces a shared vision of project success. To deliver the full benefit of DB delivery, we engage experienced construction personnel, from managers to superintendents and key subcontractors, in the design phase and have design staff reside onsite during construction to expedite submittals and quickly resolve design questions. Resumes are provided in the Resume attachment to this SOQ.

EXHIBIT B.2. Key Staff Roles and Responsibilities

Name Project Role	Preconstruction	Construction	Startup/Commissioning	One-year Service Period
Norbert Schulz DB Project Manager	Lead team integration, drive design, project schedule and GMP development. Oversee budget and schedule performance. Primary point of contact with City.	Maintain team integration, update City and public on progress. Oversee budget and schedule management.	Maintain team integration oversee budget and schedule management.	Oversee budget, address any permit compliance or warranty issues.
Tama Snow Design Manager	Lead design team and design collaboration with AdEdge. Manage design budget and schedule.	Oversee engineering design support. Lead DDW permitting.	Provide engineering support to startup, operator training, commissioning. Finalize DDW permit to operate. Prepare as-built drawings.	Support operations and provide design for warranty issues as needed. Monitor permit compliance.
Silvana Ghiu Lead Process Designer	Review of AdEdge process design, collaboration on potential improvements. Lead integration of process design into balance of facility design.	Provide engineering support during construction as needed. Collaborate with AdEdge on startup and commissioning plan.	Provide process design and operations expertise to facilitate startup.	Provide design service as needed.
Adelina Sanchez Preconstruction Manager	Coordinate constructability/VE reviews, oversee GMP development, lead baseline schedule development and construction permitting.	Provide construction engineering support, oversee development of startup and commissioning plan, support construction and environmental permit/compliance.	Support startup and commissioning team.	Provide construction engineering and other support during warranty period.
Tony Ruiz Lead Estimator	Lead development of GMP, including evaluation of constructability/VE alternatives relative to cost.	Assist in scoping and negotiation of subcontractor scope of supply, procurement and change management.	Change management as needed.	Estimating and procurement for warranty issues if needed.

EXHIBIT B.2. Continued

Name Project Role	Preconstruction	Construction	Startup/Commissioning	One-year Service Period
Vince Diaz Construction Manager	Contribute to constructability/VE reviews, develop construction sequencing and procurement plan, provide schedule logic. Establish construction budgets and subcontracting, safety and construction quality plans.	Oversee self-performed and subcontracted onsite construction labor and trades. Manage schedule and budget. Provide project updates to the City and the public as required.	Support startup and commissioning team.	Provide construction support during warranty period.
Gary Silverman Technical Advisor/ DDW Permitting	Provide technical guidance related to design-build process, DDW permit process planning and support.	Provide continued support of DDW permitting process and other technical assistance as needed.	Support final approval of DDW permit to operate.	Support permit compliance as needed.
Kevin Alexander Technical Advisor/ DDW Permitting				

Project Personnel

Design-Build Project Manager Norbert Schulz, DBIA



Norbert Schulz is a Vice President with J.R. Filanc Construction Company, Inc. (Filanc) and is a Design-Build Institute of America (DBIA) Designated Design-build Professional. His career includes more than 23 years as an environmental science and engineering professional, consulting primarily in the areas of groundwater quality assessment and treatment. He has served in multiple roles including Project and Program Manager, Client Service Manager, and Office Manager serving public, private and federal clients throughout the United States and abroad.

Norbert will lead our team on a day-to-day basis as Design-build Project Manager serving as the City's primary point of contact throughout the

project duration. He will oversee both phases of the project, driving collaboration between design and construction while maintaining communication with the City and other project stakeholders. As the project moves to construction, he will remain engaged to facilitate communication and provide continuity as our construction staff assumes day-to-day responsibilities.

Design Manager Tama Snow, PE



Ms. Snow has over 25 years of experience in civil engineering planning, design and construction of water, wastewater and recycled water projects. She has worked on a multitude of projects from the conceptual phase through the construction and operation phase that included such tasks as obtaining grants and loans, hydraulic modeling, preparing master plans, preparing design plans and specifications. As design manager, Tama will ensure that the design task leads have the necessary resources, coordinate between discipline leads and the contractor and prepare all schedules, invoices and Project Manager related duties. Tama will be responsible for making sure that deadlines to review shop drawings and RFI/RFC's are being met.

Process Design Lead Silvana Ghui, PhD, PE



Dr. Ghu has extensive experience in water treatment plant design covering all aspects of project development including feasibility studies, pilot testing, detailed design, design review, manufacturing, cost estimation, and startup and commissioning. Silvana's expertise also includes groundwater water quality assessment and treatment as well as evaluation of disinfection stability in distribution water systems. She has completed the design for over 20 treatment plants with an emphasis on groundwater treatment. Silvana will serve as the primary peer reviewer, technical consultant leading collaboration with AdEdge in support of the overall process design. She will also support the DDW permitting process.

Preconstruction Manager, Adelina Sanchez, PE



Adelina Sanchez is a California Professional Civil Engineer with over 10 years of experience in the construction industry. She has extensive experience designing piping construction drawings, preparing start-up and commissioning plans, writing Requests for Information (RFIs), preparing Stormwater Pollution Prevention Plans (SWPPP), preparing Site Specific Safety Plans (SSSP), processing submittals and Operations and Maintenance Manuals (O&Ms), processing purchase orders and subcontracts, construction layout and land surveying. Adelina will manage preconstruction activities that will include the development of the baseline schedule, creation of project cost accounting

framework, environmental and construction permitting, resource planning, procurement planning and mobilization. Her role will continue through construction, providing construction engineering support for submittals including preparation of lift and shop drawings, preparation of startup and commissioning plans, O&M plans and final documentation including quality records and as-built drawings.

Construction Manager Vince Diaz

Vince Diaz will be our construction manager with full responsibility for safe, high-quality, on-time, on-budget construction of the Station 7 and 11 WTPs. He will be supported by a full complement of Filanc construction management, engineering and field supervision staff. He will have a key role in development of site-specific safety and quality management plans during preconstruction, and full responsibility for their implementation during construction. Vince's full-time, on-site construction staff will manage the project from an on-site mobile office to be located at either the Station 7 or 11 site.

Vince has been building water and wastewater treatment facilities for more than 40 years, including Filanc's two largest Central Valley projects in Modesto and Fresno. He constructed the City of Anaheim Lenain WTP ozone facilities and oversaw our Signal Hill and Monterey Park DB projects working with Hazen.



Technical Advisors, Kevin Alexander, PE | Gary Silverman, PE BCEE, DBIA



Kevin Alexander, PE of Hazen and Gary Silverman, PE, BCEE, DBIA of Filanc will be available to provide expert advice to support the project as needed. In addition to their individual qualifications, Kevin and Gary have proven experience working together on design-build projects including our Signal Hill and Monterey Park groundwater treatment projects.

Kevin is Vice President and Project Manager for advanced treatment and recycled water projects serving both municipal and industrial clients. He has led the pilot and demonstration testing of advanced treatment processes including Ozone, MF, RO, Ion Exchange and concentrate treatment.



Gary Silverman is Filanc's Director of Design Engineering, a California Professional Engineer and a Design-Build Institute of America (DBIA) Designated Design-Build Professional. Gary has devoted his entire 30+ year professional career to the water and wastewater industry. In that time, he has developed well rounded experience in all aspects of the field, including perspectives as a regulator, a design engineer, a contractor and an Owner and applies those skills to ensure successful Design-Build delivery.

Structural Design, Wyatt Dressler PE



Mr. Dressler specializes in structural and seismic design of water and wastewater treatment facilities, water storage facilities and support systems for conveyance pipelines. He will lead structural design for the project collaborating with other disciplines to complete the facility design. Wyatt has participated in three design-build projects working with Filanc.

Electrical, Instrumentation and Controls, Christopher Thunhorst, PE



Mr. Thunhorst is a Senior Associate and he serves as Hazen's Electrical and Instrumentation Group Leader for the West Region. Mr. Thunhorst has over 17 years of experience in electrical engineering for building systems, water and wastewater treatment facilities, and pumping stations associated with water distribution and wastewater collection systems. He has collaborated with Filanc and Big Sky Electric on three design-build projects. He will lead collaboration with the City's preferred system integrator, Automation Group along with Big Sky Electric, during the preconstruction phase to offer value engineering solutions and advance the electrical design to support the AdEdge process.

Mechanical Design, Roy Yu, PE



Mr. Yu is a process mechanical design engineer with over four years of experience. He has worked on the process mechanical design for over eight water treatment plants including three design build projects recently in which Hazen was teamed with Filanc. Mr. Yu also has experience in field and bench scale testing, design services during construction, and asset registers and condition assessments.

Design Quality Manager, Ian MacKenzie, PE



Ian is a civil engineer with more than 30 years' experience in water and wastewater projects. He has managed projects for water supply and sewage treatment including the design and construction of sewerage systems, sewage treatment works, water treatment works and reservoirs. Mr. Mackenzie has worked on projects at treatment facilities up to 450 mgd in capacity and has served as Hazen's Regional Quality Assurance and Quality Control (QA/QC) Manager to ensure that all projects follow Hazen's Corporate QA/QC Manual.

Estimating and GMP Development, Tony Ruiz



Tony is a Civil Engineer with 17 years of experience in the construction industry. As a Lead Estimator, he utilizes Filanc's highly customized software and proprietary databases to develop highly detailed estimates and guaranteed maximum price (GMP) proposals on water utility and infrastructure projects. Tony has extensive background in the construction industry as an estimator and a project engineer specializing in environmental infrastructure projects and heavy civil construction. Mr. Ruiz also has significant insights into the means and methods of construction and mechanical systems of water and wastewater treatment. Recent experience includes development of GMPs for three large City of Phoenix water treatment plants and the Morro Bay Water Reclamation Facility.

Onsite Construction Lead, Aaron Arce

Aaron has been in the construction industry since 2002 and has experience as a project engineer and onsite Construction Manager. He will be located onsite during construction leading our self-perform and subcontracted services.. His duties will include coordination with owner's inspectors and subcontractors, QA/QC support and coordination, submittal preparation, procurement of equipment and materials, budget creation and management. He will also have onsite responsibility for the implementation of our project specific safety plan.

Superintendent, Jim Buckley

Jim is an experienced Superintendent with technical expertise in complex mechanical systems. He has extensive experience in all construction activities and specializes in processing and commissioning mechanical equipment, and coordinating complex, time-sensitive tie-ins. Jim will lead the installation and interconnecting piping for the AdEdge supplied process equipment.

Construction Engineering/CAD Designer, Miguel Sanchez

Miguel Sanchez is a Senior Mechanical CAD Designer with over 25 years of progressive experience as electromechanical designer of commercial equipment, low volume manufacturing and water infrastructure. His duties include the review of project drawings and generates RFIs to support field engineers. He works with the engineering team and designers developing 3D CAD models, and directs the design team in developing detailed mechanical and electrical drawings. Additionally, Miguel writes startup plans for new plant installations, supports the engineering team to solve technical problems including electrical, instrumentation, mechanical equipment, and structural steel needs, and develops organized drawing conventions to increase detail for ease of assembly and installation. Miguel will collaborate during preconstruction and construction with AdEdge in the development of a unified design in AutoCAD 3D.

Start-up and Commissioning Engineer, Christine Ludlow, PE

Christine leads the planning and implementation of startup and commissioning of treatment equipment and systems for Filanc. Her duties include preparation and implementation of start-up and commissioning plans, including coordination with Owners, vendors and equipment manufacturers, and design engineers and regulatory oversight agencies. Her work involves coordinating with system integrators as well as the project mechanical, electrical and instrumentation teams. She has significant experience in both design and construction of water/wastewater, power and industrial facilities. She holds a California Professional Engineers license in both Mechanical and Chemical Engineering.

Project Scheduler, Marsha Peterson

Marsha is responsible for providing full-dimensioned scheduling service for Filanc. As an enhancement to the project team, she provides expert scheduling support using the latest versions of project software tools including Primavera Project Planner, SureTrak, Primavera Project Management, Primavera Contractor, and Microsoft Project and their integration with Microsoft Office tools. Working with DBPM Norbert Schulz and Construction Manager Vince Diaz and his team, Marsha will provide technical management of the Primavera P6 project schedule.

Project Approach

C

The Progressive Design-Build (PDB) delivery method uses two contracting phases - preconstruction and construction. The goal of the first phase is to progress the design from where it is today to a level of completion suitable to finalize a GMP for construction. The objective of Phase 1 is to develop a design that offers the best value combination of optimized capital and lifecycle cost, operability, constructability and quality through collaboration between design, construction, process equipment and operations professionals. During Phase 2, the design is progressed to 100 percent complete with design staff supporting the project through construction, startup and commissioning.

Approach to Design-Build Collaboration

Design, construction, startup and commissioning of the Station 7 and 11 water treatment plants by June 30, 2020 requires a structured and efficient project approach implemented with full commitment from all members of the Design-Build team, the City and process designer/supplier AdEdge Water Technologies (AdEdge). As presented in the Project Team and Experience sections of our SOQ, the Filanc-Hazen team offers industry leading expertise in every aspect of the project from our deep experience with design-build delivery and collaboration, to navigating the complex California Department of Drinking Water (DDW) permitting process. Our experience, resources and proven methods ensure that this important project will succeed in every way.



As experienced design-builders, we know that collaboration takes work and constant focus. Our proven approach relies on the leadership of an experienced Design Build Project Manager (DBPM) to maintain focus on collaboration and communication to move the project forward. The DBPM must be able to drive the schedule and manage the budget collaboratively – coordinating designer, constructor, owner, supplier, regulator and stakeholder engagement.

Our proposed DBPM Norbert Schulz has focused his 30+ year career in the water and environmental field with focus on groundwater treatment. As an engineering consultant, he served as project manager on numerous complex groundwater assessment and treatment projects across the United States and abroad. For the past 10 years with Filanc, he has focused on the implementation of design-build best practices in the municipal sector including team dynamics, collaboration and communication.

Maintaining Project Momentum

We understand that the City, AdEdge and consultants including Carollo Engineers (Carollo), have been actively working to establish an effective treatment process for the water quality challenges facing the Station 7 and 11 well sites. That work resulted in a defined treatment scheme successfully pilot tested by AdEdge as described in the Basis of Design Report (BODR) by Carollo. The City has decided to move forward with this approach using the PDB delivery method to encourage further collaboration and a seamless experience.

As the final member to join following our selection as your design-builder, it will be our mission to seamlessly integrate into your established Project Team without disrupting the existing momentum. Filanc-Hazen will be a value-added member of the Team, lending our experience, supporting the City and AdEdge in decision making and problem solving with a “Project First” approach. We will always strive to be part of the solution, by providing best value solutions. We embrace the opportunity to collaborate with the City, your Owner’s Advisor (OA) and AdEdge to deliver these facilities for you.

Preconstruction Collaboration Workshops



Designing the Station 7 and 11 treatment plants will be a highly collaborative process with our design, construction and operations staff working closely with City staff, your OA and AdEdge. Because design and Guaranteed Maximum Price (GMP) development are inextricably linked, our estimating staff will also actively participate throughout the preconstruction phase.

To achieve on-time project completion, all participants must be equally dedicated to meeting internal schedules and delivery commitments. This follow-through is particularly important during Phase I where most collaboration and time-sensitive decisions are made. We will conduct several workshops following Notice to Proceed (NTP) leading to the development of a design submittal and GMP (or lump sum) cost proposal within 60 days.

Workshop 1 will consist of an overall project kick-off where we thoroughly review the existing BODR and the AdEdge scope of supply and discuss potential optimization concepts. The goal of the kick-off workshop is to begin the team building process by clearly defining roles and responsibilities and to understand the concerns and preferences of City stakeholders including operations personnel. Objectives include developing a communications plan, agreeing on a Phase 1 collaboration and baseline schedule and go-forward approach. We will then iteratively advance the design baseline project schedule, and GMP estimate providing updates at subsequent formal workshops and other informal reviews with the City.

As design progresses, we will maintain a Decision Log to document the key design alternatives we evaluated and whether an item will be incorporated into the project. The Decision Log will maintain a clear record of the collaborative decision-making and inform our estimating staff in updating the cost model. It also serves as a tool to manage and eliminate scope creep.

Building Success with AdEdge

The City's project is somewhat unique in that pilot testing, process design and initial discussions with CA DDW have already been performed by AdEdge who will now deliver the project working with the design-builder. This approach impacts several of our typical design-build processes including process design and guarantees, procurement, quality, startup and commissioning and warranty service. Our meeting with the City and AdEdge on March 6, 2019 provided welcome clarity in the future roles and responsibilities for us and AdEdge. We are quite comfortable in the City's contracting approach and have full confidence in our ability to collaborate with AdEdge from design through startup and the warranty period.

Hazen's process and facility designers will work with AdEdge to coordinate the overall design. Hazen will provide internal peer reviews of the AdEdge process design as needed or requested, recognizing that the process is proprietary to AdEdge who will also provide the overall process guarantee. Our goal is to help AdEdge avoid potential permitting pitfalls or unrecognized water quality or performance concerns. Filanc procurement, construction, quality and startup personnel will also work as a team with AdEdge to ensure that both facilities are delivered safely, on-time and within budget.



We consider early engagement of original equipment manufacturers (OEMs) and specialty treatment system suppliers like AdEdge a design-build best practice. To the extent possible, we include key partners like these in our design-build teams as early as possible.

In recent examples, Filanc-Hazen collaborated with HARN/RO Systems to design-build the 3-stage, 98% recovery nanofiltration color removal system for the City of Signal Hill. With Trojan Technologies we collaborated to design-build an advanced oxidation (UV/Peroxide/GAC) groundwater treatment system for the City of Monterey Park. This engagement with knowledgeable experienced suppliers also helps working with the California DDW in advancing the permitting process.

Interface with Division of Drinking Water

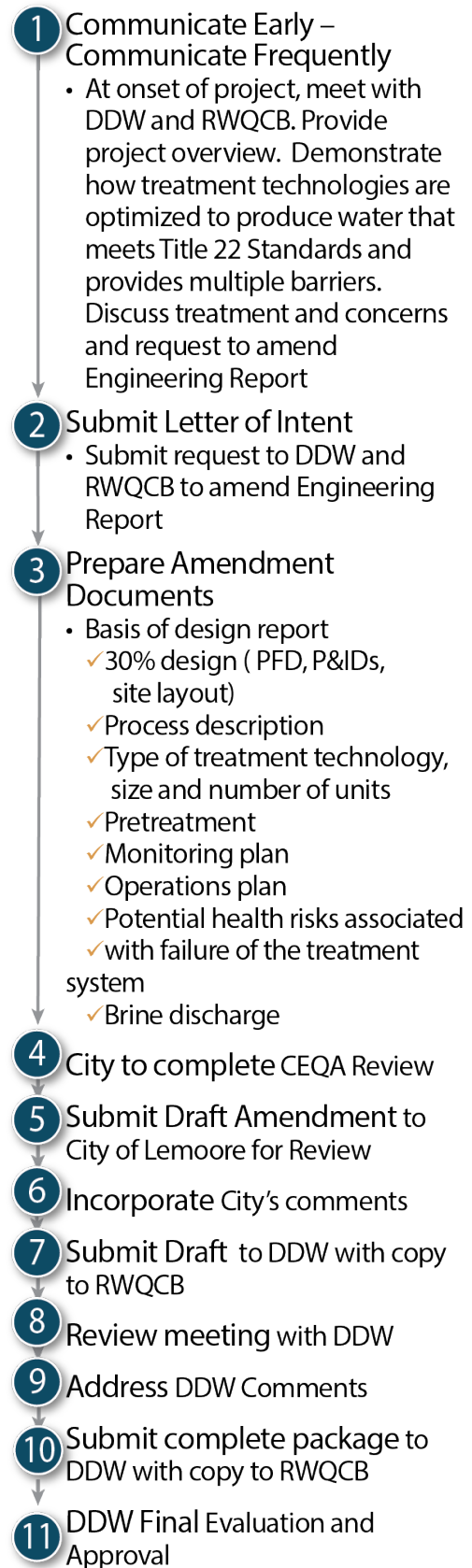
DDW is responsible for regulating public water systems including permitting new water treatment devices to ensure, to the extent possible, that all Californians are provided a reliable supply of safe drinking water. DDW recognizes that there are impaired groundwater sources in California that represent a significant resource and should not be wasted, and the City of Lemoore groundwater is one such resource.

At the onset of the project, the Filanc-Hazen team will build upon the relationship already established by the City of Lemoore and AdEdge and leverage our recent experience working with DDW to identify what is needed to streamline the permitting process. Based on our recent experience we understand that the steps outlined in Exhibit C.1 must be taken in order to get permit approval.

Interface Between Design and Construction

As discussed throughout this SOQ, the core value proposition of design-build delivery is derived from the early and continual collaboration between design and construction personnel from beginning to end. Filanc-Hazen is a proven design-build team with a history of collaboration, and the interface between design and construction has already begun. For this proposal, we held a value engineering session to look at the needs of your project and to identify areas for further evaluation. We were able to identify certain ideas to improve constructability or add value as described in the next section. We look forward to the opportunity to expand on this collaboration with the City and AdEdge to look for additional ways to add value.

Exhibit C.1 DDW Permitting Process



Constructability and Value Engineering Ideas

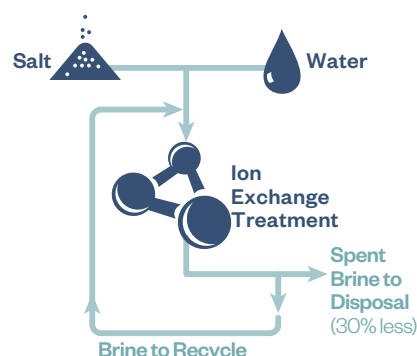
A key benefit of the collaboration between design and construction professionals is the opportunity to perform early stage constructability reviews and value engineering (VE) to add value to projects. Filanc, Hazen and Big Sky Electric staff have reviewed that available information provided in the RFQ and BODR to identify potential constructability and VE opportunities for the project. We identified opportunities for potential cost savings and/or operability improvements in site layout, electrical design and process/operations. Exhibit C.2 briefly summarizes the opportunities we've identified and the potential improvements they may have on the project.

EXHIBIT C.2. Opportunities for Improvement through Collaboration

Opportunity	Concept	Project Benefit
At both plants there are several small, discrete pads for process equipment and vessels on either side of the GAC and IX systems.	Optimizing equipment foundation pad layout.	Combining small discrete pads can reduce field construction costs and reduce interconnecting piping and electrical conduit lengths. May also improve access for media delivery and maintenance.
Rating of new main switchboard is 2,000A. However, the projected load is less than 1,100A.	Reduce the rating of the switchboard to 1,600A.	Reducing the rating of the switchboard reduces the cost of the switchboard and the cost of the utility equipment and circuit.
Distribution switchboard is shown on the south end of the facility.	Move the circuit breaker resupplying the existing switchboard from the south end of the facility to the main switchboard on the north end.	Resupplying the existing switchboard from the north end of the facility reduces the length of the feeders. There may also be an opportunity to reduce the rating of the distribution switchboard and associated circuit.
An additional circuit breaker is shown in the new switchboard for the solar system.	It may be possible to leave the solar system integrated into the existing switchboard.	Leaving the solar system integrated into the existing switchboard may reduce the amount of rework required for the solar circuit and reduce the size and cost of the new switchboard.
Optimizing brine usage before disposal.	Potential to reuse brine up to three times before disposal.	Lifecycle cost savings in terms of brine disposal and salt usage for IX media regeneration.

Brine Minimization

One potential option for reducing the lifecycle cost, is brine minimization from the IX units. The spent brine can be reused up to three times without compromising the efficiency of the resin regeneration. The approach for brine recycling is to capture the brine streams with lower concentrations of TOC, arsenic, sulfates etc. and use it for two more regenerations, in lieu of the fresh saturated salt solution.



The percentage of brine waste saved by recycling it three times is 30%. In addition to the savings associated with the brine disposal, there are additional savings associated with reduction in the salt usage. It is estimated that by reusing the brine three times, the salt consumption will be reduced by approximately 25%.

GMP Development

Our approach to collaboration and integration will continue from design through the open book development of the GMP for construction. At every iteration of the project budget estimate, we will clearly describe our approach, each scope element and associated assumptions. We will maintain a detailed log of any uncertainty associated with individual scope elements and an estimate of the associated budget allowance or contingency.

Our philosophy for contingencies on PDB projects is that the design phase process should result in both the minimization of contingencies and a clear definition of those remaining at the time of the final GMP. We would characterize it as more of a Project contingency, managed by the City, than two separate categories. There may be certain allowances for the Contractor, but not a separate contingency budget. Based on our current understanding of the project, we expect the overall level of contingency to be very low.

Providing Early Cost Certainty

In PDB, one of the first work products is the development of a working cost model for the project to confirm initial Owner estimates and guide the design, constructability and value engineering processes.

We know that early cost certainty is important to all project Owners. Using the information presented in the BODR and in collaboration with Hazen, we have already developed an initial, detailed cost model for the project. Our cost model validates the City's cost range presented in the RFQ.

Having done this homework ahead of our selection, not only provides the City with a level of early cost definition, it gives us a jump start that could lead to an earlier GMP and start of construction. It is also an example of how we would present our GMP through preconstruction. A copy of our cost model is provided for reference with our Fee Proposal in Section F.

Self-Performance and Subcontracting

Filanc is a self-performing general contractor specializing in the construction of water treatment infrastructure. We typically self-perform earthwork including subgrade preparation, concrete, piping and mechanical project elements. Together with our affiliated electrical contractor Big Sky Electric, we are generally able to self-perform between 70 and 80 percent of the work typically associated with a water treatment plant. We generally subcontract, rebar, structural steel, industrial coatings, paving and architectural trades. This self-performance capability gives Filanc an exceptional ability to control the critical path of project completion and ensures a coordinated approach to work.

Our GMP (or lump-sum price) proposal will be developed in accordance with the subcontractor qualification and listing requirements defined in California Public Contract Code section 22166(b). An important part of our approach to developing the GMP is to actively promote subcontracting opportunities to local trade

subcontractors. We accomplish this through a combination of advertising in local periodicals, posting bid opportunities on our own website, through direct phone and email solicitations. We will seek input from the City to identify known and qualified local contractors to contact directly regarding the project.

As the design-builder, we can structure individual bid packages used to develop the GMP. We use this opportunity to customize the packages based on input from local contractors, to best suit their capabilities and business needs. Bid Coordinator Julia Masaitis with support from our estimating and construction teams, will prepare standard forms of bid and contract documents for each prequalified Trade Contract for the review and approval of the City. General Conditions, bond forms, and other public works contract documents for the Project will be incorporated into the bid documents. Package-specific requirements addressing schedule, safety, construction quality control and stormwater pollution prevention will be issued with the Bid Documents.

Project bid documents will be made available to bidders using iSQft, a construction industry internet service company that specializes in the hosting of construction bid documents including large drawings and specifications. Bidders registering with iSQft will automatically receive notifications of pre-bid meetings, document updates, and addenda.

GMP vs Lump Sum

The RFQ suggests that the City would consider contracting the construction phase as either a GMP or lump-sum price. Based on our review of the BODR and understanding of the design and construction needs for the facilities, Filanc is comfortable using either means. In practice, we generally prefer to perform work under a lump-sum contract primarily because financial project administration is simpler and more cost effective. In addition, some Owners view the use of a lump-sum contract as a means of cost risk transfer to the design-builder.

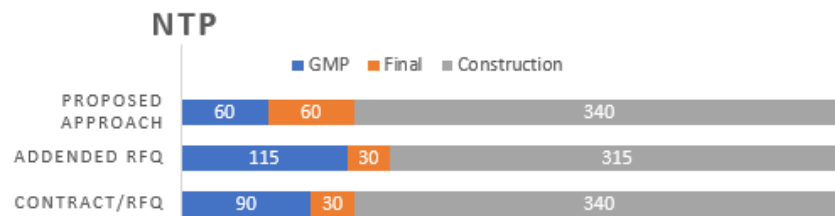
Preliminary Schedule

The Contract requires the project to be completed in 460 calendar days from initial Notice to Proceed (NTP), with City Council approval of the GMP proposal within 90 calendar days, final approval at 120 days and a construction period of 340 days. The original RFQ reiterated these requirements and identified a completion date of June 30, 2020 and contractor selection on March 19, 2020. It is important to note that assuming a completion date of June 30, 2020 and a project duration of 460 calendar days, NTP would have to occur on March 29, 2020.

RFQ Addendum No. 3 added 25 days to the GMP design phase, making it 115 days. Addendum No.

4 confirmed that the contract time was to remain 460 calendar days. In effect, the 25-day design phase extension eliminated the same number of days from available construction time. In addition, it is not clear how City Council review periods are accounted for within the schedule given the Contract and RFQ descriptions of the milestone progression. As part of our initial kick-off meeting, we would like to review this schedule to ensure that it is optimized and takes advantage of the DB process.

Our proposed approach takes advantage of the AdEdge design work and the collaboration of design-build, to focus the design and expedite the development of the GMP. From the detailed estimating we have already completed (see Section F) and the advanced state of design by AdEdge, we have firm understanding of the scope and the design needed to support our GMP development.



As illustrated in the graphic, we would propose to reach a GMP after 60 days and a final approval at 120 days as the City originally outlined. This would give the City earlier cost certainty and allow more time for the Council to review our submittals. It would also allow appropriate time to finalize the design for construction and to seek additional value engineering benefits. Another concept we would like to discuss with the City, is the development and approval of early start packages, such as for earthwork and site preparation, to ease the tight construction schedule.

Exhibit C.3, located in the Exhibits attachment, presents our conceptual Primavera P6 schedule for the design and construction of the Station 7 and 11 WTPs. It demonstrates the logical progression of activities and milestones leading to the timely completion of the project. This schedule is based on NTP on March 29, 2019, completion by June 30, 2020 and a 14-week lead time for AdEdge-provided process equipment. Given the advanced state of process design for both facilities and the nature of the overall construction required, we believe that this is a challenging but achievable schedule.

Key Schedule Milestones	
NTP for Preconstruction	May 1, 2019
GMP Submittal	July 3, 2019
NTP for Construction	July 19, 2019
Mechanical Completion Station 7	April 1, 2020
Mechanical Completion Station 11	April 17, 2020
Performance Testing Complete	June 29, 2020

Schedule and Budget Management

With the two phases of progressive design-build, there will be two budgets, each with their own schedule requirements. DBPM Norbert Schulz will have overall responsibility for schedule and budget management spanning both phases. During preconstruction, he will oversee the budget and schedule performance with Filanc estimating, engineering and construction personnel and will manage subcontracts to Hazen and AdEdge. Design Manager Tama Snow will be responsible for meeting the design budget and schedule as will Greg Gilles of AdEdge. Once we move to construction, Vince Diaz will have primary responsibility for budget and schedule management.

Budget Management

Project controls will be implemented using several industry-leading software solutions. The construction budget will be managed within Viewpoint, our accounting management system.



We have
optimized
Viewpoint to

facilitate logging of self-performed direct labor, payment of subcontractors and suppliers, compliance with state prevailing wage and subcontractor Public Works Contractor Registration and certified payrolls in accordance with CA SB854. We will collaborate with the City's construction management staff to ensure that our invoicing procedures are consistent with any payment application format the City may require.

Weekly review of construction schedule and budget status will be conducted by Vince Diaz. Budget performance evaluations relative to schedule will be performed monthly by Vince and Norbert for internal reporting of Estimated Cost at Completion (ECAC) and to accompany monthly invoices to the City. Quarterly "Deep Dive" accounting reviews will be performed by Filanc executive staff to uncover potential concerns and enact corrective actions if needed.

Schedule Management

As Construction Manager, it will be Vince's responsibility to lead the development of the contractual Baseline Schedule. The P6 schedule

ORACLE®

PRIMAVERA

will be cost-loaded to facilitate cash flow projections and reporting. Development

of the Baseline Schedule will be a collaborative effort between our design, estimating, and construction management staff and the City and its representatives. Vince will lead the development of the project schedule sequencing and logic and will be supported by P6 scheduling software expert Marsha Peterson.

The approved project schedule will be updated each month until the project is complete. Each schedule update will be built upon a copy of the previous month's schedule so that progress can be tracked and verified over time. The actual start and completion dates of construction activities will be documented within our daily reports and look-ahead schedules — these dates will then be documented within the monthly project schedule update(s). The narrative will include a summary of the month's progress, a description of the Critical Path, and highlight any notable items important to the completion of the project, such as the progress of permits, delivery of equipment, and the identification of any potential or anticipated issues so that they may be resolved prior to impact.

Schedule, daily reports and narratives will be stored and readily available on our Procore construction management platform.

Communications Management

Filanc-Hazen will work alongside of the City to develop a communications plan to manage interactions with stakeholders including regulatory agencies and the surrounding communities and provide contacts to manage inquiries and complaints.

While DBPM Norbert Schulz will be the principal point of contact between our team and the City, communication must take place at all levels for the project to be a success. As part of our kick-off workshop, we will collaborate to develop a communication plan to define lines of communication within the team and with external stakeholders such as the public and administrative agencies. Our goal is for the team to speak with one voice without miscommunication.

Team Communication

To facilitate team communication, collaboration, and accurate record keeping, all project information will be maintained in Procore, our cloud-based project management platform. City staff, construction management, and other designated personnel will be provided rights-based internet access to Procore. The system will contain information such as preconstruction phase design drawings and cost estimates, final plans, specifications, requests for information (RFIs), purchasing control register (PCR), submittals, potential change order log, change orders, schedule, daily reports, permits, photographs, safety information, meeting minutes, and agendas. Because Procore is our standard project management platform, there will be no charge for the City to access information. In addition, should the City or its consultants require training or support in the use of the system, our Procore Administrator Cat Shea will be readily available.

Cat Shea,
Procore
Administrator



My day job is to serve as an internal resource to help our design, construction management and client staff make the best use of our Procore Construction Management platform. I develop new tools, audit projects, serve as a “help desk” and train staff. As the Procore Administrator for the Lemoore WTP project, my goal is to help the entire project team communicate at the highest level.

Exhibit C.3 Filanc’s Procore Construction Management Platform Facilitates Communication and Document Management

FILANC J.R. Filanc Construction Comp... PN-2019-025 - Lemoore ... Project Tools Home Favorites

PROJECT HOME

WELCOME

Welcome to the Lemoore Water Treatment Plant Project Procore Site.

This site is hosted by Filanc as the central hub of this exciting design-build project. Through Procore we will facilitate collaboration, document distribution and record keeping.

If you have any questions on how to use this system, please contact Cat Shea our Procore Administrator.

PROJECT TEAM

Role	Name	Email	Office	Mobile
Owner	City of Lemoore			
Engineer	Hazen and Sawyer		(858) 764-5520	
General Contractor	J.R. Filanc Construction Company, Inc.		(760) 941-7130	
Vendor	AdEdge Water Technologies, Inc.		(866) 823-3343	

PROJECT PHOTO

PROJECT WEATHER

Managing Critical Success and Potential Risk Factors

In every project there are factors that if managed properly, will lead to success. Similarly, there are usually certain risks that can be identified early and managed to mitigate their occurrence or impact. In this section we discuss the critical success and potential risk factors that we currently recognize and outline our management and mitigation strategies.

Critical Success Factors

In our project kick-off workshop, we will collaborate to understand your concerns and your definition of success for the project and develop a strategy to achieve it in every measure. In general, we can assume that a successful project will be characterized by a collaborative working relationship, efficient advancement of the design, concurrence on a cost-effective GMP, safe high-quality construction and the smooth startup and turnover of facilities that meet all water quality goals and permit requirements. Exhibit C.4 presents a brief list of project-specific success factors, their potential impact to the project and approach to success.

EXHIBIT C.4. Critical Success Factors will be Managed to Ensure the Best Project Outcomes

Factor	Successful Outcome	Approach
Integration of AdEdge process design into complete facility design.	Optimized plant design resulting in a cost-effective GMP and rapid DDW approval.	Conduct multi-day initial design development kick-off meeting to confirm scope, roles and responsibilities. Continued communication and collaboration.
DDW permitting.	Timely approval of permit to operate without additional requirements.	Early engagement with DDW and proactive follow up.
Efficient, on-time delivery of AdEdge-supplied equipment.	Safe and cost-effective installation and on-time startup.	Early submittal packages and timely review by the City and Hazen.
Efficient start-up of new treatment process.	No disruption of water service to residents, limited wasted water and confident permit compliance.	Early planning of start-up and commissioning process including tie-ins and cutover to storage and distribution system.
City Operator engagement during design, construction, permitting, startup and commissioning.	Ensures complete understanding of new treatment processes, permit conditions and operating responsibilities.	Proactive engagement of City Operations staff beginning in Phase I of design build process continuing through to turnover. Operations and compliance support from Hazen specialists.

Identification and Management of Potential Risk Factors

The joint development of a Project Risk Register and Mitigation Plan is commonly a key early deliverable during preconstruction of a design-build project. Together, we will evaluate all aspects of the project from environmental, permitting, design, construction and startup to identify potential risks and who will be responsible for assuming and mitigating them. Our philosophy is that risks should be assigned to the party best able to manage them.

Exhibit C.5 located in the Exhibits attachment, outlines our initial summary of potential project risks and assessment of potential impacts, likelihood of occurrence, allocation and a mitigation approach for each. In general, we view this to be a low risk project with few if any areas of elevated concern. The risks that we have identified are all well within the Project Team's ability to mitigate.

Performance Guarantees

As shown in Exhibit C.5, the performance of the proposed treatment process is recognized as a potential risk to the project. It is our presumption that through AdEdge's design, pilot testing and subsequent discussions with DDW, the City has high confidence in the recommended approach. It is also our understanding that AdEdge will provide performance and payment bonds to the City and Design-Builder to support its role as the process designer and supplier. This bonding coupled with AdEdge's other forms of insurance, including but not limited to Professional Errors and Omissions, would constitute the project Performance Guarantee. As the Design-Builder, our responsibility will be to guarantee the functional completion of the installed systems. We understand that AdEdge will provide warranty service and a one-year support contract to encompass the process. Filanc will be responsible for the balance of the facilities.

We look forward to the opportunity to collaborate with the Project Team to further vet these and other potential risks and develop effective mitigation strategies to maximize the investment of the Lemoore rate payers in the construction of these facilities.

Design-Build Quality Management

Filanc-Hazen understands the need to build quality into all that we do to deliver a project on time, safe and within budget. These factors are implicitly linked, with quality being a driving force behind all aspects of a successful project. We have systems, processes and procedures to help us maintain the standards that you expect. Quality is a process that merits diligent performance, management, feedback, and improvement.

Our established design-build Quality Control Program addresses all aspects of quality from design through construction and startup. Under the direction of our DBPM, Design and Construction Quality Control Managers not involved in the day-to-day management of the project, prepare and implement Quality Control Plans in their specific areas of responsibility. Documentation of quality reviews, inspections and corrective actions are recorded and maintained in our cloud-based Procore Project Management system, available to City representatives for review.

Quality Control Team and Approach

Quality management is separate and independent from the Design and Construction Managers and reports directly to our Design-Build Project Manager, Norbert Schulz. Consisting of a Design Quality Manager (DQM), Construction Quality Manager (CQM). Ian MacKenzie, PE will serve as the DQM for the project, Edward Chavez, CQC will serve as the CQM. This Quality group has the authority to stop work until the work is brought into conformance with the Contract Documents.

Design Quality

As a full-service nationally recognized design engineering firm, Hazen employs a comprehensive design QA/QC methodology on each of its design projects. It is a systematic process of monitoring and evaluation of the project to provide and maintain quality of the delivered products. QA activities and roles are identified as the project is scoped and implemented throughout the project. QC activities consist of independent reviews for technical, coordination, and readability needed to provide the detailed design for the project.

At NTP, Design Manager Tama Snow will develop a Project Management Plan (PMP) that details how the project design will be completed. A Quality Management Plan (QMP) is a section within the PMP that is jointly developed by Tama and DQM, Ian MacKenzie.

Coordination of Quality Management with AdEdge

At our joint meeting, we discussed the issue of QA/QC with AdEdge. We understand that the primary responsibility for process design and equipment fabrication and assembly will lie with AdEdge. At our project kick-off meeting quality management will be a topic of discussion. Together we will integrate our processes to develop a project-specific Quality Control Program.

The QMP will identify a Technical Advisory Committee (TAC) with appropriate technical expertise to provide input during the early stages of project development to assure that subsequent work will proceed based on proper assumptions and sound decisions. The TAC will support the DQM and provide additional input at various stages of the project including at the beginning of the preliminary design development for technical review and direction verification. The QMP will also document the City's critical success factors how design quality is defined or monitored for the project.

QA is the direct responsibility of the project design team. QA activities consist of managing the overall quality of the design products developed for the project, scheduling QC reviews and those assigned to perform reviews and following through on comments received during the City review process.

DQM, Ian MacKenzie will lead internal meetings at key points with the senior design reviewers to coordinate QC activities and compliance to the QMP. QC is used to verify that design deliverables are reviewed, comply with design requirements and that they are complete and correct. QC is about adherence to the QA requirements and is performed by independent

reviewers after the deliverables are developed by the design team. Scheduled QC reviews will be conducted at key milestones to review the quality of the designs being developed and to discuss and reach consensus on key risk elements and specific courses of action.

The findings and documentation of the QC review process will be presented internally to DBPM Norbert Schulz as independent confirmation that they are taking place as required and that corrective actions, if any, are implemented. On a monthly basis, he will review the results of our design quality management process with the City.

Construction Quality

QA during construction will be the responsibility of Construction Manager, Vince Diaz. Prior to construction, he will lead the development of detailed construction work packages for each discipline of work and include applicable construction specification sections, activity-specific quality considerations, a material list, material delivery dates, labor crew size, required construction equipment, drawings, and lay and lift drawings.

The packages will serve as the manual of construction that explains “How to Execute” each definable feature of work (DFOW). Means and methods, number of craft, estimated man-hours, and type of construction equipment will be evaluated to develop the best project plan. Communication is key to any construction effort. Creation of these work packages increases clarity and focus on each DFOW, improves safety, communication, and maximizes quality and productivity. Working with Onsite Project Manager, Aaron Arce, and Superintendent, Jim Buckley, Vince will coordinate all third-party special inspections and testing with the City.

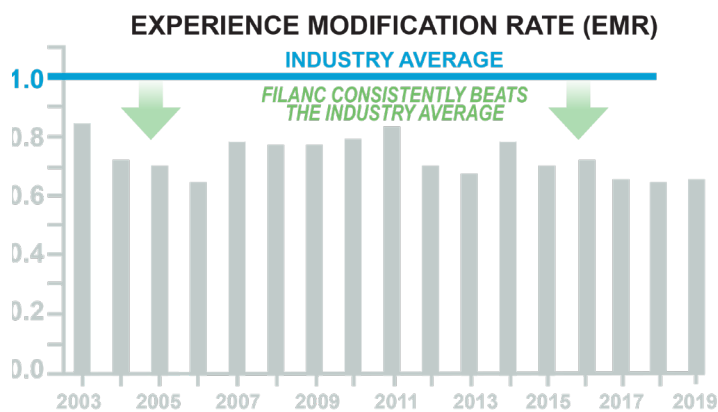
The CQM is the key person involved with QC of construction activities in the field. Edward Chavez, CQC will serve as the CQM responsible for maintaining all construction QC reports and data. He will provide updates to DBPM Norbert Schulz who will review all construction quality issues with the City on a monthly basis. Edward will conduct field inspections when construction is under way. He is responsible for and has the obligation to stop work in areas that have not met requirements.

Edward’s responsibilities also include:

- Ensuring proper documents and project revisions are used during all phases of construction by all affected trades and subs
- Collecting jobsite photos of the ongoing construction progress
- Organizing, conducting, and reporting on the QA/QC status to the Project Executive and Manager
- Collecting and reviewing subcontractor’s quality control plans
- Auditing logs and submittal packages sent to the City
- Reviewing as-built drawing packages
- Ensuring proper documents and project revisions are used during all phases of construction by all affected trades and subs
- Collecting jobsite photos of the ongoing construction progress
- Reviewing as-built drawing packages

Safety

As a self-performing heavy civil contractor, Filanc personnel face safety challenges every hour of every day on the job. We take safety very seriously and are vigilant in our efforts to protect our staff, the public and the environment. Our proactive safety program, built on continuous communication, oversight and enforcement, has resulted in exceptional results. Over the past 5 years our Experience Modification Rate (EMR) has averaged less than 0.68 and has never exceeded the insurance threshold of 1.0. Our efforts have resulted in more than 18 national, local and client safety awards.



Day-to-day responsibility for safe construction will be the responsibility of onsite Construction Manager Aaron Arce. During the pre-construction period, he and Vince Diaz will collaborate with Safety Director Rick Kaullen to develop a project-specific plan that identifies all local emergency response specifics, anticipated construction activities and areas of major risk. The plan will contain Job Hazard Analyses (JHAs) for each identified activity from our existing JHA database. Before the start of construction, the JHAs will be reviewed with onsite construction staff and modified as necessary to address site-specific conditions. During construction, implementation of the plan will be independently monitored by Mr. Kaullen.

Safety tailgate meetings are held on a daily basis. Every employee and subcontractor working on-site must attend and participate in these discussions. These discussions help inform all workers of the surrounding hazards and what has been put in place to safeguard the hazards. These meetings not only inform our employees and subcontractors, they also give them an opportunity to address their concerns and resolve them prior to starting the day's activities.

Site Specific Issues

In walking the two project sites, we identified certain potential concerns that we will address in our site-specific Safety Plans.

Station 7 Project Site

- We noted the narrow, unpaved access road entering the facility from Bush Street. The narrow entrance is directly across the street from West Hills College. At certain times of the day the delivery of heavy construction and/or process equipment could create a traffic safety concern. Prior to construction we will incorporate a traffic control plan into our safety plans for the project and will pre-plan deliveries to avoid high traffic times at the school.
- The unpaved access road is in poor condition and could create an overturning hazard for tall, heavy delivery vehicles such as those expected for the GAC vessels. We will make necessary improvements to stabilize the access road.
- Power lines are located along the east side of the access road that could be a hazard to excavation and lifting equipment. We will pre-plan our construction sequence so as to station equipment properly to safely avoid the lines.

Station 11 Project Site

- There are two site access roads to Station 11 – an unpaved road entering from Glendale Avenue and a paved road entering from 18th Street. The south side of Glendale Street is occupied by residential properties. For safer access to the site, and to avoid disturbance to residents, we will designate the 18th Street entrance as the single access point for the site.

Client Satisfaction/References



Reference	Project Description	Participating Staff
Desi Alvarez, PE, Project Manager 310-7391625 2175 Cherry Avenue, Signal Hill CA 90755	City of Signal Hill, Well #9 Nanofiltration Treatment Facility Design-Build. \$6,925,000	Gary Silverman, Kevin Alexander, Silvana Ghiu, Norbert Schulz, Vince Diaz, Tony Ruiz, John Phillips, Wyatt Dressler, Chris Thunhorst, Marsha Peterson, Roy Yu, Christine Ludlow
Richard Gonzales, Water Utilities Director 602-307-1295 City of Monterey Park, 320 W. Newmark Ave Monterey, Park CA 91754	City of Monterey Park Centralized Advanced Oxidation (UV/ Peroxide) groundwater treatment plant. \$8,300,000	Gary Silverman, Kevin Alexander, Ian MacKenzie, Chris Thunhorst, Wyatt Dressler, Roy Yu, Norbert Schulz, Vince Diaz, Aaron Arce, Jim Buckley, John Phillips, Tony Ruiz, Marsha Peterson
Tim Bramer, Construction Services Manager 408-630-3794 Valley Water 5750 Almaden Expy San Jose, CA 95118	Valley Water, Silicon Valley Advanced Water Purification Center. \$52,702,398	Vince Diaz, Tony Ruiz, Jim Buckley, Marsha Peterson, Christine Ludlow
Will Wong, Engineering Division Manager 209-571-5801 City of Modesto 1010 Tenth Street, Suite, 4600 Modesto, CA 95353	City of Modesto, Phase 2 Biological Nutrient Removal Upgrades. \$103,467,483	Vince Diaz, Jim Buckley, Christine Ludlow, Tony Ruiz, Marsha Peterson
Erik Jorgensen, Senior Project Engineer 951-928-3777 Eastern Municipal Water District 2270 Trumble Road Perris, CA 92570	Eastern Municipal Water District Pump Electrification Project Conversion of five engine-driven pumps to electric motor driven pumps. \$3,600,000	Chris Thunhorst, PE, Dan Carreon, PE, Wyatt Dressler, Gary Silverman, Marsha Peterson, John Phillips
Prem Kumar, City Engineer 310-802-5352 City of Manhattan Beach 3621 Bell Avenue Manhattan Beach, CA 90266	City of Manhattan Beach, Design of 4.6 MGD Greensand Filtration System Design Design of 4.6 MGD Greensand Filtration System \$400,000 (Design Fee)	Silvana Ghiu, PhD, PE, Roy Yu, PE, Chris Thunhorst, PE, Dan Carreon, PE
Evelyn Cortez-Davis, Manager of Special Projects and Groundwater Planning 213-367-3564 Los Angeles Department of Water and Power 111 N. Hope St., #1603 Los Angeles, CA 90012	LADWP, Owner's Agent for the San Fernando Basin Groundwater Remediation \$30 Million (Design Fee) Design of three groundwater treatment facilities	Silvana Ghiu, PhD, PE, Kevin Alexander, PE, Ian Mackenzie, PE, Roy Yu, PE

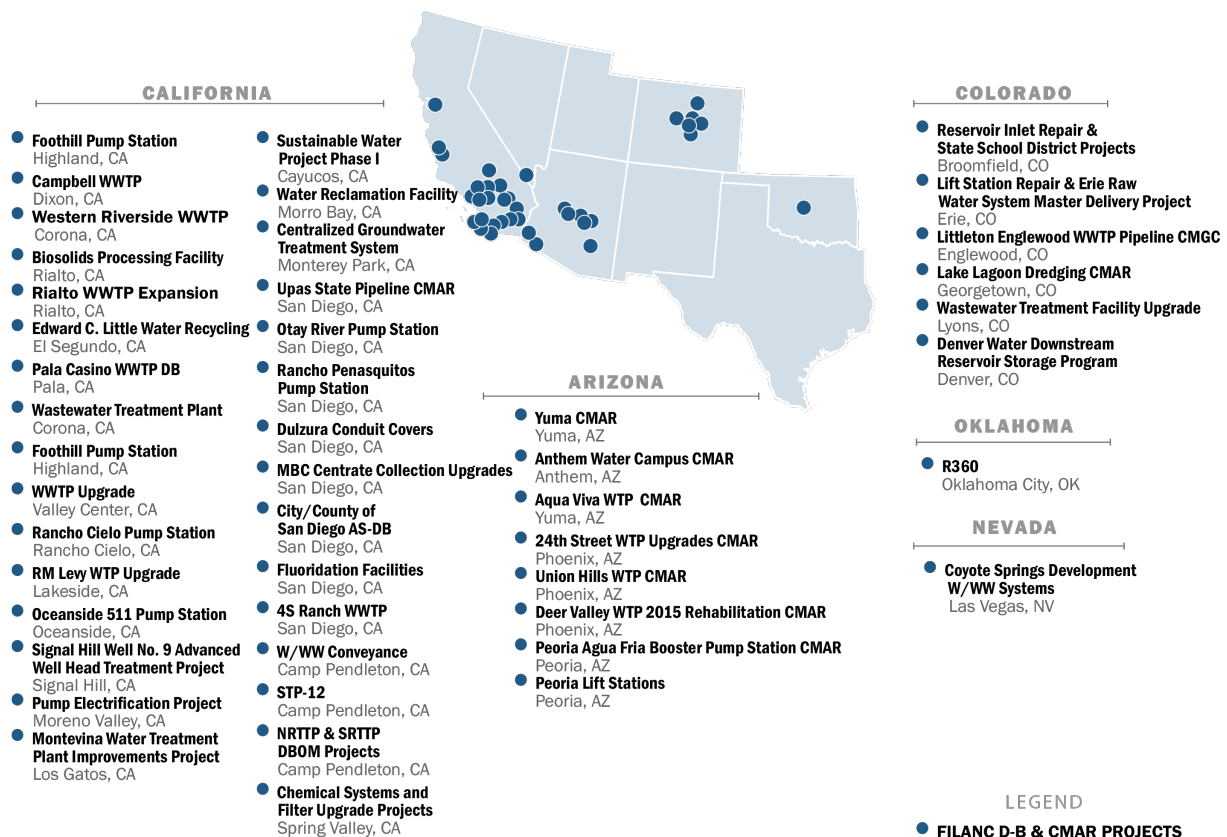
Experience

E

In the RFQ, the City identified selection criteria that show a strong preference for a design-build team with outstanding personnel, water and wastewater related design-build experience and water treatment plant experience particularly with California DDW permitting. In Section B, we presented our outstanding project team qualifications. In this section we highlight our experience in design-build of water and wastewater facilities and in working with DDW on potable water treatment projects.

The Filanc-Hazen team brings together California's leading design-builder of water infrastructure with a national leader in design focused 100 percent on water. Our combined experience and resources in the areas of design-build delivery, process design, DDW permitting and construction, are head and shoulders above the City's other alternatives. We are ready to roll up our sleeves and get to work with you and AdEdge to bring these facilities into existence and deliver high quality drinking water to the residents of Lemoore.

Alternative Delivery Experience by Filanc



Filanc-Hazen: A Design-Build Partnership You Can Trust

Filanc and Hazen are widely recognized as industry leaders, and pioneers in the use of collaborative delivery methods such as design-build and CMAR. Combined we have over 45 years of DB experience, completing over 100 projects valuing over \$2 billion in design-build earning dozens of awards along the way. We have established a unique design-build relationship through our partnership on three design-build projects and several other pursuits over the past few years. Together, our goal is not only to expertly deliver the project at hand, but to continually optimize the design-build delivery process. For example, we have integrated our CAD design groups to improve productivity and to develop 3D designs that can readily be used by our construction staff to accelerate project completion. We share a vision of design-build where all design decisions are made collaboratively to optimize the design-to-construction process for the good of the project.

Filanc-Hazen: Three Design-Build Projects in Last Three Years

We are a proven design-build team that has taken on highly challenging groundwater treatment issues and solved them through innovation, collaboration and cost consciousness. This very recent and relative experience ensures a successful project for the City.



City of Signal Hill, Well No. 9 Nanofiltration Facility \$6.9 Million

This design-build project included equipping the existing Well #9, designing, DDW permitting and installing a nanofiltration treatment facility for color removal consisting of cartridge filters and two nanofiltration trains capable of operating at 98% recovery; a clean-in-place system; chemical feed systems for pre-treatment and post-treatment; concentrate discharge tank; product water storage tank; yard piping and connections for potable water, and sewer and storm drain facilities.



City of Monterey Park, Centralized Advanced Oxidation Treatment Facility \$8.3 Million

This innovative facility treats groundwater contaminated with VOCs and 1,4 dioxane by advanced oxidation using UV and peroxide. Existing ion-exchange vessels were repurposed to contain catalyzed granular activated carbon (GAC) to quench peroxide and provide secondary VOC removal. Filanc-Hazen led DDW approval of this innovative treatment process which could be used by others facing similar water quality challenges.



Eastern Municipal Water District, Pump Electrification \$3.6 Million

The project consists of the conversion of five engine-driven pumps at two potable water pump stations to electric motor driven pumps. All motor control centers (MCCs), motor starters, switchgear, and other appurtenances were replaced and variable frequency drives (VFDs) were installed to improve efficiency. We collaborated closely with the Owner to manage startup to avoid disruption of service to residents.



Each of these projects also included collaboration with Big Sky Electric to ensure that electrical designs were constructable and provide best value.

Filanc: Over \$220 Million in Central Valley Water/Wastewater Construction

For over 66 years, Filanc has been a California General Engineering Contractor delivering complex treatment facilities throughout the state including the Central Valley. We have all the resources and experience to efficiently deliver the City of Lemoore WTP project safely, on-time and within budget.



City of Fresno Clovis Organics Upgrade \$105 Million

Filanc expanded the existing wastewater treatment plant from 80 to 91 MGD to produce Title 22 secondary effluent. The expansion included a new digester, RAS/WAS pump station, aeration and secondary sedimentation basins.



City of Modesto Biological Nutrient Removal Tertiary Treatment Expansion \$101 Million

This greenfield project included advanced treatment using membrane bioreactors (MBR) and UV disinfection, this facility now provides high quality Title 22 reclaimed water to the Del Puerto Water District for agriculture.



City of Hughson Wastewater Treatment Plant Upgrades and Expansion \$15.5 Million

The project increased the plant's capacity to 1.9 MGD and included construction of new headworks, oxidation ditch, secondary clarifiers, biofilter system, RAS/WAS pump stations, belt filter press, percolation ponds, operations building, electrical service, standby generator, potable water well, yard piping and sitework.

Additional Relevant Experience by Filanc

In addition to the projects described above and in our initial prequalification for this project, Filanc brings other significant experience in complex water treatment and design-build.

Project	Delivery Method	Value	Technology
West Basin Municipal Water District, El Segundo Water Reclamation Facility	DB	\$57 M	MF/RO UV of secondary wastewater effluent to ultrapure quality
Valley Water, Silicon Valley Advanced Water Purification Center	DBB	\$52 M	MF/RO/UV of secondary wastewater effluent to ultrapure quality.
San Jose Water Monteviena WTP	Progressive DB	\$17 M	MF/RO of surface water for potable use
Morro Bay Water Reclamation Facility	DB	\$70 M (in process)	First ever MBR to RO/UV for aquifer injection
Yuma Arizona, Agua Viva WTP	CMAR	\$92 M	MF of surface canal water for potable use.
Escondido Treatment Facility for Agriculture	Progressive DB	\$45 M (in process)	TDS removal by MF/RO of secondary effluent for agricultural use.

Hazen: Over 50 Groundwater Treatment Projects in California in the Past 3 Years

Hazen knows California groundwater and has solved challenging treatment issues for dozens of owners



Coachella Valley Municipal Water District, Chromium VI Treatment Facilities Design

\$22 Million (Design Fee)

This CMAR project included a source of supply and compliance study as well as ground water treatment design services for 30 individual wells across 7 pressure zones to treat 78 MGD. In addition to completing design documents, Hazen completed a pilot study for the ion exchange (IX) equipment and prepared a blending plan to ensure the drinking water met State and Federal drinking water regulations. Design had an aggressive 8 month schedule and was met by close collaboration between engineering design and operations staff in a series of workshops. Alternatives for minimizing brine discharge and trucking brine for offsite disposal were extensively evaluated as part of this project. In addition, Hazen provided CEQA documents for this project.



Los Angeles Department of Water and Power (LADWP), Owner's Agent for the San Fernando Basin Groundwater Remediation

\$30 Million (Design Fee)

As the owner's agent for the LADWP, Hazen's role is to develop a schedule and budget for each project phase, including planning, design, permitting, procurement planning, alternative delivery, construction, commissioning, closeout and operations support as well as production of design drawings, facility layouts and specifications. The breadth of services provided to support project delivery includes civil, structural, mechanical, electrical, environmental, water quality and treatment. Facilities of relevance to the City include design of a GAC system. To date full design of one treatment facility has been completed and is in construction and preliminary design of two additional sites have been completed.



City of Manhattan Beach, Design of 4.6 MGD Greensand Filtration System

\$400,000 (Design Fee)

Hazen is providing the design and construction services for a greensand filtration system to reduce concentrations of Fe and Mn from 100 micrograms/L to less than 15 micrograms/L and remove color. As part of the design process, a pilot program was developed to facilitate performance of different filtration media and test for various design parameters that are being utilized as part of the full scale design. Full scale design includes the addition of chlorine and ammonia for disinfection. Special considerations were made for retrofitting the new equipment into the existing infrastructure and the controls for the chemical addition will be integrated into the existing SCADA system for seamless operations and control.

Using Design-Build for the First Time

It is our understanding that the water treatment project will be the City's first using design-build. You are in good company. Many other municipalities within California have begun to use DB to take advantage of the collaborative process, fewer claims and an overall better experience. We've been doing DB for a long time and have helped quite a few public sector Owners through their first public works project including:

City of San Diego

Encina Wastewater Authority

Inland Empire Utilities Agency

Sweetwater Authority

City of Oceanside

City of Escondido

City of Morro Bay

City of Peoria, AZ

City of Signal Hill

City of Monterey Park

Western Riverside Regional Wastewater Authority

City of Corona

City of Rialto

Olivenhain Water District

Helix Water District

Eastern Municipal Water District

Fee Proposal

F

Time Preconstruction Fee

Our proposed Preconstruction Fee for the design phase and performing all necessary preconstruction services to develop a GMP in accordance with the Approach Section of this SOQ is \$525,260 inclusive of home office overhead and profit. Elements of the fee calculation and an hourly rate schedule for additional services are provided in the following pages.

Home Office Overhead & Profit Fee Percentages

Home Office Overhead & Profit fee (HOO&P) pays for the indirect costs not directly charged to the project and for the profit earned by designing and constructing the project. Our proposed HOO&P as percentage of the direct costs of the work, excluding services & materials furnished by AdEdge is 9%. In accordance with the City's RFQ, we acknowledge that our HOO&P as a percentage of the direct costs for services & materials furnished by AdEdge is 5%.

Our HOO&P considers direct costs to include labor, materials, equipment, subcontractors, project management, engineering, scheduling, detail design, field supervision, field office, field office expenses, bonds, insurance, permits, startup and testing. All direct costs are calculated based on actual work performed and are both task and time related, and not as an overall percentage of the work. Detailed breakdown of the expected direct costs are provided in our initial GMP cost model, described below.

Initial GMP Cost Model

Though not required by the City, Filanc developed an initial cost model based on the information provided in the RFQ. Our cost model incorporates the initial design, site layouts and P&ID's. We have further developed the conceptual design and construction schedule in order to estimate final earthwork, site drainage, paving, fencing, concrete sections, underground and above ground piping, site electrical and mechanical equipment installation. We developed site specific take-offs and quantities to calculate actual labor, material equipment and subcontract costs. Our model confirms the cost of this project, including final design and all HOO&P to be under \$28,000,000 without competitive pricing and collaborative value engineering. Our cost includes the base scope listed by AdEdge and the recommended options, not included in their price but required to complete the project. This additional required scope is estimated to be approximately \$800,000 for a total AdEdge cost of \$13,689,300

This cost model is provided as an added value for your use as a tool to better understand the breakdown of the project costs by discipline and by site. We have included the cost model in both a summary and detail level. In most scenarios, this model is an early deliverable in the progressive design build process. Preparing the model at this stage is a key step in the efficient and early development of a firm GMP, while offering more time to evaluate value engineering improvements. We look forward to working with you and AdEdge to optimize the delivery of this important project. The output from our cost model is provided for your reference at the end of this section.

Schedule of Hourly Rates for Phase 1 (RFQ, Page 8, Section V.F.i)

March 19, 2019

Name	Project Role	Job Classification	Rate, \$/hr
			Phase 1
Filanc			
Norbert Schulz	DB Project Manager	Vice President	\$ 193
Gary Silverman	Technical Advisor	Vice President	\$ 193
Vince Diaz	Construction Manager	Vice President	\$ 212
Adelina Sanchez	Preconstruction Manager	Project Manager	\$ 115
Aaron Arce	Asst. Construction Manager	Project Manager	\$ 110
Tony Ruiz	Project Estimator	Lead Estimator	\$ 115
Marsha Peterson	Scheduling (P6)	Scheduler	\$ 120
Jean PirkI	Procurement	Purchasing Administrator	\$ 71
John Phillips (Big Sky)	Value Engineering - Electric	Senior Project Manager	\$ 193
Administrative Assistant	Administrative Assistant	Administrative Assistant	\$ 50
Various (composite)	General Estimating	Estimator	\$ 115
Hazen			
K. Alexander	Technical Advisor/Principal in Charge	Vice President	\$ 263
S. Ghiu	Design Manager	Senior Associate Engineer	\$ 235
T. Snow	Project Manager	Senior Associate Engineer	\$ 262
I. Mackenzie	Civil	Associate Vice President	\$ 263
M. Santowasso	Civil	Civil Associate Vice President	\$ 216
C. McNicol	Civil	Civil Engineer	\$ 112
P. Selisker	Civil Engineer	Civil Senior Designer	\$ 134
QA/QC	E&IC	Senior Associate Engineer	\$ 263
TBD	E&IC	Designer	\$ 138
C. Thunhorst	Elctrical	Electrical Senior Associate	\$ 268
A. Mlakar	Electrical	E&IC Senior Principal Engineer	\$ 202
H. Benavidez	Electrical	Electrical Engineer	\$ 141
D. Carreon	I&C	I&C Senior Associate	\$ 259
S. Alpert	Process Mechanical	Senior Associate Engineer	\$ 263
R. Yu	Process Mechanical	Process Mechanical Engineer	\$ 142
V. Panez	Process Mechanical	Process Mechanical Designer	\$ 144
A. Thurston	Structrual	Structural Senior Associate	\$ 187
QA/QC	Structural	Senior Associate Engineer	\$ 263
W. Dressler	Structural	Structural Senior Principal Engineer	\$ 160
TBD	Structural	Designer	\$ 138

Lump Sum Pre-Construction Fee for Phase 1 (RFQ, Page 8, Section V.F.i)

March 19, 2019

Name	Project Role	Job Classification	Rate, \$/hr	Phase 1							
				Project Management	Field Investigations	Value Engineering	Phase 1 Design Documents	Permitting	Cost Model & GMP Development	Phase 1 - Total Hours	Phase 1Total \$
Filanc											
Norbert Schulz	DB Project Manager	Vice President	\$ 193	108	-	20	8	8	16	160	\$30,880
Vince Diaz	Construction Manager	Vice President	\$ 212	-	-	40	-	-	26	66	\$13,992
Adelina Sanchez	Preconstruction Manager	Project Manager	\$ 115	60	-	10	10	-	-	80	\$9,200
Tony Ruiz	Project Estimator	Lead Estimator	\$ 115	-	-	40	-	-	60	100	\$11,500
Various (composite)	General Estimating	Estimator	\$ 115	-	-	-	-	-	246	246	\$28,290
Hazen											
K. Alexander	Technical Advisor/Principal in Charge	Vice President	\$ 263	28	-	-	-	-	-	28	\$7,364
S. Ghiu	Design Manager	Senior Associate Engineer	\$ 235	76	40	-	160	20	-	296	\$69,560
T. Snow	Project Manager	Senior Associate Engineer	\$ 262	44	-	-	-	-	-	44	\$11,528
I. Mackenzie	Civil	Associate Vice President	\$ 263	-	-	16	-	-	-	16	\$4,208
M. Santowasso	Civil	Civil Associate Vice President	\$ 216	-	16	-	52	-	-	68	\$14,688
C. McNicol	Civil	Civil Engineer	\$ 112	-	-	-	260	-	-	260	\$29,120
P. Selisker	Civil Engineer	Civil Senior Designer	\$ 134	-	-	-	48	-	-	48	\$6,432
QA/QC	E&IC	Senior Associate Engineer	\$ 263	-	-	32	-	-	-	32	\$8,416
TBD	E&IC	Designer	\$ 138	-	-	-	32	-	-	32	\$4,416
C. Thunhorst	Elctrical	Electrical Senior Associate	\$ 268	-	-	-	52	-	-	52	\$13,936
A. Mlakar	Electrical	E&IC Senior Principal Engineer	\$ 202	-	-	-	96	-	-	96	\$19,392
H. Benavidez	Electrical	Electrical Engineer	\$ 141	-	-	-	48	-	-	48	\$6,768
D. Carreon	I&C	I&C Senior Associate	\$ 259	-	-	-	100	-	-	100	\$25,900
S. Alpert	Process Mechanical	Senior Associate Engineer	\$ 263	-	-	16	-	-	-	16	\$4,208
R. Yu	Process Mechanical	Process Mechanical Engineer	\$ 142	-	-	-	341	-	-	341	\$48,422
V. Panez	Process Mechanical	Process Mechanical Designer	\$ 144	-	-	-	320	-	-	320	\$46,080
A. Thurston	Structrual	Structural Senior Associate	\$ 187	-	-	-	-	-	-	-	\$0
QA/QC	Structural	Senior Associate Engineer	\$ 263	-	-	-	-	-	-	-	\$0
W. Dressler	Structural	Structural Senior Principal Engineer	\$ 160	-	-	-	36	-	-	36	\$5,760
TBD	Structural	Designer	\$ 138	-	-	-	-	-	-	-	\$0
Misc Meetings	Misc Meetings	Misc Meetings	1	-	-	-	-	-	-	4,800	\$4,800
Subconsultant and Subcontractors											
Marsha Peterson	Scheduling		LS	\$ 2,400.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,400.00
Big Sky Electric	Electrical		LS	\$ -	\$ -	\$ 15,000.00	\$ 10,000.00	\$ -	\$ 10,000.00	\$ -	\$ 35,000.00
AdEdge	Process Design		LS	0	0	0	63,000	\$0	0	\$ -	\$ 63,000.00
Total Hours				316	56	174	1,563	28	348	2,485	
Total Dollars											\$ 525,260

BID SUMMARY

J.R. Filanc Construction Company, Inc.

740 N. Andreasen Dr. Escondido, Ca 92029

Phone (760) 941-7130

Fax (760) 941-3969

Cost Model

3/19/2019

PROJECT: Lemoore WTP

BID DATE: 3/19/19

BID TIME: 2:00 PM

2023-2024												
Item	Description	Qty	Consumable			Rent	Sub	Permanent		Tax	Total	
			Labor	Material	Equip	Equip	contractor	Amount	Mtl			
1	Concrete \$/CY	\$ 1,331.00 \$ 716	529,455	3,321	81,726	0		50,517	268,721	19,723	953,463	3.7%
2	Underground Pipe \$/LF	\$ 5,900 \$ 170	300,923	29,164	75,977	0		24,591	530,340	40,564	1,001,559	3.9%
3	Above Ground Pipe \$/LF	\$ 6,730 \$ 220	158,709	8,443	53,615	0		94,000	1,088,580	79,534	1,482,881	5.7%
4	Pipe Supports \$/EA	\$ 299 \$ 1,371	68,790	4,130	34,385	0		0	281,800	20,730	409,835	1.6%
5	Excavation \$/CY	\$ 2,190 \$ 134	127,639	0	57,273	0		39,100	64,500	4,676	293,188	1.1%
6	Sitework		21,700	1,095	3,430	0		1,616	20,150	1,540	49,531	0.2%
7	Paving \$/SF	\$ 7,400 \$ 6	8,111	0	3,402	0		29,031	6,250	453	47,247	0.2%
8	Misc. Steel		28,550	0	958	0		0	16,800	1,218	47,526	0.2%
9	Mechanical AdEdge Only		497,712	176,850	240,312	0		20,000	83,500 13,689,300	1,011,350	2,029,724 13,689,300	7.8%
10	Architectural		3,011	0	127	0		94,736	2,049	149	100,072	0.4%
11	Elec./Inst.		0	0	0	0		2,820,855	0	0	2,820,855	10.9%
12	Painting		0	0	0	0		207,530	0	0	207,530	0.8%
13	Rebar		0	0	0	0		311,982	0	0	311,982	1.2%
14	Fence		0	0	0	0		151,925	0	0	151,925	0.6%
15	Landscaping		0	0	0	0		0	0	0	0	0.0%
16	Shoring		0	0	0	0		0	0	0	0	0.0%
17	Dewatering		0	0	0	0		0	0	0	0	0.0%
18	Digester Cleaning		0	0	0	0		0	0	0	0	0.0%
19	Temporary Work		0	0	0	0		0	0	0	0	0.0%
20	Demolition		0	0	0	0		0	0	0	0	0.0%
21	Design		0	0	0	0		1,184,990	0	0	1,184,990	4.6%
22	Field Overhead		0	0	0	0		1,187,725	0	0	1,187,725	4.6%
23	Total		1,744,600 6.7%	223,003 0.9%	551,205 2.1%	0 0.0%		6,218,598 23.9%	16,051,990 61.8%	1,179,937 4.5%	25,969,333 100.0%	47.3%

[illegible]

Form EST100

Labor		1,744,600
Consumable Material		223,003
FCC Equipment		551,205
Rental Equipment		0
Subcontracts		6,218,598
Permanent Material		16,051,990
Tax		1,179,937
Subtotal		25,969,333
Add		\$0
Cut		\$0
Subtotal		25,969,333
HOO & Profit Fee - AdEdge	5.0%	684,465
HOO & Profit Fee - Balance	9.0%	1,105,203
HOO & Profit Fee		1,789,668
Total		27,759,001

Summary Cost Model

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
002			Field Overhead - Construction Phase 2									
	05		Field Overhead	1 LS	7,222	522,216	508,109	53,150	104,250			1,187,725
			002 Field Overhead - Construction Phase 2	1 LS	7,222	522,216	508,109	53,150	104,250			1,187,725
01.			Concrete									
	10		Station 7	1 LS	2,955	212,642	1,202	30,480	22,688	100,334	7,361	374,707
	15		Station 11	1 LS	4,467	316,814	2,120	51,245	27,829	168,387	12,362	578,756
			01. Concrete	1 LS	7,423	529,455	3,321	81,726	50,517	268,721	19,723	953,463
02.			Underground Pipe									
	10		Station 7	2,940 LS	1,984	151,887	14,950	40,241	11,791	221,467	17,140	457,476
	15		Station 11	2,960 LS	1,995	149,036	14,214	35,736	12,800	308,873	23,424	544,083
			02. Underground Pipe	1 LS	3,979	300,923	29,164	75,977	24,591	530,340	40,564	1,001,558
03.			Above Ground Pipe									
	10		Station 7	2,500 LS	780	59,895	2,886	19,226	47,000	355,648	25,994	510,648
	15		Station 11	4,230 LS	1,307	98,814	5,558	34,389	47,000	732,932	53,540	972,233
			03. Above Ground Pipe	1 LS	2,087	158,709	8,443	53,615	94,000	1,088,580	79,534	1,482,881
04.			Supports									
	10		Station 7	134 LS	313	24,602	1,363	10,169		91,360	6,722	134,216
	15		Station 11	165 LS	558	44,187	2,768	24,216		190,440	14,008	275,618
			04. Supports	1 LS	871	68,790	4,130	34,385		281,800	20,730	409,834
05.			Excavation									
	10		Station 7	1 LS	748	55,619		24,470	18,175	28,625	2,075	128,964
	15		Station 11	1 LS	962	72,020		32,803	20,925	35,875	2,601	164,224
			05. Excavation	1 LS	1,711	127,639		57,273	39,100	64,500	4,676	293,188
06.			Sitework									
	10		Station 7	1 LS	145	10,117	547	1,556	808	9,700	743	23,471
	15		Station 11	1 LS	169	11,583	547	1,875	808	10,450	797	26,061
			06. Sitework	1 LS	313	21,700	1,095	3,430	1,616	20,150	1,540	49,532
07.			Paving									
	10		Station 7	1 LS					29,031			29,031
	15		Station 11	1 LS	104	8,111		3,402		6,250	453	18,216
			07. Paving	1 LS	104	8,111		3,402	29,031	6,250	453	47,247
08.			Misc. Steel									
	10		Station 7	1 LS	201	14,275		479		8,400	609	23,763
	15		Station 11	1 LS	201	14,275		479		8,400	609	23,763
			08. Misc. Steel	1 LS	403	28,550		958		16,800	1,218	47,526
09.			Mechanical									
	10		Station 7	1 LS	2,507	200,877	74,025	91,462	10,000	4,868,888	358,361	5,603,614
	15		Station 11	1 LS	3,697	296,835	102,825	148,850	10,000	8,903,912	652,988	10,115,410
			09. Mechanical	1 LS	6,203	497,712	176,850	240,312	20,000	13,772,800	1,011,350	15,719,024
10.			Architectural									
	10		Station 7	1 LS	22	1,506		64	47,368	1,025	74	50,036
	15		Station 11	1 LS	22	1,506		64	47,368	1,025	74	50,036

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			10. Architectural	1 LS	43	3,011		127	94,736	2,049	149	100,072
11.			Elec. / Inst.									
	10		Station 7	1 LS					1,263,855			1,263,855
	15		Station 11	1 LS					1,557,000			1,557,000
			11. Elec. / Inst.	1 LS					2,820,855			2,820,855
12.			Painting & Coatings									
	10		Station 7	1 LS					98,765			98,765
	15		Station 11	1 LS					108,765			108,765
			12. Painting & Coatings	1 LS					207,530			207,530
13.			Rebar									
	10		Station 7	1 LS					113,264			113,264
	15		Station 11	1 LS					198,718			198,718
			13. Rebar	1 LS					311,982			311,982
14.			Fence									
	10		Station 7	1 LS					70,500			70,500
	15		Station 11	1 LS					81,425			81,425
			14. Fence	1 LS					151,925			151,925
21.			Design									
	20		Design Engineering	1 LS					1,184,990			1,184,990
			21. Design	1 LS					1,184,990			1,184,990

Partial Totals

Description	Amount	Totals	Hours	Rate	Cost Basis	Cost per Unit	Percent of Total
Labor	2,266,816		30,357.470 hrs				8.73%
Material	16,051,990						61.81%
Subcontract	5,135,123						19.77%
Equipment	604,355		10,012.496 hrs				2.33%
Other	731,112						2.82%
	24,789,396	24,789,396					95.46% 95.46%
Sales Tax	1,179,937			7.250 %	C		4.54%
Partial Total		25,969,333					

Detail Cost Model

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
002			Field Overhead - Construction Phase 2									
	05		Field Overhead									
		00.01.01000	PROJECT MANAGEMENT									
			Construction Field Overhead									
			Project Manager - Monthly Cost	12 Mo	480	73,776	1,500	2,700	300	0		78,276
			Project Engineer 1 - Monthly Cost	12 Mo.	2,076	124,560	6,000	6,000	1,200	0		137,760
			Subsistence & Travel - Monthly Cost - PE	12 Mo.		-	36,000	-	-	0		36,000
			Construction Field Overhead	1 LS	2,556	198,336	43,500	8,700	1,500			252,036
			00.01.01000 PROJECT MANAGEMENT	1 LS	2,556	198,336	43,500	8,700	1,500			252,036
		00.01.02000	CONSTRUCTION SUPPORT SERVICES									
			Construction Field Overhead									
			Submittal Coordination - Monthly Cost	6 Mo.	240	7,200	-	-	-	0		7,200
			Scheduling Engineer - Monthly Cost	12 Mo.	192	19,200	-	-	-	0		19,200
			Pipe Detailing - Monthly Cost	6 Mo.	1,038	46,799	-	-	-	0		46,799
			Purchasing Administration - Monthly Cost	5 Mo.	200	8,000	-	-	-	0		8,000
			Job Cost Administration - Monthly Cost	12 Mo.	480	19,200	-	-	-	0		19,200
			Construction Field Overhead	1 LS	2,150	100,399						100,399
			00.01.02000 CONSTRUCTION SUPPORT SERVICES	1 LS	2,150	100,399						100,399
		00.01.03000	SAFETY & QA/QC									
			Construction Field Overhead									
			Safety Consultant - Monthly Cost	12 Mo.		-	-	-	10,200	0		10,200
			Safety Equipment & Supplies - Lump Sum Cost	1 LS		-	2,500	2,500	-	0		5,000
			Safety Equipment & Supplies - Ea per Person	10 EA		-	-	3,300	-	0		3,300
			Drug Testing - Ea per Person	10 EA		-	-	-	850	0		850
			Construction Field Overhead	1 LS			2,500	5,800	11,050			19,350
			00.01.03000 SAFETY & QA/QC	1 LS			2,500	5,800	11,050			19,350
		00.01.04000	FIELD SUPERVISION									
			Construction Field Overhead									
			General Superintendent - Monthly Cost	12 Mo.	2,076	178,868	6,000	10,200	1,200	0		196,268
			Subsistence & Travel - Monthly Cost - Super	12 Mo.		-	36,000	-	-	0		36,000
			Subsistence & Travel - Monthly Cost - Lead Man	12 Mo.		-	36,000	-	-			36,000
			Construction Field Overhead	1 LS	2,076	178,868	78,000	10,200	1,200			268,268
			00.01.04000 FIELD SUPERVISION	1 LS	2,076	178,868	78,000	10,200	1,200			268,268
		00.01.05000	FIELD OFFICE EXPENSES									
			Construction Field Overhead									
			Field Office Trailer - Setup Costs - Lump Sum	1 LS		-	-	-	9,000	0		9,000
			Field Office Trailer for Filanc - Monthly Cost	12 Mo.		-	-	-	15,600	0		15,600
			Field Office Supplies for Filanc - Monthly Cost	12 Mo.		-	3,600	-	-	0		3,600
			Office Drinking Water - Monthly Cost	12 Mo.		-	-	-	1,800	0		1,800
			Computer Expense - Internet Install - Lump Sum Cost	1 LS		-	10,000	-	2,500	0		12,500
			Copy Machine - Monthly Cost	12 Mo.		-	-	-	9,000	0		9,000
			Computer Expense - Internet - Monthly Cost	12 Mo.		-	-	-	3,600	0		3,600
			Construction Field Overhead	1 LS			13,600		41,500			55,100
			00.01.05000 FIELD OFFICE EXPENSES	1 LS			13,600		41,500			55,100
		00.01.06000	SITE SETUP/MAINT./CLOSEOUT - 2 Sites									
			Construction Field Overhead									
			Move In - Lump Sum Cost	1 Mo	100	7,155	1,500	10,000	-	0		18,655
			Yard - Setup Costs - Lump Sum	2 EA		-	-	-	9,000	0		9,000
			Move Out - Lump Sum Cost	2 EA		4,160	-	5,000	-	0		9,160
			Final Job Clean Up - Lump Sum Cost	2 EA		4,174	-	-	-	0		4,174

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Construction Field Overhead									
			Construction Zone Fencing	2 EA		-	-	-	20,000	0		20,000
			Project Signs - Each	2 EA		832	2,000	-	-	0		2,832
			Construction Field Overhead	1 LS	100	16,321	3,500	15,000	29,000			63,821
			00.01.06000 SITE SETUP/MAINT./CLOSEOUT - 2 Sites	1 LS	100	16,321	3,500	15,000	29,000			63,821
		00.01.07000	INSURANCE/BONDS/PERMIT/LICENSE									
			Construction Field Overhead									
			Bonds - Lump Sum Cost	1 LS		-	238,709	-	-	0		238,709
			Builders Risk Insurance	1 LS		-	20,000	-	-	0		20,000
			Permits (CEQA, Fire Dept., Air Quality, DDW, Discharge, Other)	1 LS		-	25,000	-	-	0		25,000
			Licenses	1 LS		-	1,000	-	-	0		1,000
			Construction Field Overhead	1 LS			284,709					284,709
			00.01.07000 INSURANCE/BONDS/PERMIT/LICENSE	1 LS			284,709					284,709
		00.01.08000	JOBSITE VEHICLES									
			Construction Field Overhead									
			Fuel & Oil - Staff - Monthly Cost	24 Mo.		-	12,000	-	-	0		12,000
			Jobsite Vehicles - Monthly Cost	24 Mo.		-	-	8,400	-	0		8,400
			Small Tools and Hardware - Lump Sum Cost	2 EA		-	20,000	-	-	0		20,000
			Construction Field Overhead	1 LS			32,000	8,400				40,400
			00.01.08000 JOBSITE VEHICLES	1 LS			32,000	8,400				40,400
		00.01.09000	TEMPORARY FACILITIES									
			Construction Field Overhead									
			Drinking Water - Site - Monthly Cost	24 Mo.		-	4,800	-	-	0		4,800
			Construction Temporary Power - By Filanc - Lump Sum Cost	2 EA		-	-	-	15,000	0		15,000
			Sanitation - Monthly Cost	24 Mo.		-	8,400	-	-	0		8,400
			SWPPP Plan - Sub Cost	1 LS		-	-	-	5,000	0		5,000
			Rubbish - Monthly Cost	24 Mo.			12,000	-	-	0		12,000
			Storage Containers (2 Sites, 2 per site)	24 Mo		-	-	4,800	-	0		4,800
			Construction Field Overhead	1 LS			25,200	4,800	20,000			50,000
			00.01.09000 TEMPORARY FACILITIES	1 LS			25,200	4,800	20,000			50,000
		00.01.10000	ENGINEERING/TESTING/INSPECTION									
			Construction Field Overhead									
			Construction Layout Monthly Cost (2 Sites)	1 Mo.	80	6,385	100	250	0	0		6,735
			Construction Field Overhead	1 LS	80	6,385	100	250				6,735
			00.01.10000 ENGINEERING/TESTING/INSPECTION	1 LS	80	6,385	100	250				6,735
		01.01.12000	STARTUP/TESTING/COMMISSIONING									
			Construction Field Overhead									
			Startup - Trade Support Labor	2 Mo.	260	21,907	-	-	-	0		21,907
			Startup - Chemical Costs - First Fill Sulf. Caust. Brine (2 Sites)	2 EA		-	25,000	-	-	0		25,000
			Construction Field Overhead	1 LS	260	21,907	25,000					46,907
			01.01.12000 STARTUP/TESTING/COMMISSIONING	1 LS	260	21,907	25,000					46,907
			05 Field Overhead	1 LS	7,222	522,216	508,109	53,150	104,250			1,187,725
			002 Field Overhead - Construction Phase 2	1 LS	7,222	522,216	508,109	53,150	104,250			1,187,725

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
01.			Concrete									
	10		Station 7									
		01 - 0020	Slab on Grade									
			Station 7 Chiller 18" SOG	180 sf	52	3,698	28	605	154	2,147	158	6,789
			Station 7 Ozone Generation/Control Room SOG	400 sf	108	7,557	61	1,344	342	4,665	343	14,312
			Station 7 Ozone Vaporizer SOG	64 sf	24	1,752	10	291	55	828	61	2,996
			Station 7 Liquid Oxigen Tank SOG	81 sf	29	2,070	12	295	69	1,027	75	3,550
			Station 7 Cartridge Filters/Booster Pumps SOG	330 sf	96	6,747	50	1,109	282	3,921	288	12,397
			Station 7 Ozone Injection SOG	133 sf	45	3,193	20	447	114	1,655	121	5,551
			Station 7 Sulphuric Acid Feed SOG	360 sf	99	6,928	55	1,210	308	4,209	309	13,018
			Station 7 GAC / ION Exchange Vessels SOG	4,256 sf	1,185	82,820	650	15,230	3,641	49,370	3,626	155,339
			Station 7 Waste Equalization Tank SOG	255 sf	73	5,146	39	857	218	3,019	222	9,501
			Station 7 Regeneration Holding Tank SOG	225 sf	66	4,637	34	756	193	2,679	197	8,496
			Station 7 Brine Maker & Pumps SOG	510 sf	135	9,365	78	1,715	436	5,891	433	17,918
			Station 7 Caustic Feed SOG	345 sf	95	6,674	53	1,159	295	4,039	297	12,516
			Station 7 Standby Generator SOG	480 sf	155	11,029	73	1,706	411	5,842	429	19,489
			01 - 0020 Slab on Grade	7,619 sf	2,163	151,617	1,164	26,723	6,519	89,290	6,558	281,871
		01 - 0037	Column - Light Pedestal									
			Station 7 Light Pole Bases	6 ea					15,000			15,000
			01 - 0037 Column - Light Pedestal	6 ea					15,000			15,000
		01 - 0060	Mech. Pads									
			Station 7 Chiller Equipment Pad	60 sf	34	2,426		307		297	22	3,052
			Station 7 Ozone Injection Pumps Equipment Pad	36 sf	26	1,835		301		237	17	2,389
			Station 7 Filters Booster Pumps Equipment Pad	12 sf	14	1,013		288		201	15	1,517
			01 - 0060 Mech. Pads	108 sf	74	5,274		897		735	53	6,959
		01 - 0080	Containment Curb									
			Station 7 Sulphuric Acid Feed SOG Containment Wall	234 sf	215	16,658	11	747	130	3,086	225	20,857
			Station 7 Caustic Feed SOG Containment Wall	228 sf	209	16,236	11	742	127	3,007	219	20,342
			Station 7 Brine Maker SOG Containment Wall	216 sf	198	15,393	10	732	120	2,850	207	19,313
			Station 7 Liquid Oxygen Tank Containment Wall	108 sf	96	7,463	5	640	792	1,365	99	10,364
			01 - 0080 Containment Curb	786 sf	718	55,750	37	2,861	1,169	10,309	750	70,877
			10 Station 7	1 LS	2,955	212,642	1,202	30,480	22,688	100,334	7,361	374,707
	15		Station 11									
		01 - 0020	Slab on Grade									
			Station 11 Sulphuric Acid Feed SOG	300 sf	84	5,910	46	1,008	257	3,529	259	11,008
			Station 11 Ozone Injection SOG	133 sf	45	3,193	20	447	114	1,655	121	5,551
			Station 11 Cartridge Filters/Booster Pumps SOG	416 sf	115	8,002	64	1,398	356	4,863	357	15,039
			Station 11 Waste Equalization Tank SOG	255 sf	73	5,146	39	857	218	3,019	222	9,501
			Station 11 Ozone Vaporizer/Liquid Oxigen Tank SOG	544 sf	143	9,926	83	1,828	465	6,274	461	19,037
			Station 11 Ozone Generation/Control Room SOG	400 sf	108	7,557	61	1,344	342	4,665	343	14,312
			Station 11 Chiller 18" SOG	180 sf	52	3,698	28	605	154	2,147	158	6,789
			Station 11 GAC Vessels SOG	4,800 sf	1,302	90,616	733	17,058	4,107	55,307	4,063	171,884
			Station 11 ION Exchange Vessels SOG	3,960 sf	1,088	75,905	605	14,073	3,388	45,810	3,365	143,146
			Station 11 Brine Maker & Pumps SOG	510 sf	135	9,364	78	1,714	436	5,891	433	17,916
			Station 11 Caustic Feed SOG	285 sf	81	5,656	44	958	244	3,359	247	10,506
			Station 11 Regeneration Holding Tank SOG	225 sf	66	4,637	34	756	193	2,679	197	8,496

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Station 11 Future Pump Station SOG	1,620 sf	383	26,177	248	5,443	1,386	18,148	1,334	52,735
			01 - 0020 Slab on Grade	13,628 sf	3,675	255,789	2,082	47,488	11,660	157,344	11,558	485,921
		01 - 0037	Column - Light Pedestal									
			Station 7 Light Pole Bases	6 ea					15,000			15,000
			01 - 0037 Column - Light Pedestal	6 ea					15,000			15,000
		01 - 0060	Mech. Pads									
			Station 11 Chiller Equipment Pad	60 sf	34	2,426		307		297	22	3,052
			Station 11 Ozone Injection Pumps Equipment Pad	36 sf	26	1,835		301		237	17	2,389
			Station 11 Filters Booster Pumps Equipment Pad	12 sf	14	1,013		288		201	15	1,517
			01 - 0060 Mech. Pads	108 sf	74	5,274		897		735	53	6,959
		01 - 0080	Containment Curb									
			Station 11 Sulphuric Acid Feed SOG Containment Wall	234 sf	215	16,658	11	747	130	3,086	225	20,857
			Station 11 Caustic Feed SOG Containment Wall	228 sf	209	16,236	11	742	127	3,007	219	20,342
			Station 11 Brine Maker SOG Containment Wall	216 sf	198	15,393	10	732	120	2,850	207	19,313
			Station 7 Liquid Oxygen Tank Containment Wall	108 sf	96	7,463	5	640	792	1,365	99	10,364
			01 - 0080 Containment Curb	786 sf	718	55,750	37	2,861	1,169	10,309	750	70,877
			15 Station 11	1 LS	4,467	316,814	2,120	51,245	27,829	168,387	12,362	578,756
			01. Concrete	1 LS	7,423	529,455	3,321	81,726	50,517	268,721	19,723	953,463

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
02.			Underground Pipe									
	10		Station 7									
		15-001	Plant Influent, GAC Influent, Treat Efflunt BW Supply									
			C-900 Pipe	840 If	251	17,145	1,363	7,627		73,665	5,440	105,240
			Trenching D/L/B Pipeline	835 If	334	26,037	3,747	3,808	4,163	10,238	1,014	49,006
			15-001 Plant Influent, GAC Influent, Treat Efflunt BW Supply	840 If	585	43,182	5,110	11,435	4,163	83,903	6,453	154,246
		15-002	Brine Supply, Regan Piping, WW EQ Underground									
			C-900 Pipe	240 If	72	5,325	357	2,586		6,393	489	15,149
			Trenching D/L/B Pipeline	230 If	166	12,784	796	2,098	885	2,190	216	18,969
			15-002 Brine Supply, Regan Piping, WW EQ Underground	240 If	238	18,110	1,153	4,683	885	8,582	706	34,118
		15-003	Utility Water Loop									
			C-900 Pipe	1,160 If	246	16,667	860	7,374		94,375	6,905	126,181
			Trenching D/L/B Pipeline	1,150 If	460	35,859	4,571	5,244	5,078	12,524	1,239	64,515
			15-003 Utility Water Loop	1,160 If	706	52,526	5,431	12,618	5,078	106,899	8,144	190,696
		15-004	Underground Chem Piping									
			Plastic Piping	350 If	22	1,593	41	243		455	36	2,368
			SS Piping	150 If	35	2,514	63	797			5	3,378
			Trenching D/L/B Pipeline	500 If	117	9,219	641	1,216	712	1,821	178	13,788
			15-004 Underground Chem Piping	500 If	174	13,326	745	2,256	712	2,276	219	19,534
		15-005	Sitewide Potholing, Utility Relocation									
			Relocation of Utility lines	300 If	45	2,999	260	1,894		2,645	211	8,007
			MH Relocation	1 ea	63	8,824	79	2,006	87	15,000	1,093	27,089
			Potholing	15 ea	100	7,704	779	1,425	865	2,162	213	13,149
			Demo Pipe - Misc. Piping *	300 If	72	5,216	1,395	3,924			101	10,637
			15-005 Sitewide Potholing, Utility Relocation	300 If	280	24,744	2,512	9,249	953	19,807	1,618	58,882
			10 Station 7	2,940 LS	1,984	151,887	14,950	40,241	11,791	221,467	17,140	457,476
	15		Station 11									
		15-030	Plant Influent, GAC Influent, Treated Effluent, IX Influent, BWS									
			C-900 Pipe	880 If	238	16,239	1,215	7,617		158,855	11,605	195,531
			Trenching D/L/B Pipeline	870 If	348	27,128	4,573	3,967	5,081	12,455	1,235	54,439
			15-030 Plant Influent, GAC Influent, Treated Effluent, IX Influent, BWS	880 If	586	43,367	5,788	11,585	5,081	171,310	12,840	249,970
		15-031	Brine Supply, Regan Piping, WW EQ Underground									
			C-900 Pipe	440 If	97	6,793	465	3,244		10,595	802	21,899
			Trenching D/L/B Pipeline	430 If	310	23,901	1,489	3,922	1,654	4,094	405	35,463
			15-031 Brine Supply, Regan Piping, WW EQ Underground	440 If	407	30,694	1,953	7,165	1,654	14,689	1,207	57,362
		15-032	Utility Water Loop									
			C-900 Pipe	1,200 If	252	17,003	897	7,516		107,510	7,859	140,786
			Trenching D/L/B Pipeline	1,200 If	480	37,418	4,769	5,472	5,299	13,068	1,293	67,320
			15-032 Utility Water Loop	1,200 If	732	54,421	5,666	12,988	5,299	120,578	9,153	208,106
		15-033	Underground Chem Piping									
			Plastic Piping	260 If	16	1,153	30	180		338	27	1,728
			SS Piping	180 If	49	3,557	87	915			6	4,566
			Trenching D/L/B Pipeline	430 If	126	9,910	689	1,307	766	1,958	192	14,822
			15-033 Underground Chem Piping	440 If	191	14,620	807	2,402	766	2,296	225	21,115
		15-034	Sitewide Potholing									

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Potholing	20 ea	80	5,934		1,596				7,530
			15-034 Sitewide Potholing	20 ea	80	5,934		1,596				7,530
			15 Station 11	2,960 LS	1,995	149,036	14,214	35,736	12,800	308,873	23,424	544,083
			02. Underground Pipe	1 LS	3,979	300,923	29,164	75,977	24,591	530,340	40,564	1,001,558
03.			Above Ground Pipe									
	10		Station 7									
		15-006	LOX, Ozone Generation & Vapization System									
			SS Piping	320 lf	96	7,119	166	1,085	20,000	1,050	88	29,507
			15-006 LOX, Ozone Generation & Vapization System	320 lf	96	7,119	166	1,085	20,000	1,050	88	29,507
		15-007	Ozone Injection System									
			SS Piping	98 lf	74	5,760	282	1,113		27,522	2,016	36,693
			15-007 Ozone Injection System	98 lf	74	5,760	282	1,113		27,522	2,016	36,693
		15-008	Influent Booster PS, Filter Piping									
			DI Piping	135 lf	72	5,733	424	1,902		61,765	4,509	74,333
			15-008 Influent Booster PS, Filter Piping	135 lf	72	5,733	424	1,902		61,765	4,509	74,333
		15-009	Sulfuric Acid Feed									
			Plastic Piping	100 lf	39	2,829	53	737		1,050	80	4,749
			Pipe Insulation & Heat Tracing	1 ls					27,000			27,000
			Sulfuric Acid PDVF Special Material	1 ls						23,500	1,704	25,204
			15-009 Sulfuric Acid Feed	100 lf	39	2,829	53	737	27,000	24,550	1,784	56,953
		15-010	GAC Process Piping System									
			DI Piping	420 lf								
			15-010 GAC Process Piping System	420 lf								
		15-011	Ion Exchange Process Piping System									
			DI Piping	0								
			15-011 Ion Exchange Process Piping System	0								
		15-012	GAC Influent									
			DI Piping	115 lf	55	4,093	240	1,505		37,760	2,755	46,352
			15-012 GAC Influent	115 lf	55	4,093	240	1,505		37,760	2,755	46,352
		15-013	GAC BW Supply									
			DI Piping	110 lf	35	2,730	135	1,064		15,615	1,142	20,686
			15-013 GAC BW Supply	110 lf	35	2,730	135	1,064		15,615	1,142	20,686
		15-014	GAC Effluent									
			DI Piping	110 lf	30	2,348	165	886		23,080	1,685	28,164
			15-014 GAC Effluent	110 lf	30	2,348	165	886		23,080	1,685	28,164
		15-015	GAC BW Waste									
			DI Piping	142 lf	35	2,745	142	1,033		22,660	1,653	28,233
			15-015 GAC BW Waste	142 lf	35	2,745	142	1,033		22,660	1,653	28,233
		15-016	IX Influent									
			DI Piping	105 lf	37	2,913	238	1,002		30,175	2,205	36,533
			15-016 IX Influent	105 lf	37	2,913	238	1,002		30,175	2,205	36,533
		15-017	IX BW Supply									
			DI Piping	120 lf	53	4,110	225	1,269		42,130	3,071	50,805
			15-017 IX BW Supply	120 lf	53	4,110	225	1,269		42,130	3,071	50,805
		15-018	IX Effluent									
			DI Piping	85 lf	27	2,096	136	801		18,070	1,320	22,422

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			15-018 IX Effluent	85 lf	27	2,096	136	801		18,070	1,320	22,422
		15-019	IX BW Waste									
			Plastic Piping	100 lf	35	2,734	116	1,307		14,250	1,042	19,448
			15-019 IX BW Waste	100 lf	35	2,734	116	1,307		14,250	1,042	19,448
		15-020	IX Brine Regen Supply									
			Plastic Piping	75 lf	32	2,487	85	1,003		1,930	146	5,650
			15-020 IX Brine Regen Supply	75 lf	32	2,487	85	1,003		1,930	146	5,650
		15-021	Caustic Soda Feed System									
			Plastic Piping	120 lf	32	2,295	45	804		256	22	3,422
			Small Piping PVC Special Material	1 ls						5,565	403	5,968
			15-021 Caustic Soda Feed System	120 lf	32	2,295	45	804		5,821	425	9,390
		15-022	Treated Effluent									
			DI Piping	45 lf	24	1,771	102	834		13,800	1,008	17,515
			15-022 Treated Effluent	45 lf	24	1,771	102	834		13,800	1,008	17,515
		15-023	Brine / ReGen Piping System									
			Plastic Piping	145 lf	65	5,061	213	1,554		5,063	382	12,273
			15-023 Brine / ReGen Piping System	145 lf	65	5,061	213	1,554		5,063	382	12,273
		15-024	Waste EQ Tank Piping System									
			Plastic Piping	106 lf	40	3,071	120	1,327		10,407	763	15,688
			15-024 Waste EQ Tank Piping System	105 lf	40	3,071	120	1,327		10,407	763	15,688
			10 Station 7	2,500 LS	780	59,895	2,886	19,226	47,000	355,648	25,994	510,648
	15		Station 11									
		15-008	Influent Booster PS, Filter Piping									
			DI Piping	135 lf	72	5,733	424	1,902		48,565	3,552	60,176
			15-008 Influent Booster PS, Filter Piping	135 lf	72	5,733	424	1,902		48,565	3,552	60,176
		15-035	LOX, Ozone Generation & Vapization System									
			SS Piping	340 lf	98	7,264	169	1,176	20,000	1,050	88	29,748
			15-035 LOX, Ozone Generation & Vapization System	340 lf	98	7,264	169	1,176	20,000	1,050	88	29,748
		15-036	Ozone Injection System									
			SS Piping	115 lf	77	5,949	288	1,207		23,078	1,694	32,216
			15-036 Ozone Injection System	115 lf	77	5,949	288	1,207		23,078	1,694	32,216
		15-037	Influent Booster PS, Filter Piping									
			DI Piping	140 lf	140	10,634	866	4,001		119,730	8,743	143,974
			15-037 Influent Booster PS, Filter Piping	140 lf	140	10,634	866	4,001		119,730	8,743	143,974
		15-038	Sulfuric Acid Feed									
			Plastic Piping	100 lf	39	2,829	53	737		1,050	80	4,749
			Pipe Insulation & Heat Tracing	1 ls					27,000			27,000
			Sulfuric Acid PDVF Special Material	1 ls						23,500	1,704	25,204
			15-038 Sulfuric Acid Feed	100 lf	39	2,829	53	737	27,000	24,550	1,784	56,953
		15-039	GAC Process Piping System									
			DI Piping	840 lf								
			15-039 GAC Process Piping System	840 lf								
		15-040	Ion Exchange Process Piping System									
			DI Piping	102 lf								
			15-040 Ion Exchange Process Piping System	100 lf								
		15-041	GAC Influent									

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			DI Piping	230 lf	123	9,055	664	3,358		111,540	8,135	132,752
			15-041 GAC Influent	230 lf	123	9,055	664	3,358		111,540	8,135	132,752
		15-042	GAC BW Supply									
			DI Piping	220 lf	54	4,179	223	1,559		31,130	2,273	39,363
			15-042 GAC BW Supply	220 lf	54	4,179	223	1,559		31,130	2,273	39,363
		15-043	GAC Effluent									
			DI Piping	220 lf	86	6,319	413	2,561		71,070	5,183	85,545
			15-043 GAC Effluent	220 lf	86	6,319	413	2,561		71,070	5,183	85,545
		15-044	GAC BW Waste									
			DI Piping	284 lf	62	4,783	245	1,916		39,350	2,871	49,164
			15-044 GAC BW Waste	285 lf	62	4,783	245	1,916		39,350	2,871	49,164
		15-045	IX Influent									
			DI Piping	210 lf	110	8,213	645	3,093		89,690	6,549	108,191
			15-045 IX Influent	210 lf	110	8,213	645	3,093		89,690	6,549	108,191
		15-046	IX BW Supply									
			DI Piping	240 lf	90	6,951	401	2,202		67,980	4,958	82,492
			15-046 IX BW Supply	240 lf	90	6,951	401	2,202		67,980	4,958	82,492
		15-047	IX Effluent									
			DI Piping	170 lf	69	5,123	329	2,056		55,540	4,051	67,099
			15-047 IX Effluent	170 lf	69	5,123	329	2,056		55,540	4,051	67,099
		15-048	IX BW Waste									
			Plastic Piping	200 lf	61	4,680	190	2,242		18,900	1,384	27,396
			15-048 IX BW Waste	200 lf	61	4,680	190	2,242		18,900	1,384	27,396
		15-049	IX Brine Regen Supply									
			Plastic Piping	160 lf	59	4,529	137	1,867		3,896	292	10,721
			15-049 IX Brine Regen Supply	160 lf	59	4,529	137	1,867		3,896	292	10,721
		15-050	Caustic Soda Feed System									
			Plastic Piping	120 lf	32	2,295	45	804		256	22	3,422
			Small Piping PVC Special Material	1 ls						5,565	403	5,968
			15-050 Caustic Soda Feed System	120 lf	32	2,295	45	804		5,821	425	9,390
		15-051	Treated Effluent									
			DI Piping	17 lf	25	1,801	115	809		12,390	907	16,021
			15-051 Treated Effluent	20 lf	25	1,801	115	809		12,390	907	16,021
		15-052	Brine / ReGen Piping System									
			Plastic Piping	160 lf	70	5,407	231	1,573		5,595	422	13,228
			15-052 Brine / ReGen Piping System	160 lf	70	5,407	231	1,573		5,595	422	13,228
		15-053	Waste EQ Tank Piping System									
			Plastic Piping	106 lf	40	3,071	120	1,327		3,057	230	7,805
			15-053 Waste EQ Tank Piping System	105 lf	40	3,071	120	1,327		3,057	230	7,805
			15 Station 11	4,230 LS	1,307	98,814	5,558	34,389	47,000	732,932	53,540	972,233
			03. Above Ground Pipe	1 LS	2,087	158,709	8,443	53,615	94,000	1,088,580	79,534	1,482,881

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
04.			Supports									
	10		Station 7									
		15-025	Station #7 Piping Supports									
			Station #7 Piping Supports	134 ea	313	24,602	1,363	10,169		6,360	560	43,054
			Station #7 Pipe Support Special Material	1 ls						85,000	6,163	91,163
			15-025 Station #7 Piping Supports	134 Ea	313	24,602	1,363	10,169		91,360	6,722	134,216
			10 Station 7	134 LS	313	24,602	1,363	10,169		91,360	6,722	134,216
	15		Station 11									
		15-054	Station #11 Piping Supports									
			Station #11 Piping Supports	165 ea	558	44,187	2,768	24,216		10,440	958	82,568
			Station #11 Pipe Support Special Material	1 ls						180,000	13,050	193,050
			15-054 Station #11 Piping Supports	165 Ea	558	44,187	2,768	24,216		190,440	14,008	275,618
			15 Station 11	165 LS	558	44,187	2,768	24,216		190,440	14,008	275,618
			04. Supports	1 LS	871	68,790	4,130	34,385		281,800	20,730	409,834

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
05.			Excavation									
	10		Station 7									
		05 - 0005	SWPPP									
			Station 7 SWPPP	1 ls	96	5,880			9,175	9,625	698	25,378
			05 - 0005 SWPPP	1 ls	96	5,880			9,175	9,625	698	25,378
		05 - 0010	Survey for Earthwork									
			Station 7 Survey for Earthwork	2 day	34	2,254		1,138				3,393
			05 - 0010 Survey for Earthwork	1 ls	34	2,254		1,138				3,393
		05 - 0015	Excavation & Disposal									
			Station 7 Excavation 5' Beyond Plant Footprint	730 yd3	240	18,219		9,895	8,750			36,864
			Station 7 Excavation Standby Generator SOG	30 yd3	42	3,215		1,562	250			5,026
			05 - 0015 Excavation & Disposal	760 yd3	282	21,434		11,457	9,000			41,891
		05 - 0100	Structural Backfill									
			Station 7 Structural Backfill 5' Beyond Plant Footprint	1,460 yd3	280	21,709		9,895		18,250	1,323	51,178
			Station 7 Structural Backfill Standby Generator SOG	30 yd3	56	4,342		1,979		750	54	7,125
			05 - 0100 Structural Backfill	1,490 yd3	336	26,051		11,874		19,000	1,378	58,303
			10 Station 7	1 LS	748	55,619		24,470	18,175	28,625	2,075	128,964
	15		Station 11									
		05 - 0005	SWPPP									
			Station 11 SWPPP	1 ls	96	5,880			9,175	9,625	698	25,378
			05 - 0005 SWPPP	1 ls	96	5,880			9,175	9,625	698	25,378
		05 - 0010	Survey for Earthwork									
			Station 11 Survey for Earthwork	2 day	34	2,254		1,138				3,393
			05 - 0010 Survey for Earthwork	1 ls	34	2,254		1,138				3,393
		05 - 0015	Excavation & Disposal									
			Station 11 Excavation 5' Beyond Plant Footprint	930 yd3	288	21,863		11,874	11,250			44,987
			Station 11 Excavation Pump Station SOG	120 yd3	96	7,288		3,958	500			11,746
			05 - 0015 Excavation & Disposal	1,050 yd3	384	29,151		15,832	11,750			56,733
		05 - 0100	Structural Backfill									
			Station 11 Structural Backfill 5' Beyond Plant Footprint	930 yd3	336	26,051		11,874		23,250	1,686	62,861
			Station 11 Structural Backfill Pump Station SOG	120 yd3	112	8,684		3,958		3,000	218	15,859
			05 - 0100 Structural Backfill	1,050 yd3	448	34,735		15,832		26,250	1,903	78,720
			15 Station 11	1 LS	962	72,020		32,803	20,925	35,875	2,601	164,224
			05. Excavation	1 LS	1,711	127,639		57,273	39,100	64,500	4,676	293,188

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
06.			Sitework									
	10		Station 7									
		06 - 0105	Drainage									
			Station 7 Drainage Catch Basins	2 ea	40	2,465	500	520		1,600	152	5,237
			Station 7 Detention Pond	300 sf	18	1,257		369		3,000	218	4,843
			Station 7 Drainage Plastic Piping	400 lf	31	2,366	47	28		3,430	252	6,124
			Station 7 Drainage Trenching D/L/B	400 lf	56	4,029		638	808	1,670	121	7,266
			06 - 0105 Drainage	1 ls	145	10,117	547	1,556	808	9,700	743	23,471
		06 - 0205	Potholing for Utilities									
			Station 7 Potholing for Utilities	10 ea								
			06 - 0205 Potholing for Utilities	10 ea								
			10 Station 7	1 LS	145	10,117	547	1,556	808	9,700	743	23,471
	15		Station 11									
		06 - 0105	Drainage									
			Station 11 Drainage Catch Basins	2 ea	40	2,465	500	520		1,600	152	5,237
			Station 11 Detention Pond	300 sf	18	1,257		369		3,000	218	4,843
			Station 11 Drainage Plastic Piping	400 lf	31	2,366	47	28		3,430	252	6,124
			Station 11 Drainage Trenching D/L/B	400 lf	56	4,029		638	808	1,670	121	7,266
			06 - 0105 Drainage	2 ls	145	10,117	547	1,556	808	9,700	743	23,471
		06 - 0205	Potholing for Utilities									
			Station 11 Potholing for Utilities	10 ea								
			06 - 0205 Potholing for Utilities	10 ea								
		06 - 0305	Utilities Relocation									
			Station 11 Relocation of Existing Utilities	1 ls	24	1,466		319		750	54	2,590
			06 - 0305 Utilities Relocation	1 ls	24	1,466		319		750	54	2,590
			15 Station 11	1 LS	169	11,583	547	1,875	808	10,450	797	26,061
			06. Sitework	1 LS	313	21,700	1,095	3,430	1,616	20,150	1,540	49,532

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
07.			Paving									
	10		Station 7									
		07 - 0005	Asphalt Paving									
			Station 7 New AC Paving	1,775 sf					10,700			10,700
			07 - 0005 Asphalt Paving	1,775 sf					10,700			10,700
		07 - 0105	Grind and 2" Overlay									
			Station 7 Grind and 2" Overlay	5,625 sf					18,331			18,331
			07 - 0105 Grind and 2" Overlay	5,625 sf					18,331			18,331
			10 Station 7	1 LS					29,031			29,031
	15		Station 11									
		07 - 0205	Compacted Road Base									
			Station 11 Compacted Roadbase	250 yd3	104	8,111		3,402		6,250	453	18,216
			07 - 0205 Compacted Road Base	250 cy	104	8,111		3,402		6,250	453	18,216
			15 Station 11	1 LS	104	8,111		3,402		6,250	453	18,216
			07. Paving	1 LS	104	8,111		3,402	29,031	6,250	453	47,247

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
08.			Misc. Steel									
	10		Station 7									
		08 - 0065	Ladders									
			Station 7 Access Ladders to Brine Maker	1 ea								
			08 - 0065 Ladders	1 ea								
		08 - 0070	Pipe Bollards									
			Station 7 Guard Post	24 ea	201	14,275		479		8,400	609	23,763
			08 - 0070 Pipe Bollards	24 ea	201	14,275		479		8,400	609	23,763
			10 Station 7	1 LS	201	14,275		479		8,400	609	23,763
	15		Station 11									
		08 - 0065	Ladders									
			Station 11 Access Ladders to Brine Maker	1 ea								
			08 - 0065 Ladders	1 ea								
		08 - 0070	Pipe Bollards									
			Station 11 Guard Post	24 ea	201	14,275		479		8,400	609	23,763
			08 - 0070 Pipe Bollards	24 ea	201	14,275		479		8,400	609	23,763
			15 Station 11	1 LS	201	14,275		479		8,400	609	23,763
			08. Misc. Steel	1 LS	403	28,550		958		16,800	1,218	47,526

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
09.			Mechanical									
	10		Station 7									
		09-AdEdge 07A0	AdEdge Supply Station 7 - BOD Proposal									
			AdEdge Supply Station 7	1 ls						4,449,363	322,579	4,771,942
			09-AdEdge 07A0 AdEdge Supply Station 7 - BOD Proposal	1 ls						4,449,363	322,579	4,771,942
		09-AdEdge 07A0.1	Station 7 Recommended Scope - Spare Parts									
			AdEdge Supply Station 7 Spare Parts	1 ls						40,000	2,900	42,900
			09-AdEdge 07A0.1 Station 7 Recommended Scope - Spare Parts	1 ls						40,000	2,900	42,900
		09-AdEdge 07A1-A6	Ozone Generation Bldg & System Components									
			A3 Closed Loop Chilled Water System	1 ea	16	1,377	400	767			29	2,573
			A4 LOX Storage Tank	1 ea	67	5,679	4,000	4,992	10,000		290	24,961
			A6 Side Stream Ozone Injection System & Manifold	1 ea	47	3,947	600	401			44	4,991
			A1 Ozone Generator & Control Room	1 ea	52	4,315	12,750	1,133			924	19,122
			A2 Ozone System Destruct	1 ea	41	3,203	2,650	1,034			192	7,079
			09-AdEdge 07A1-A6 Ozone Generation Bldg & System Components	1 ls	223	18,521	20,400	8,327	10,000		1,479	58,727
		09-AdEdge 07B1	Raw Water Booster Pumps									
			PC-003 A / B Raw Water Booster Pumps	2 ea	90	7,267	1,200	1,910			87	10,464
			09-AdEdge 07B1 Raw Water Booster Pumps	2 ea	90	7,267	1,200	1,910			87	10,464
		09-AdEdge 07C1	pH Reduction Module									
			Injection Quill INJ-001	1 ea	4	338	150				11	499
			Static Mixer MX-004	1 ea	4	338	150				11	499
			Static Mixer MX-302	1 ea	4	338	150				11	499
			pH Reduction Module Duplex Pump Skid	1 ea	19	1,422	375	616			27	2,439
			TK-001 H2SO4 Tank 4000 gal	1 ea	57	4,663	1,150	1,847		2,000	228	9,888
			TK-002 H2SO4 Tank 200 gal	1 ea	19	1,487	1,650	923		2,000	265	6,326
			PM-001 pH Reduction Transfer Pump	1 ea	20	1,512	250	770			18	2,549
			09-AdEdge 07C1 pH Reduction Module	1 ls	127	10,097	3,875	4,155		4,000	571	22,698
		09-AdEdge 07C2	pH Neutralization Module									
			Injection Quill INJ-301	1 ea	4	338	150				11	499
			Injection Quill INJ-302	1 ea	4	338	150			5,000	373	5,861
			Static Mixer MX-304	1 ea	4	338	150				11	499
			pH Neutralization Module Duplex Pump Skid	1 ea	19	1,422	375	616			27	2,439
			TK-301 NaOH Tank 5000 gal	1 ea	57	4,663	1,150	1,847		2,000	228	9,888
			TK-302 NaOH Tank 200 gal	1 ea	28	2,255	1,650	1,385		2,000	265	7,555
			PM-301 pH Neutralization Transfer Pump	1 ea	19	1,422	250	616			18	2,305
			PM-303 pH CIP Pump	1 ea	20	1,512	250	770			18	2,549
			09-AdEdge 07C2 pH Neutralization Module	1 ls	155	12,286	4,125	5,233		9,000	952	31,596
		09-AdEdge 07D1	Cartridge Filtration Units									
			Cartridge Filters FLT-012 A/B	2 ea	23	1,826	800	923		750	112	4,412
			09-AdEdge 07D1 Cartridge Filtration Units	2 ea	23	1,826	800	923		750	112	4,412
		09-AdEdge 07E1 & E2	Ion Exchange Vessels AV-101 A to F									
			Ion Exchange Vessels AV-101 A to F	6 ea	547	44,415	13,500	26,539			979	85,433
			09-AdEdge 07E1 & E2 Ion Exchange Vessels AV-101 A to F	6 ea	547	44,415	13,500	26,539			979	85,433
		09-AdEdge 07E5	Brine Maker and Salt Storage									

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Static Mixer MX-302	1 ea								
			BM-311 Salt Silo	1 ea	77	6,129	1,400	1,847		2,000	247	11,623
			PM-305 A / B Brine Pumps	1 ea	42	3,181	1,000	1,208			73	5,462
			09-AdEdge 07E5 Brine Maker and Salt Storage	1 ls	119	9,311	2,400	3,055		2,000	319	17,085
		09-AdEdge 07F1 & F2	GAC Vessels EV-201 A to F									
			GAC Vessels EV-201 A to F	6 ea	607	48,954	14,100	30,233			1,022	94,309
			09-AdEdge 07F1 & F2 GAC Vessels EV-201 A to F	6 ea	607	48,954	14,100	30,233			1,022	94,309
		09-FCC 0701	CL2									
			Injection Quill INJ-xxx	1 ea	4	338	150			5,000	373	5,861
			09-FCC 0701 CL2	1 ls	4	338	150			5,000	373	5,861
		09-FCC 0705	NaCl									
			Injection Quill INJ-XXX	1 ea	4	338	150			5,000	373	5,861
			09-FCC 0705 NaCl	1 ls	4	338	150			5,000	373	5,861
		09-FCC 0710	Required to Complete Plant Process - Post Chlorination									
			Injection Quill INJ-xxx Post Chlorination	1 ea	4	338	150			6,812	505	7,804
			Static Mixer MX-xxx Post Chlorination	1 ea	4	338	150			16,348	1,196	18,032
			Post Chlorination Module Duplex Pump Skid	1 ea	22	1,691	375	1,077		20,435	1,509	25,087
			TK-XXX Post Chlorination Tank 5000 gal	1 ea	77	6,129	1,400	1,847		36,783	2,768	48,927
			PM-XXX Post Chlorination Transfer Pump	1 ea	20	1,512	250	770		13,623	1,006	17,160
			09-FCC 0710 Required to Complete Plant Process - Post Chlorination	1 ls	127	10,007	2,325	3,694		94,000	6,984	117,010
		09-FCC 0715	Required to Complete Plant Process - Brine Holding Tank									
			30,000 gallon Brine Holding Tank	1 ea	99	8,422		1,200		110,400	8,004	128,026
			09-FCC 0715 Required to Complete Plant Process - Brine Holding Tank	1 ls	99	8,422		1,200		110,400	8,004	128,026
		09-FCC 0720	Required to Complete Plant Process - Backwash Supply Pumps									
			Backwash Supply Pumps	2 ea	64	5,195	1,000	1,493		85,000	6,235	98,923
			09-FCC 0720 Required to Complete Plant Process - Backwash Supply Pumps	1 ls	64	5,195	1,000	1,493		85,000	6,235	98,923
		09-FCC 0725	Required to Complete Plant Process - Waste EQ Tank									
			24,000 gallon Waste EQ Tank	1 ea	179	14,068		1,200		62,000	4,495	81,763
			09-FCC 0725 Required to Complete Plant Process - Waste EQ Tank	1 ls	179	14,068		1,200		62,000	4,495	81,763
		09-FCC 0750	Start Up Internal Loop									
			12" Start Up Test Loop	300 lf	136	9,834	10,000	3,500		2,375	897	26,606
			09-FCC 0750 Start Up Internal Loop	300 lf	136	9,834	10,000	3,500		2,375	897	26,606
			10 Station 7	1 LS	2,507	200,877	74,025	91,462	10,000	4,868,888	358,361	5,603,614
	15		Station 11									
		09-AdEdge 11A0	AdEdge Supply Station 11 - BOD Proposal									
			AdEdge Supply Station 11	1 ls						8,473,937	614,360	9,088,297
			09-AdEdge 11A0 AdEdge Supply Station 11 - BOD Proposal	1 ls						8,473,937	614,360	9,088,297
		09-AdEdge 11A0.1	Station 11 Recommended Scope - Spare Parts									
			AdEdge Supply Station 11 Spare Parts	1 ls						50,000	3,625	53,625
			09-AdEdge 11A0.1 Station 11 Recommended Scope - Spare Parts	1 ls						50,000	3,625	53,625
		09-AdEdge 11A1-A6	Ozone Generation Bldg & System Components									

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			A3 Closed Loop Chilled Water System	1 ea	16	1,377	400	767			29	2,573
			A4 LOX Storage Tank	1 ea	67	5,679	4,000	4,992	10,000		290	24,961
			A6 Side Stream Ozone Injection System & Manifold	1 ea	47	3,947	600	401			44	4,991
			A1 Ozone Generator & Control Room	1 ea	52	4,315	13,750	1,133			997	20,195
			A2 Ozone System Destruct	1 ea	41	3,203	2,650	1,034			192	7,079
			09-AdEdge 11A1-A6 Ozone Generation Bldg & System Components	1 ls	223	18,521	21,400	8,327	10,000		1,552	59,799
		09-AdEdge 11B1	Raw Water Booster Pumps									
			PC-003 A / B Raw Water Booster Pumps	2 ea	93	7,476	1,200	2,063			87	10,827
			09-AdEdge 11B1 Raw Water Booster Pumps	2 ea	93	7,476	1,200	2,063			87	10,827
		09-AdEdge 11C1	pH Reduction Module									
			Injection Quill INJ-001	1 ea	4	338	150				11	499
			Static Mixer MX-004	1 ea	8	675	300				22	997
			pH Reduction Module Duplex Pump Skid	1 ea	19	1,422	375	616			27	2,439
			TK-001 H2SO4 Tank 4000 gal	1 ea	57	4,663	1,150	1,847		2,000	228	9,888
			TK-002 H2SO4 Tank 200 gal	1 ea	19	1,487	1,650	923		2,000	265	6,325
			PM-001 pH Reduction Transfer Pump	1 ea	20	1,512	250	770			18	2,549
			09-AdEdge 11C1 pH Reduction Module	1 ls	127	10,097	3,875	4,155		4,000	571	22,698
		09-AdEdge 11C2	pH Neutralization Module									
			Injection Quill INJ-301	1 ea	4	338	150				11	499
			Injection Quill INJ-302	1 ea	4	338	150			5,000	373	5,861
			Static Mixer MX-304	1 ea	4	338	150				11	499
			pH Neutralization Module Duplex Pump Skid	1 ea	19	1,422	375	616			27	2,439
			TK-301 NaOH Tank 5000 gal	1 ea	57	4,663	1,150	1,847		2,000	228	9,888
			TK-302 NaOH Tank 200 gal	1 ea	28	2,255	1,650	1,385		2,000	265	7,555
			PM-301 pH Neutralization Transfer Pump	1 ea	19	1,422	250	616			18	2,305
			PM-303 pH CIP Pump	1 ea	20	1,512	250	770			18	2,549
			09-AdEdge 11C2 pH Neutralization Module	1 ls	155	12,286	4,125	5,233		9,000	952	31,596
		09-AdEdge 11D1	Cartridge Filtration Units									
			Cartridge Filters FLT-012 A/B/C	3 ea	35	2,739	1,000	1,385		1,200	160	6,484
			09-AdEdge 11D1 Cartridge Filtration Units	3 ea	35	2,739	1,000	1,385		1,200	160	6,484
		09-AdEdge 11E1 & E2	Ion Exchange Vessels AV-101 A to L									
			Ion Exchange Vessels AV-101 A to L	12 ea	1,094	88,830	27,000	53,078			1,958	170,866
			09-AdEdge 11E1 & E2 Ion Exchange Vessels AV-101 A to L	12 ea	1,094	88,830	27,000	53,078			1,958	170,866
		09-AdEdge 11E5	Brine Maker and Salt Storage									
			BM-311 Salt Silo	1 ea	77	6,129	1,400	1,847		2,000	247	11,623
			PM-305 A / B Brine Pumps	1 ea	42	3,181	1,000	1,208			73	5,462
			09-AdEdge 11E5 Brine Maker and Salt Storage	1 ls	119	9,311	2,400	3,055		2,000	319	17,085
		09-AdEdge 11F1 & F2	GAC Vessels EV-201 A to L									
			GAC Vessels EV-201 A to L	12 ea	1,214	97,908	28,200	60,466			2,045	188,618
			09-AdEdge 11F1 & F2 GAC Vessels EV-201 A to L	12 ea	1,214	97,908	28,200	60,466			2,045	188,618
		09-FCC 1101	CL2									
			Injection Quill INJ-xxx	1 ea	4	338	150			5,000	373	5,861
			09-FCC 1101 CL2	1 ls	4	338	150			5,000	373	5,861
		09-FCC 1105	NaCl									

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Injection Quill INJ-XXX	1 ea	4	338	150			5,000	373	5,861
			09-FCC 1105 NaCl	1 ls	4	338	150			5,000	373	5,861
		09-FCC 1110	Required to Complete Plant Process - Post Chlorination									
			Injection Quill INJ-xxx Post Chlorination	1 ea	4	338	150			6,812	505	7,804
			Static Mixer MX-xxx Post Chlorination	1 ea	4	338	150			16,348	1,196	18,032
			Post Chlorination Module Duplex Pump Skid	1 ea	22	1,691	375	1,077		20,435	1,509	25,087
			TK-XXX Post Chlorination Tank 5000 gal	1 ea	77	6,129	1,400	1,847		36,783	2,768	48,927
			PM-XXX Post Chlorination Transfer Pump	1 ea	20	1,512	250	770		13,623	1,006	17,160
			09-FCC 1110 Required to Complete Plant Process - Post Chlorination	1 ls	127	10,007	2,325	3,694		94,000	6,984	117,010
		09-FCC 1115	Required to Complete Plant Process - Brine Holding Tank									
			30,000 gallon Brine Holding Tank	1 ea	99	8,422		1,200		110,400	8,004	128,026
			09-FCC 1115 Required to Complete Plant Process - Brine Holding Tank	1 ls	99	8,422		1,200		110,400	8,004	128,026
		09-FCC 1120	Required to Complete Plant Process - Backwash Supply Pumps									
			Backwash Supply Pumps	2 ea	64	5,195	1,000	1,493		85,000	6,235	98,923
			09-FCC 1120 Required to Complete Plant Process - Backwash Supply Pumps	1 ls	64	5,195	1,000	1,493		85,000	6,235	98,923
		09-FCC 1125	Required to Complete Plant Process - Waste EQ Tank									
			24,000 gallon Waste EQ Tank	1 ea	179	14,068		1,200		62,000	4,495	81,763
			09-FCC 1125 Required to Complete Plant Process - Waste EQ Tank	1 ls	179	14,068		1,200		62,000	4,495	81,763
		09-FCC 1150	Start Up Internal Loop									
			12" Start Up Test Loop	300 lf	157	11,300	10,000	3,500		2,375	897	28,072
			09-FCC 1150 Start Up Internal Loop	300 lf	157	11,300	10,000	3,500		2,375	897	28,072
			15 Station 11	1 LS	3,697	296,835	102,825	148,850	10,000	8,903,912	652,988	10,115,410
			09. Mechanical	1 LS	6,203	497,712	176,850	240,312	20,000	13,772,800	1,011,350	15,719,024

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
10.			Architectural									
	10		Station 7									
		10 - 04008	Masonry Walls									
			Station 7 Sulphuric Acid Feed CMU Walls (3 sides)	630 sf	3	202		32	24,048	62	5	24,350
			Station 7 Caustic Feed CMU Walls (3 sides)	610 sf	3	200		31	23,320	62	5	23,618
			10 - 04008 Masonry Walls	1,240 sf	7	402		64	47,368	125	9	47,967
		10 - 10520	Fire Protection Specialties									
			Station 7 Control/Ozone Generator Rooms Fire Extinguishers	2 ea	15	1,104				900	65	2,069
			10 - 10520 Fire Protection Specialties	2 ea	15	1,104				900	65	2,069
			10 Station 7	1 LS	22	1,506		64	47,368	1,025	74	50,036
	15		Station 11									
		10 - 04008	Masonry Walls									
			Station 11 Sulphuric Acid Feed CMU Walls (3 sides)	630 sf	3	202		32	24,048	62	5	24,350
			Station 11 Caustic Feed CMU Walls (3 sides)	610 sf	3	200		31	23,320	62	5	23,618
			10 - 04008 Masonry Walls	1,240 sf	7	402		64	47,368	125	9	47,967
		10 - 10520	Fire Protection Specialties									
			Station 11 Control/Ozone Generator Rooms Fire Extinguishers	2 ea	15	1,104				900	65	2,069
			10 - 10520 Fire Protection Specialties	2 ea	15	1,104				900	65	2,069
			15 Station 11	1 LS	22	1,506		64	47,368	1,025	74	50,036
			10. Architectural	1 LS	43	3,011		127	94,736	2,049	149	100,072

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
11.			Elec. / Inst.									
	10		Station 7									
		11 - 0705	Big Sky Electric Station 7									
			Big Sky Electric Station 7	1 Ls					1,263,855			1,263,855
			11 - 0705 Big Sky Electric Station 7	1 ls					1,263,855			1,263,855
			10 Station 7	1 LS					1,263,855			1,263,855
	15		Station 11									
		11 - 1105	Big Sky Electric Station 11									
			Big Sky Electric Station 11	1 Ls					1,557,000			1,557,000
			11 - 1105 Big Sky Electric Station 11	1 ls					1,557,000			1,557,000
			15 Station 11	1 LS					1,557,000			1,557,000
			11. Elec. / Inst.	1 LS					2,820,855			2,820,855

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
12.			Painting & Coatings									
	10		Station 7									
		08 - 0070	Pipe Bollards									
			Station 7 Guard Post	24 ea					4,800			4,800
			08 - 0070 Pipe Bollards	24 ea					4,800			4,800
		10 - 04008	Masonry Walls									
			Station 7 Sulphuric Acid Feed CMU Walls (3 sides)	630 sf					6,300			6,300
			Station 7 Caustic Feed CMU Walls (3 sides)	610 sf					6,100			6,100
			10 - 04008 Masonry Walls	1,240 sf					12,400			12,400
		12 - 09910	Paint									
			Station 7 Field Painting Pipe, Valves & Appurtenances	1 ls					20,000			20,000
			12 - 09910 Paint	1 ls					20,000			20,000
		12 - 09960	Coatings									
			Station 7 Sulphuric Acid Feed Coating Concrete Containment	672 sf					23,520			23,520
			Station 7 Caustic Feed Coating Concrete Containment	649 sf					22,715			22,715
			Station 7 Brine Maker Coating Concrete Containment	438 sf					15,330			15,330
			12 - 09960 Coatings	1,759 sf					61,565			61,565
			10 Station 7	1 LS					98,765			98,765
	15		Station 11									
		08 - 0070	Pipe Bollards									
			Station 11 Guard Post	24 ea					4,800			4,800
			08 - 0070 Pipe Bollards	24 ea					4,800			4,800
		10 - 04008	Masonry Walls									
			Station 11 Sulphuric Acid Feed CMU Walls (3 sides)	630 sf					6,300			6,300
			Station 11 Caustic Feed CMU Walls (3 sides)	610 sf					6,100			6,100
			10 - 04008 Masonry Walls	1,240 sf					12,400			12,400
		12 - 09910	Paint									
			Station 11 Field Painting Pipe, Valves & Appurtenances	1 ls					30,000			30,000
			12 - 09910 Paint	1 ls					30,000			30,000
		12 - 09960	Coatings									
			Station 11 Sulphuric Acid Feed Coating Concrete Containment	672 sf					23,520			23,520
			Station 11 Caustic Feed Coating Concrete Containment	649 sf					22,715			22,715
			Station 11 Brine Maker Coating Concrete Containment	438 sf					15,330			15,330
			12 - 09960 Coatings	1,759 sf					61,565			61,565
			15 Station 11	1 LS					108,765			108,765
			12. Painting & Coatings	1 LS					207,530			207,530

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
13.			Rebar									
	10		Station 7									
		01 - 0020	Slab on Grade									
			Station 7 Chiller 18" SOG	180 sf					2,560			2,560
			Station 7 Ozone Generation/Control Room SOG	400 sf					5,688			5,688
			Station 7 Ozone Vaporizer SOG	64 sf					910			910
			Station 7 Liquid Oxygen Tank SOG	81 sf					1,152			1,152
			Station 7 Cartridge Filters/Booster Pumps SOG	330 sf					4,694			4,694
			Station 7 Ozone Injection SOG	133 sf					1,892			1,892
			Station 7 Sulphuric Acid Feed SOG	360 sf					5,120			5,120
			Station 7 GAC / ION Exchange Vessels SOG	4,256 sf					60,530			60,530
			Station 7 Waste Equalization Tank SOG	255 sf					3,626			3,626
			Station 7 Regeneration Holding Tank SOG	225 sf					3,200			3,200
			Station 7 Brine Maker & Pumps SOG	510 sf					7,260			7,260
			Station 7 Caustic Feed SOG	345 sf					4,906			4,906
			Station 7 Standby Generator SOG	480 sf					6,826			6,826
			01 - 0020 Slab on Grade	7,619 sf					108,364			108,364
		01 - 0060	Mech. Pads									
			Station 7 Chiller Equipment Pad	60 sf					144			144
			Station 7 Ozone Injection Pumps Equipment Pad	36 sf					100			100
			Station 7 Filters Booster Pumps Equipment Pad	12 sf					60			60
			01 - 0060 Mech. Pads	108 sf					304			304
		01 - 0080	Containment Curb									
			Station 7 Sulphuric Acid Feed SOG Containment Wall	234 sf					1,586			1,586
			Station 7 Caustic Feed SOG Containment Wall	228 sf					1,546			1,546
			Station 7 Brine Maker SOG Containment Wall	216 sf					1,464			1,464
			01 - 0080 Containment Curb	678 sf					4,596			4,596
			10 Station 7	1 LS					113,264			113,264
	15		Station 11									
		01 - 0020	Slab on Grade									
			Station 11 Sulphuric Acid Feed SOG	300 sf					4,266			4,266
			Station 11 Ozone Injection SOG	133 sf					1,892			1,892
			Station 11 Cartridge Filters/Booster Pumps SOG	416 sf					5,916			5,916
			Station 11 Waste Equalization Tank SOG	255 sf					3,626			3,626
			Station 11 Ozone Vaporizer/Liquid Oxygen Tank SOG	544 sf					7,736			7,736
			Station 11 Ozone Generation/Control Room SOG	400 sf					5,688			5,688
			Station 11 Chiller 18" SOG	180 sf					2,560			2,560
			Station 11 GAC Vessels SOG	4,800 sf					68,266			68,266
			Station 11 ION Exchange Vessels SOG	3,960 sf					56,320			56,320
			Station 11 Brine Maker & Pumps SOG	510 sf					7,254			7,254
			Station 11 Caustic Feed SOG	285 sf					4,054			4,054
			Station 11 Regeneration Holding Tank SOG	225 sf					3,200			3,200
			Station 11 Future Pump Station SOG	1,620 sf					23,040			23,040
			01 - 0020 Slab on Grade	13,628 sf					193,818			193,818
		01 - 0060	Mech. Pads									
			Station 11 Chiller Equipment Pad	60 sf					144			144

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
			Station 11 Ozone Injection Pumps Equipment Pad	36 sf					100			100
			Station 11 Filters Booster Pumps Equipment Pad	12 sf					60			60
			01 - 0060 Mech. Pads	108 sf					304			304
		01 - 0080	Containment Curb									
			Station 11 Sulphuric Acid Feed SOG Containment Wall	234 sf					1,586			1,586
			Station 11 Caustic Feed SOG Containment Wall	228 sf					1,546			1,546
			Station 11 Brine Maker SOG Containment Wall	216 sf					1,464			1,464
			01 - 0080 Containment Curb	678 sf					4,596			4,596
			15 Station 11	1 LS					198,718			198,718
			13. Rebar	1 LS					311,982			311,982

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
14.			Fence									
	10		Station 7									
		14 - 0105	Fencing									
			Station 7 Fencing w/Privacy Slats & 3 Wire Top	1,100 If					66,700			66,700
			Station 7 Sulphuric Acid Feed Fencing & Gate	15 If					1,900			1,900
			Station 7 Caustic Feed Fencing & Gate	15 If					1,900			1,900
			14 - 0105 Fencing	1,100 If					70,500			70,500
			10 Station 7	1 LS					70,500			70,500
	15		Station 11									
		14 - 0105	Fencing									
			Station 11 Fencing w/Privacy Slats & 3 Wire Top	1,375 If					77,625			77,625
			Station 11 Sulphuric Acid Feed Fencing & Gate	15 If					1,900			1,900
			Station 11 Caustic Feed Fencing & Gate	15 If					1,900			1,900
			14 - 0105 Fencing	1,375 If					81,425			81,425
			15 Station 11	1 LS					81,425			81,425
			14. Fence	1 LS					151,925			151,925

Work Code	Area	Est. Item	Description	Quantity UOM	Labor Hours	Labor Total	Consumable Total	Equip Total	Sub Total	Material Total	Tax	Grand Total Amount
21.			Design									
	20		Design Engineering									
		21 - 0010	Hazen & Sawyer Final Design									
			Hazen & Sawyer Final Design	1 ls					1,184,990			1,184,990
			21 - 0010 Hazen & Sawyer Final Design	1 ls					1,184,990			1,184,990
			20 Design Engineering	1 LS					1,184,990			1,184,990
			21. Design	1 LS					1,184,990			1,184,990

Partial Totals

Description	Amount	Totals	Hours	Rate	Cost Basis	Cost per Unit	Percent of Total
Labor	2,266,816		30,357.470 hrs				8.73%
Material	16,051,990						61.81%
Subcontract	5,135,123						19.77%
Equipment	604,355		10,012.496 hrs				2.33%
Other	731,112						2.82%
	24,789,396	24,789,396					95.46% 95.46%
Sales Tax	1,179,937			7.250 %	C		4.54%
Partial Total		25,969,333					

Certification Forms

C

EXHIBIT C

DOCUMENTS TO BE SUBMITTED WITH PROPOSAL

NON-COLLUSION DECLARATION
[Public Contract Code §7106]

Owner: City of Lemoore
Contract: Water Plant Project


The undersigned declares:

I am the Vice President of J.R. Filanc Construction Company, Inc. the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or to refrain from bidding. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid or proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 14, 2019, at Escondido [city], CA [state].



Signature

Norbert Schulz, Vice President

Print Name

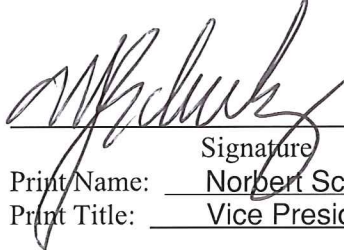
SUFFICIENT FUNDS DECLARATION
[Labor Code §2810]

Owner: City of Lemoore
Contract: Water Plant Project

I, Norbert Schulz, declare that I am the Vice President of
J.R. Filanc Construction Company, Inc., the entity making and submitting the proposal for the above Contract that
accompanies this Declaration, and that such proposal includes sufficient funds to permit
J.R. Filanc Construction Company, Inc. *[insert name of entity]* to comply with all local, state or federal labor laws or
regulations during the Contract, including payment of prevailing wage, and that J.R. Filanc Construction Company, Inc. *the*
entity will comply with the provisions of Labor Code section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct and executed on March 14 2019, at Escondido *[city]*, CA *[state]*.

Date: March 14, 2019



Signature
Print Name: Norbert Schulz
Print Title: Vice President

WORKERS' COMPENSATION CERTIFICATION
[Labor Code §1861]

Labor Code Section 3700, in relevant part, provides:

“Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers. Said certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees”

I am aware of the provisions of the Labor Code Section 3700 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 I will comply with such provisions before commencing the performance of the work of this contract. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

J.R. Filanc Construction Company, Inc.
Name of Contractor


Signature

Norbert Schulz, Vice President
Print Name

March 14, 2019
Date

(In accordance with Article 5 (commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

DRUG-FREE WORKPLACE CERTIFICATION
[Government Code §8350 *et seq.*]

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- (b) Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or organization's policy of maintaining a drug-free workplace;
 - (3) The availability of drug counseling, rehabilitation and employee-assistance programs;
 - (4) The penalties that may be imposed upon employees for drug abuse Violations;
- (c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the Owner determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract or grant awarded herein is subject to suspension of payments, termination, or both. I further understand that should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

I acknowledge that I am aware of the provisions of Government Code Section 8350 *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

J.R. Filanc Construction Company, Inc.

Name of Contractor

March 14, 2019

Date

Signature

Norbert Schulz, Vice President

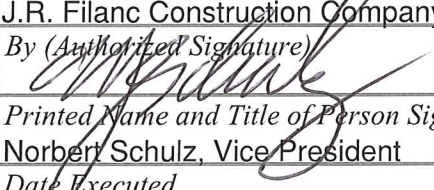
Print Name

IRAN CONTRACTING ACT CERTIFICATION
[Public Contract Code §2200 et seq.]

As required by Public Contract Code (“PCC”) section 2204 for contracts of \$1,000,000 or more, please insert proposer’s or financial institution’s name and Federal ID Number (if available) and complete **one** of the options below. Please note that California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid or propose on contracts. (PCC §2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the proposer/financial institution identified below, and the proposer/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by California Department of General Services (“DGS”) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/proposer, for 45 days or more, if that other person/proposer will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS. (PCC §2204(a).)

<i>Proposer Name/Financial Institution (Printed)</i> J.R. Filanc Construction Company, Inc.		<i>Federal ID Number (or n/a)</i> 95-1758372
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Norbert Schulz, Vice President		
<i>Date Executed</i> March 14, 2019	<i>Executed in</i> Escondido, California	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

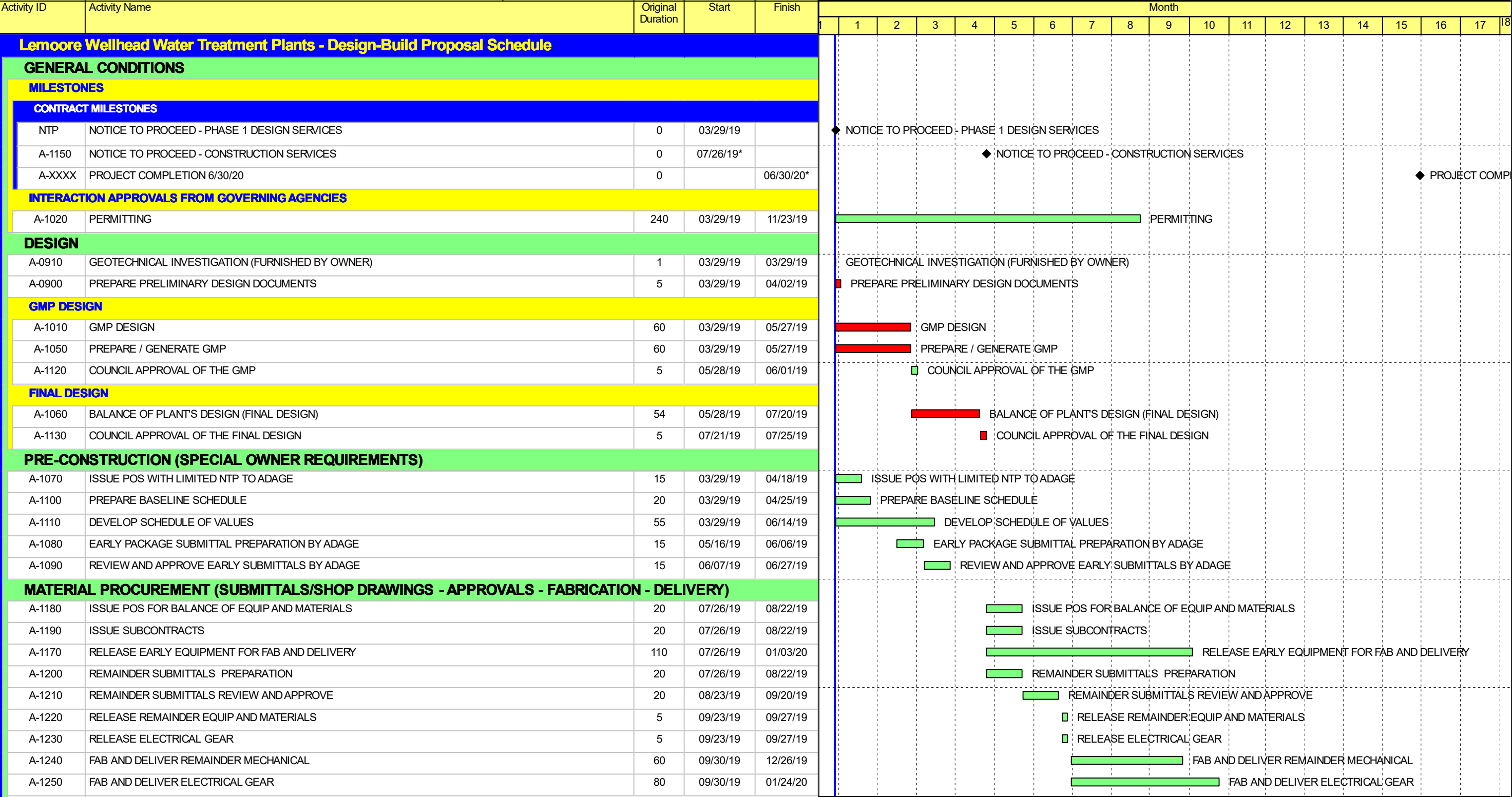
<i>Proposer Name/Financial Institution (Printed)</i> N/A	<i>Federal ID Number (or n/a)</i> N/A
<i>By (Authorized Signature)</i> N/A	
<i>Printed Name and Title of Person Signing</i> N/A	<i>Date Executed</i> N/A

Progressive Design-Build Contract Markup



Complete Progressive Design-Build Contract with Markup on the electronic version attached. Please find markup/comments only, following this page.

FILANC PROJECT BAR CHART
Lemoore Wellhead Water Treatment Plants - Design-Build
Proposal Schedule Exhibit C.3



Remaining Level of Effort

Actual Level of Effort

Actual Work

Remaining Work

Critical Remaining Work

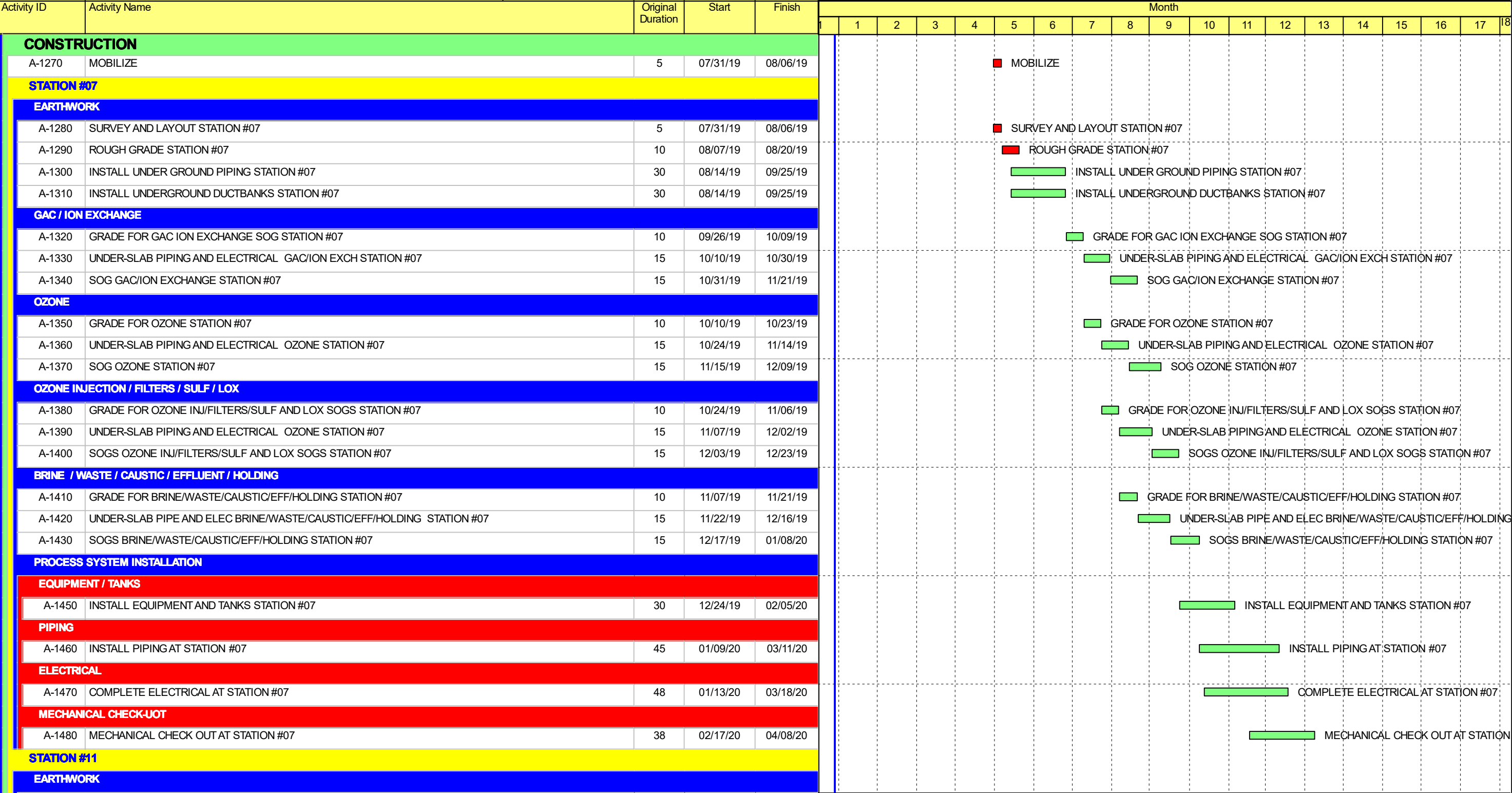
Milestone

TASK filter: All Activities

FILANC PROJECT BAR CHART
// PSI / MP-PC

Peterson Scheduling Inc (760) 413-8793			
Date	Revision	Checked	Approved

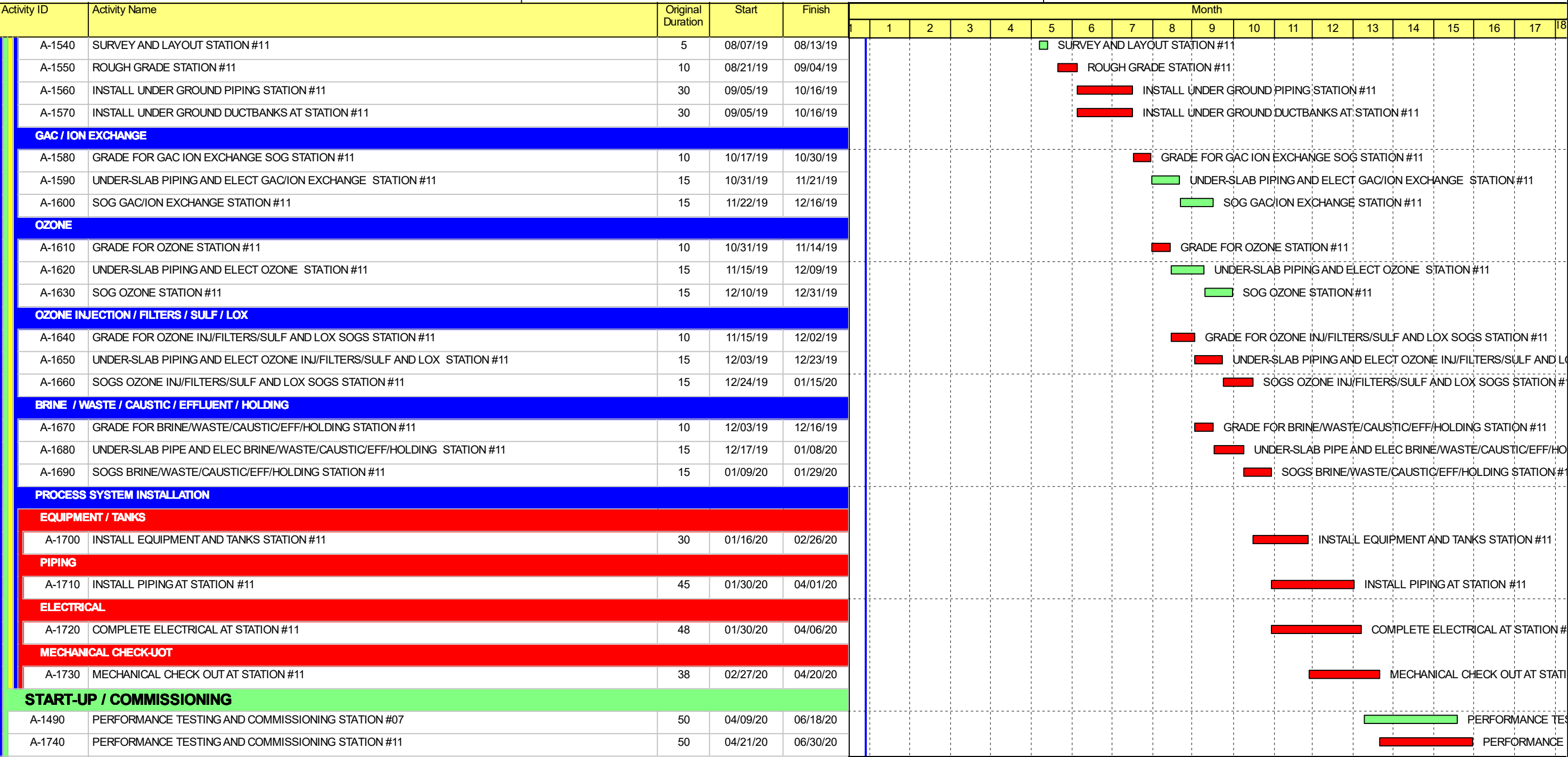
FILANC PROJECT BAR CHART
Lemoore Wellhead Water Treatment Plants - Design-Build
Proposal Schedule Exhibit C.3



TASK filter: All Activities
FILANC PROJECT BAR CHART
// PSI / MP-PC

Peterson Scheduling Inc (760) 413-8793			
Date	Revision	Checked	Approved

FILANC PROJECT BAR CHART
Lemoore Wellhead Water Treatment Plants - Design-Build
Proposal Schedule Exhibit C.3



Remaining Level of Effort

Actual Level of Effort

Actual Work

Remaining Work

Critical Remaining Work

Milestone

TASK filter: All Activities

FILANC PROJECT BAR CHART

// PSI / MP-PC

Peterson Scheduling Inc (760) 413-8793			
Date	Revision	Checked	Approved

RESOLUTION NO. 2019-06

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LEMOORE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY
OF WATER REVENUE BONDS, THE EXECUTION AND DELIVERY OF
AN INDENTURE AND OTHER DOCUMENTS IN CONNECTION WITH
SUCH BONDS AND TAKING RELATED ACTIONS**

WHEREAS, the City of Lemoore (the "**City**") is a municipal corporation organized and existing under the laws and Constitution of the State of California (the "**State**") and, upon voter approval in March 2000, became a charter city pursuant to Section 3 of Article XI of the State Constitution; and

WHEREAS, the City operates a waterworks system (such system, including all additions, improvements and extensions thereto, the "**Water System**"); and

WHEREAS, on April 3, 2018, the City Council adopted Ordinance No. 2018-02, adding Title 10 to the City's Municipal Code, authorizing the City to issue enterprise revenue bonds (the "**Enterprise Bond Ordinance**"), which Enterprise Bond Ordinance became effective as of May 3, 2018; and

WHEREAS, the City is contemplating the issuance of bonds (the "**Bonds**") to finance a costs for capital projects of the Water System (the "**Projects**"), among which include: (i) the construction of new water treatment plants; (ii) the installation of a new replacement pipe that will extend from a well field five miles north of the City; (iii) the construction of a new water well in the southeast portion of the City; and (iv) the acquisition and installation a new water storage tank; and

WHEREAS, the Bonds will be issued pursuant to the Enterprise Bond Ordinance and an Indenture (the "**Indenture**"), to be executed by and between the City and the bond trustee (the "**Trustee**"); and

WHEREAS, the Bonds shall be secured by a pledge of certain revenues of the Water System as provided in the Indenture; and

WHEREAS, there has been presented to the City Council a Purchase Contract (the "**Purchase Contract**") with Stifel, Nicolaus & Company, Incorporated, as underwriter (the "**Underwriter**"), pursuant to which the Underwriter will purchase such bonds for reoffering to the public;

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED THE CITY COUNCIL OF THE CITY OF LEMOORE AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. Subject to the parameters set forth in this Resolution, the issuance of the Bonds pursuant to the terms of the Indenture is hereby authorized and approved. The form of the

Indenture to be entered into by and between the City and the Trustee, and on file in the office of the City Clerk, is hereby approved. Each of the Mayor (or in the Mayor's absence, the Mayor Pro-Tem) and the City Manager (each, an "Authorized Officer"), acting individually, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Indenture in substantially said form, with such changes therein as the Authorized Officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The appointment of U.S. Bank National Association, as Trustee under the Indenture is hereby approved.

Section 4. The Purchase Contract, proposed to be entered into by and between the City and the Underwriter, in the form on file with the City Clerk, is hereby approved. Subject to the parameters set forth below, each Authorized Officer, acting individually, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Purchase Contract in substantially said form, with such changes therein as the Authorized Officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. The authorization set forth in this Resolution regarding the issuance and sale of the Bonds is subject to the following parameters: (i) the aggregate principal amount of the Bonds shall not exceed \$35,000,000; (ii) the true interest cost with respect to the Bonds shall not exceed 5.00 percent; and (iii) the Underwriter's compensation (i.e., underwriter's discount), exclusive of any original issue discount, shall not exceed 0.75 percent of the aggregate principal amount of the Bonds. The authorization and powers delegated by this Resolution with respect to the issuance and sale of the Bonds shall be valid for a period of six months from the date of adoption of this Resolution.

Section 6. The Preliminary Official Statement relating to the Bonds (the "Preliminary Official Statement"), in the form presented at this meeting and on file with the City Clerk, is hereby approved. Each Authorized Officer, acting individually, is hereby authorized and directed, for and in the name and on behalf of the City, to cause the Preliminary Official Statement in substantially said form, with such additions or changes therein as the Mayor (or the Mayor Pro-Tempore, as the case may be) or the City Manager may approve, to be deemed final for the purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934. The distribution by the Underwriter of copies of the Preliminary Official Statement to potential purchasers of the Bonds is hereby approved.

Section 7. Each Authorized Officer, acting individually, is hereby authorized and directed, for and in the name and on behalf of the City, to cause the Preliminary Official Statement to be brought into the form of a final Official Statement (the "Official Statement"), and to execute the same for and in the name and on behalf of the City, with such changes therein as the Authorized Officer may approve, such approval to be conclusively evidenced by the execution and delivery thereof. The distribution and use of the Official Statement by the Underwriter in connection with the sale of the Bonds are hereby approved.

Section 8. The Continuing Disclosure Certificate (the “**Continuing Disclosure Certificate**”), in the form on file with the City Clerk, is hereby approved. Each Authorized Officer, acting individually, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such changes therein as the Authorized Officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. Reference is hereby made to the Debt Issuance and Management Policy, adopted pursuant to Resolution No. 2018-13, adopted by this City Council on March 20, 2018. The City Council hereby finds that the issuance of the Bonds is consistent with the Debt Issuance and Management Policy

Section 10. The Mayor, the Mayor Pro Tem, the City Manager, the Assistant City Manager and all other officers of the City are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents that they may deem necessary or advisable for the sale, issuance and delivery of the Bonds (including, but not limited to, the obtaining of bond insurance or other types of credit enhancement for the Bonds, the purchase of any debt service reserve fund insurance policy or surety bond), or otherwise to effectuate the purposes of this Resolution, the Indenture, the Purchase Contract, the Official Statement and the Continuing Disclosure Certificate and any such actions previously taken by such officers are hereby ratified and confirmed.

Section 11. This Resolution will become effective upon adoption.

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PASSED, APPROVED AND ADOPTED by the City Council of the City of Lemoore at a regular meeting this 5th day of February, 2019, by the following vote:

AYES: BILLINGSLEY, BROWN, LYONS, NEAL

NOES: BLAIR

ABSENT: NONE

ABSTAIN: NONE

APPROVED:


Eddie Neal, Mayor

ATTEST:


Marisa Avalos, Deputy City Clerk

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

This agreement is effective April 16, 2019, by and between the City of Lemoore, Kings County, California, hereinafter called the "City" or "Owner," and J.R. Filanc Construction, hereinafter called the "Design-Builder" (the "Agreement").

WITNESSETH: That the Design-Builder and the Owner for the consideration hereinafter named agree to enter into this Agreement for design and construction of the Project pursuant to Public Contract Code sections 22160 et seq., as follows:

ARTICLE I. SCOPE OF WORK. For the Owner's Water Treatment Plant Project in Lemoore, California (the "Project"), the Design-Builder agrees to furnish all labor, equipment, and materials, including tools, implements, and appliances required, and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers. The Work includes all obligations of the Design-Builder under this Agreement, the Contract, and the Contract Documents (see Article II, below), including all design and construction services necessary to complete the Project.

A. Design Services

The Design-Builder shall complete the design of the Project within the parameters of the approved pilot program and Owner's requirements for design of the Project (the "Design Requirements," or "Bridging Documents") that were included in the Request for Qualifications ("RFQ") and on which the Design-Builder based its SOQ, and within the other requirements of the Contract Documents (including Article VI, below).

The Design-Builder shall prepare a 70 % complete design for the Owner's review and approval, and then prepare a 100% complete design for the Owner's review and approval.

Constructability review of the design and value engineering are the responsibility of the Design-Builder, but Owner may provide its own constructability or value engineering comments when reviewing the 70% or 100% designs.

After obtaining Owner approval of the 100% complete design, the Design-Builder shall submit it to the California Division of Drinking Water ("DDW") for review. The Design-Builder shall make all changes in the design as may be required by DDW and shall obtain all necessary permits from the City Building Department, local fire department, and Kings County ("Design"). If any such changes reduce the scope of the Design Requirements, then the Owner shall be entitled to a deductive change order. If any such changes are outside the scope of the Design Requirements, then the Design-Builder shall be entitled to a change order to the extent that the change increases the Design-Builder's design costs.

B. Construction Services

The Design-Builder may not commence construction until it obtains all required permits for the Design. The Design-Builder shall perform all construction necessary to construct the Work in compliance with the Design and the Contract Documents, including the General Conditions.

ARTICLE II. CONTRACT DOCUMENTS. The Design-Builder and the Owner agree that the following documents form the Contract Documents:

- A. The RFQ, including all attachments, appendices and addenda.
- B. The Design-Builder's statement of qualifications in response to the RFQ ("SOQ"), including all attachments, certifications and declarations required to be submitted with the SOQ.
- C. This Agreement.
- D. The General Conditions.
- E. Any written and City Council-approved agreement to modify this Agreement, such as an amendment or change order.
- F. The payment bond.
- G. The performance bond.
- H. The documents listed in Article 1.1.1 of the General Conditions.

This Agreement incorporates the above Contract Documents by reference, and together they constitute the "Contract."

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.

Time is of the essence in this Contract, and the time of Completion for the Work (the "Contract Time") shall be four hundred sixty (460) calendar days from (a) the date of commencement of the Work as established in the Owner's Notice to Proceed, or (b) if no such date is established in a Notice to Proceed from Owner, the date ten (10) calendar days after award of the Contract.

In addition, the Design-Builder shall meet the following milestone deadlines:

- City Council approval of the 70% design of the Project within ninety (90) calendar days from (a) the date of commencement of the Work as established in the Owner's Notice to Proceed, or (b) if no other date is established in a Notice to Proceed from Owner, the date ten (10) calendar days after award of the Contract;
- City Council approval of the Final 100% Plans and Specifications of the Project within thirty (30) calendar days from approval of the 70% design; and
- Completion of the construction of the Project within three hundred and forty (340) calendar days from approval of the Final 100% Plans and Specifications.

The time period between (a) Design-Builder's submission of the City Council-approved Final 100% Plans and Specifications to DDW, and (b) DDW's response to the Final 100% Plans and Specifications, shall not count against the Contract Time, and the Design-Builder shall be entitled to a time extension for such time period.

Failure to Complete the Work within the Contract Time, or by the milestone deadlines noted above, in the manner provided for by the Contract Documents shall subject the Design-Builder to liquidated damages. For purposes of liquidated damages, the concept of "substantial completion" shall constitute Completion and is part of the Contract Documents. Substantial completion is defined as when the new facilities are producing water and Owner has beneficial use of them. All sites and plants must meet Substantial Completion within the Contract Time. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Substantially Completed within the Contract Time, or by the milestone deadlines noted above, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration, supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the Parties agree that the amount of damages which the Owner shall directly incur upon

failure of the Design-Builder to Complete the Work within the Contract Time, or by the milestone deadlines noted above, shall be \$1,000 for each calendar day of delay of such Completion.

If the Design-Builder becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Design-Builder until the liability of the Design-Builder under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Design-Builder incurred under this Article, the Design-Builder and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time for Completion and liquidated damages.

ARTICLE IV. PAYMENT AND RETENTION. Owner shall pay Design-Builder a total amount for the Work ("GMP or "Contract Sum") which shall be made up of two components: (i) the Design Fee; and (ii) the Construction Fee. The Design Fee shall compensate Design-Builder for the design services as set forth in Article VI. Consistent with the SOQ, the Design Fee shall be \$525,260, and shall be paid in four equal monthly installments of \$131,315.

The Construction Fee will be calculated following: (i) Design-Builder's completion of its Design Services in accordance with Article VI; (ii) final approval of the Designs; and (iii) the selection of all subcontractors in accordance with Public Contract Code section 22166(b). Design-Builder shall provide Owner with objectively verifiable information of its costs to perform the Work and a written rationale for the proposed GMP, including documentation sufficient to support the calculation. Design-Builder's written rationale shall detail the construction cost for the Project, consisting of (a) all subcontracts to be awarded by Design-Builder for the Project, (b) any separately awarded contracts for materials and supplies for the Project, and (c) and all related overhead and profit.

The proposed Construction Fee shall be approved or rejected by the Owner at a public meeting before Design-Builder may proceed with construction of the Project. Once approved, the Parties shall execute **Exhibit B** of this Agreement, setting forth the GMP, whereupon **Exhibit B** shall be incorporated into, and become part of the Contract Documents. If the Owner rejects the Construction Fee and requests another calculation from Design-Builder, then Design-Builder shall submit another calculation complying with this Section's procedures. If the Owner rejects the Construction Fee and does not request another calculation from Design-Builder, then such rejection will act as a Termination for Convenience pursuant to the General Conditions. In such event, Design-Builder shall be entitled to payment for design services satisfactorily completed, in an amount not to exceed the Design Fee. In the event of Termination for Convenience, the City reserves the absolute right to use the plans in accordance with Article VI(f), and bid the Project. In such event, the City reserves the right to request Design-Builder to act as the Project architect at an additional cost to be agreed upon in writing.

Except as otherwise provided in the General Conditions, the Design-Builder shall assume the risk of all costs in excess of the GMP in the performance of such work and shall not be entitled to additional payments because of such excess costs. Should the Design-Builder believe that it is entitled to an increase in the GMP or a time extension for completion, it must request it pursuant to the procedures in the General Conditions for change orders and claims. The Design-Builder shall submit monthly payment applications based upon the progress of the Work, as described in the Contract Documents, including Article 9 of the General Conditions.

ARTICLE V. CHANGES. Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions, and shall be in the form of a written amendment or change order to this Agreement approved by the Owner's governing body.

ARTICLE VI. DESIGN RESPONSIBILITIES OF THE DESIGN-BUILDER.

A. Definitions.

1. Design Services. "Design Services" shall mean the Design-Builder's design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, foreseeably required under law, the standard of care, and this Agreement, to complete the design of the Work, obtain all necessary permits for the Design, and administer the construction of the Work, as further defined in this Article.

2. Wrongful Acts or Omissions. "Wrongful Acts or Omissions" shall mean Design-Builder's acts or omissions in breach of this Agreement, the applicable standard of care, or law.

B. Standard of Care.

City retains Design-Builder to perform, and Design-Builder agrees to provide to City, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Design-Builder agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Design-Builder under or required by this Agreement shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects or engineers in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the City; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). Design-Builder shall be responsible for the completeness and accuracy of the plans and specifications.

C. Design Services.

1. General.

The Design-Builder shall complete the design for the Project in conformance to the Contract Documents, including the Bridging Documents, and applicable law.

The City shall have the right to add or delete from the Design-Builder's scope of Design Services as it may determine is necessary for the best interests of the Project and/or the City. Design-Builder shall expeditiously and diligently perform all of its work and obligations under this Agreement. Design-Builder may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with City.

All personnel provided by Design-Builder shall be qualified to perform the services for which they are provided. Design-Builder shall obtain City's written approval of each employee of Design-Builder who provides services under this Agreement, and written approval of each change of employees who are providing such services. City may, upon thirty (30) days' written notice, cause Design-Builder to remove a person from the Project if he/she has failed to perform to City's satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Design-Builder shall provide them immediately.

Design-Builder is an agent of City and shall reasonably represent the City at all times in relation to the Project.

Design-Builder shall be fully licensed as required by law at all times when providing services under this Agreement.

2. Consultants.

The Design-Builder shall employ or retain at Design-Builder's own expense, engineers and other consultants necessary to Design-Builder's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Design-Builder for this Project shall be approved by City prior to their commencement of work. The Design-Builder's consultants shall be employed or retained to provide assistance during all aspects of performance of the Design Services for the Project, including but not limited to review of schedules, shop drawings, samples, submittals, and requests for information. The Design-Builder's consultants shall also conduct periodic inspections of the site to determine conformance with the approved design and shall participate in the final inspections and development of any "punch list" items. Design-Builder must disclose to City all such consultants employed or retained, and the compensation paid to those retained.

Design-Builder shall confer and cooperate with consultants retained by City as may be requested by City or as reasonably necessary. City may retain an architect or construction manager to assist City in performance of City's duties for the Project.

If not done by the City's architect for the Project ("Architect"), the Design-Builder shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the City, and the City shall own and, upon termination of this Agreement or Completion of the Project, shall have returned to it by Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

If not done by the Architect, Design-Builder shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the City, and the City shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

3. Schematic Design Phase.

The Design-Builder shall treat the Bridging Documents as the schematic design for the Project. The Design-Builder shall complete the design of the Project in conformance with the Bridging Documents, as described in this Agreement.

4. Design Development Phase.

Design-Builder shall provide all necessary architectural and engineering services to prepare design development documents for the City Council's written approval, which fix and describe the size and character of the Project and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. The design development documents shall represent a 70% complete design, and shall conform to the Bridging Documents and other Contract Documents. Design-Builder shall submit the 70% development design to the City for its review and for Council approval. Design-Builder is encouraged to make recommendations to City regarding benefits that could be realized by altering the scope of work or completion deadlines. If City incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Design-Builder shall revise the design development documents as necessary until the City Council approves them in writing. Design-Builder shall attend, and present at three (3) meetings of the City Council as may be necessary to obtain the Council's approval of the design development documents.

Design-Builder shall prepare necessary documents for and oversee the processing of City's application for and obtaining of required approvals from the DDW, the City Building Department, local fire department, Kings County and other agencies exercising jurisdiction over the Project. Design-Builder shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Design-Builder shall provide a copy of all such documents to the City.

5. Completion of Design Phase.

Following the City Council's written approval of the design development documents, the Design-Builder shall prepare for the written approval of the City Council the 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. The 100% complete design shall conform to, comply with, and satisfy the Bridging Documents and other Contract Documents, as well as all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the ADA. As part of the 100% complete design, Design-Builder shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages.

Prior to submission of the 100% complete design, the Design-Builder shall submit the design to the City for review and for Council approval. Design-Builder shall attend, and present at three (3) meetings of the City Council as may be necessary to obtain written approval of the 100% complete design. After approval by the City Council, the Design-Builder shall submit the 100% complete design, and make the necessary corrections to secure all required approval.

6. Construction Phase.

The construction phase shall begin on the date that Design-Builder obtains complete approval of the 100% complete design.

The Design-Builder shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* Design-Builder shall provide a copy of all such notifications to the City.

After approval of the design, the Design-Builder may select subcontractors for performance of construction work, and if the scope of a subcontractor's construction work is greater than 0.5% of the total value of the contract price allocable to construction work, then the Design-Builder shall use the procedures specified in Public Contract Code section 22166(b) to select that construction subcontractor. The Design-Builder shall award each construction subcontract on a best value basis.

The Design-Builder shall submit to the City and its Architect all schedules, shop drawings, samples and other submissions as set forth in the Contract Documents. The City and its Architect shall take action within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case the City and its Architect shall take such action as soon as possible. If the City and its Architect are not able to take such action within the required time due to reasons beyond their control, they may take action within a reasonable period of time under the circumstances; however, they shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the Design-Builder immediately after such determination with an explanation as to why they cannot take action within the time required, what they are doing to expedite its response, when they expect to be able to issue a response, and what action, if any, should be taken by the Design-Builder in the meantime to mitigate delays and/or costs. The City and its Architect will have the authority to reject work and materials which do not conform to the Contract Documents, including the Bridging Documents. The approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the reasonable judgment of the City, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the City and its Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The City and its Architect will also recommend substitution of materials or equipment when, in their reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

The Design-Builder shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the City informed in writing of the progress of the Project.

The Design-Builder will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the City or Design-Builder is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The Parties recognize, however, that neither Design-Builder nor the City is trained or licensed in the recognition or remediation of Hazardous Substances.

Design-Builder shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the City upon Completion of the Project. Design-Builder shall also assemble and deliver to the City all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required under the Contract Documents.

When construction is properly completed, Design-Builder shall provide such certification as to Hazardous Substances as is required of architects for such projects.

Notwithstanding any other provision of this Agreement, the Design-Builder will not be entitled to a change order or additional payment if the underlying issue was caused by a Wrongful Act or Omission. At its own expense, the Design-Builder shall perform all Work caused or necessitated by the Wrongful Act or Omissions. Design-Builder is responsible to ensure that the 100% complete design, and the finished Project based on that design, comply with all standards imposed by the ADA, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Design-Builder has violated any of the above-referenced laws, or the City, because of Design-Builder's Wrongful Acts or Omissions, has violated any of the above-referenced laws, Design-Builder shall remedy the violation at its own cost. **Design-Builder shall indemnify, defend and hold the City harmless under Section VI.G of this Agreement for any breach of this paragraph due to Design-Builder's negligence, recklessness or willful misconduct.** In the event that the Design-Builder is or becomes aware of possible non-compliance with the foregoing standards, Design-Builder shall have a duty immediately to notify the City in writing of the possible non-compliance.

7. Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Design-Builder, whether supplied by the City or by others, which are relied upon, altered or otherwise utilized by Design-Builder, Design-Builder shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Design-Builder under this Agreement.

D. Errors and Omissions Insurance.

Prior to the commencement of services under this Agreement, the Design-Builder shall furnish to the City satisfactory proof that the Design-Builder has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Five Million Dollars (\$5,000,000) and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars

(\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Design-Builder shall provide errors and omissions insurance on a claims-made basis.

Each of Design-Builder's professional sub-consultants (including consultants of Design-Builder) shall comply with this Section, and Design-Builder shall include such provisions in its contracts with them.

Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

Should any of the required insurance be provided under a claims-made form, Design-Builder shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the completion of construction (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Design-Builder's obligations to the City under any provision, including any duty to indemnify and defend the City.

Design-Builder shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the City for approval. Thereafter Design-Builder shall produce a certified copy of any insurance policy required under this Article upon written request of the City.

At the time of making application for any extension of time, Design-Builder shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

If the Design-Builder fails to maintain such insurance, the City may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Design-Builder under this Agreement.

Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Design-Builder may be held responsible for the payment of damages resulting from the Design-Builder's operations.

Each of Design-Builder's consultants shall comply with this Article, and Design-Builder shall include such provisions in its contracts with them.

Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the City.

Any failure to maintain any item of the required insurance may, at the City's sole option, be sufficient cause for termination of this Agreement.

E. Compliance with Laws.

Design-Builder shall be familiar with, and Design-Builder and Design-Builder's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the ADA.

F. Ownership of Documents; Licensing of Intellectual Property.

All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement shall be and shall remain the property of the City for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project).

The Design-Builder will provide the City with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement, and will retain, on the City's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Design-Builder's files for a period of no less than fifteen (15) years. Design-Builder shall promptly make available to the City any original documents it has retained under this Agreement upon request by the City.

This Agreement creates a non-exclusive and perpetual license for the City to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project). The Design-Builder shall require any and all subcontractors and consultants to agree in writing that the City is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization or other alterations or revisions to this Project, but also for any re-use by the City in relation to other projects. The only other term or condition of such re-use shall be that if the City reuses the plans prepared by the Design-Builder and retains another certified architect or structural engineer for the preparation of those plans for the re-

use, the City shall indemnify and hold harmless the Design-Builder and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by law.

Design-Builder represents and warrants that Design-Builder has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Design-Builder or its consultants prepares or causes to be prepared under this Agreement. **Design-Builder shall indemnify, defend and hold the City harmless under Section VI.G of this Agreement for any breach of this Section due to Design-Builder's negligence, recklessness or willful misconduct.** The Design-Builder makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Design-Builder and provided to Design-Builder by the City.

G. Indemnity Regarding Design.

Design-Builder Indemnification – **To the fullest extent permitted by law, including California Civil Code section 2782.8, the Design-Builder shall defend, indemnify, and hold harmless the City, the City Council, each member of the Council, and their officers, agents and employees (“City Indemnitees”) against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Design-Builder, the Design-Builder's officers, employees, or consultants in performing or failing to perform any design work, services, or functions provided for, referred to, or in any way connected with any design work, services, or functions to be performed under this Agreement.**

For purposes of this Section VI.G only, (a) “claims” means all claims, demands, actions and suits brought by third parties against the City Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations, and (b) the Design-Builder's defense obligation shall include but not be limited to (i) provision of a full and complete defense of the City Indemnitees by an attorney chosen or approved by the City, and (ii) payment of the City's attorneys' fees, experts' fees, and all other litigation costs incurred in the City's defense (“Defense Costs”) within thirty (30) days of Design-Builder's receipt of each invoice for such Defense Costs. After conclusion of the action against the City Indemnitees (including all appeals), the City shall reimburse Design-Builder for the portion of the Defense Costs proportionate to the percentage of fault of parties other than the Design-Builder (“Other Parties”) for the amounts paid or owed to the third party by the City Indemnitees, but this duty of reimbursement shall only be owed by the City if there are specific findings in a settlement agreement, arbitration award, or verdict as to the Other Parties' percentage of fault, and the Design-Builder's percentage of fault, for those amounts paid or owed to the third party.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Design-Builder shall meet and confer with the Other Parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Builder.

City Indemnification for Use of Third Party Materials – The City shall defend, indemnify, and hold harmless the Design-Builder and its employees against any and all copyright infringement claims by any design professional formerly retained by the City arising out of Design-Builder's completion, use or re- use of that former design professional's designs or contract documents in performing this Agreement. Design-Builder shall be entitled to such indemnification only if each of the following conditions are met:

(a) Design-Builder actually re-draws or completes such other designs or contract documents; (b) Design-Builder complies with the provisions of this Agreement regarding use of materials prepared by other design professionals; (c) the City has supplied Design-Builder with the previously prepared documents or materials; and (d) the City expressly requests that the Design-Builder utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, the City does not waive any immunities.

ARTICLE VII. TERMINATION. The Owner or Design-Builder may terminate the Contract as provided in the General Conditions.

ARTICLE VIII. PREVAILING WAGES. The Project is a public work. The Work shall be performed as a public work and pursuant to the provisions of section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Design-Builder and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Design-Builder and any subcontractor under the Design-Builder as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Builder.

The Design-Builder and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Design-Builder and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner at least monthly.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or

to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

ARTICLE IX. WORKING HOURS. In accordance with the provisions of sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Design-Builder or a subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per period of noncompliance. and every subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Design-Builder shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Design-Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

ARTICLE X. APPRENTICES. The Design-Builder agrees to comply with Chapter 1, Part 7, Division 2, sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Design-Builder for all apprenticeable occupations.

ARTICLE XI. SKILLED AND TRAINED WORKFORCE. The Design-Builder and its subcontractors at every tier shall comply with Public Contract Code sections 2600-2602 and 22164, which require the Design-Builder and its subcontractors at every tier to employ a skilled and trained workforce, as defined herein, to perform all Work that falls within an apprenticeable occupation in the building and construction trades.

For the purpose of this Article, the following definitions apply:

- A. "Apprenticeable occupation" means an occupation for which the Division of Apprenticeship Standards of the DIR had approved an apprenticeship program before January 1, 2014.
- B. "Graduate of an apprenticeship program" means either (a) an individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the DIR pursuant to

section 3075 of the Labor Code, or (b) an individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to apprenticeship regulations adopted by the federal Secretary of Labor. (See Public Contract Code §2601(c).)

- C. “Skilled and trained workforce” means that all of the workers are either apprentices registered in an apprenticeship program approved by the DIR, or skilled journeypersons, with at least 30 percent of the skilled journeypersons employed on the Project in the following occupations must be graduates of an apprenticeship program: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher. At least 50 percent of the skilled journeypersons employed on the Project in all other apprenticeable occupations must be graduates of an apprenticeship program for work performed on or after January 1, 2019 and before January 1, 2020. The 50 percent requirement will increase over time (see details in Public Contract Code §2601(d)(2)). Pursuant to sections 2600-2602 of the Public Contract Code, the percentage requirement may be partially met in some apprenticeable occupations by skilled journeypersons who commenced working before an apprenticeship program existed, may be met by the hours performed by the skilled journeypersons, need not be met if less than ten (10) hours of work were performed, and need not be met by some subcontractors.
- D. “Skilled journeyperson” means any of the following: (i) a person who has graduated from an apprenticeship program for the applicable occupation that was approved by the DIR, (ii) a person who has graduated from an apprenticeship program for the applicable occupation that was located outside of California and approved for federal purposes in accordance with regulations adopted by the federal Secretary of Labor, or (iii) a person who has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program approved by the DIR.

For each calendar month during the Work, Design-Builder shall provide a compliance report to the Owner for each contractor or subcontractor before the fifth day of each month, using the format attached hereto as ***Exhibit A***, or in a substantially similar format, demonstrating compliance with this Article, ***except that*** a compliance report is not required for any occupation exempted under Public Contract Code §2601(d)(2)(B)-(D). Such monthly compliance reports shall be subject to the California Public Records Act (commencing with Government Code section 6250), and shall be open to public inspection.

If Contractor fails to comply with this Section 13 then Owner, at its sole discretion, may terminate the Agreement pursuant to Article 14 of the General Conditions, in addition to any other rights or remedies provided to Owner in the Contract Documents. Notwithstanding any other provision of the Agreement or the General Conditions if Contractor fails to provide any required monthly compliance report pursuant to this Section 13 on or before the fifth day of the following month, or provides an incomplete report, Owner shall withhold further payments to Contractor that would otherwise be due and payable consistent with Public Contract Code section 2602(b).

ARTICLE XII. DDW REVIEW PROCESS. The Design-Builder must comply with the applicable requirements of the DDW review process. Design-Builder shall be responsible for any additional fees related to review of proposed changes. If inspected Work is found to be in non-compliance with the construction documents or the DDW-approved testing and inspection, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Design-Builder's expense, in order to permit inspection and approval of the covered work in accordance with the DDW Review Process.

ARTICLE XIII. INDEMNIFICATION AND INSURANCE. The Design-Builder will defend, indemnify and hold harmless the Owner, its City Council, officers, agents, trustees, employees and others as provided in the Contract Documents, including the General Conditions.

By this statement the Design-Builder represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Design-Builder shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Design-Builder shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$4,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$2,000,000 per accident for bodily injury and property damage combined single limit.

ARTICLE XIV. ENTIRE AGREEMENT. The Contract constitutes the entire agreement between the Parties relating to the Work, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, including the Owner's award of the Contract to Design-Builder, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XV. EXECUTION OF OTHER DOCUMENTS. The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE XVI. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XVII. BINDING EFFECT. Design-Builder, by execution of this Agreement, acknowledges that Design-Builder has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Design-Builder and the Owner and their respective successors and assigns.

ARTICLE XVIII. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM. If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for

the County of Kings, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

ARTICLE XIX. AMENDMENTS. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, including a change order, signed by the Parties and approved or ratified by the City Council.

ARTICLE XX. ASSIGNMENT OF CONTRACT. The Design-Builder shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XXI. WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

DESIGN-BUILDER:

a California corporation

BY: _____

TITLE: President, Vice President, or Chairman

BY: _____
TITLE: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

OWNER:

City of Lemoore

BY: _____

TITLE: City Manager

~~CALIFORNIA ARCHITECT LICENSE~~

~~NO. LICENSE EXPIRATION DATE~~

~~CALIFORNIA CONTRACTOR'S LICENSE NO.~~

~~LICENSE EXPIRATION DATE~~

NOTE: Design-Builder must give the full business address of the Design-Builder and sign with Design-Builder's usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and

designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

EXHIBIT A

**FORM FOR MONTHLY REPORTING OF
SKILLED AND TRAINED WORKFORCE**

SKILLED AND TRAINED WORKFORCE COMPLIANCE REPORT
(Public Contract Code §§2600 et seq.)

Owner: City of Lemoore

Contract: Water Treatment Plant Project

Lemoore, Kings County, California

The undersigned declares:

I am the _____ of _____, the “Design-Builder” on the Project identified above. I hereby certify that during the month of _____, 20__, there were a total of _____ workers employed in the apprenticeable occupations designated under Public Contract Code section 2600 *et seq.* and these workers performed a total of _____ hours of work within an apprenticeable occupation. I certify that all of these workers in an apprenticeable occupation are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Department of Industrial Relations (DIR), and that all of these hours performed in this apprenticeable occupation were performed by such skilled journeypersons and apprentices. I certify that each subcontractor who performed work during the aforementioned month has provided to Contractor a Skilled and Trained Workforce Compliance Report consistent with Public Contract Code section 2602.

Following review of all Skilled and Trained Workforce Compliance Reports, I also certify as follows [*check applicable box(es)*]:

☐ **A. Exemption from Percentage Compliance**

Of the above total number of hours of work performed by workers employed in an apprenticeable occupation this month, _____ were performed by skilled journeypersons, which is less than the statutory threshold of ten (10) hours.

☐ **B. Percentage Compliance by Number of Workers**

1. Of the above total number of workers employed in an apprenticeable occupation this month, _____ were apprentices registered in an apprenticeship program approved by the DIR.
2. Of the above total number of workers employed in an apprenticeable occupation in this month, _____ were skilled journeypersons. Included in these skilled journeypersons are the following:
 - a. _____ who are graduates of an apprenticeship program for the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile drive, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher;

- b. [REDACTED] who are graduates of another apprenticeship program not listed in subsection (a) for the applicable occupation; and
- c. [REDACTED] who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; and (b) these workers commenced working in this apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined number of skilled journeypersons listed in Section B.1 and Section B.2 meets the requirements as contained in Education Code section 17407.5 and Public Contract Code sections 2600-2602, with no more than half of this percentage requirement being satisfied by the number of skilled journeypersons listed in Section B.2.c.

☐ **C. Percentage Compliance by Number of Hours**

- 1. Of the above total number of hours of work performed by workers employed in this apprenticeable occupation this month, [REDACTED] hours were performed by apprentices registered in an apprenticeship program approved by the DIR.
- 2. Of the above total number of hours of work performed by workers employed in this apprenticeable occupation in this month, [REDACTED] hours were performed by skilled journeypersons. Included in these hours are the following:
 - a. [REDACTED] hours performed by graduates of an apprenticeship program for the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher;
 - b. [REDACTED] hours performed by graduates of another apprenticeship program not listed in subsection (a) for the applicable occupation; and
 - c. [REDACTED] hours performed by skilled journeypersons who are not graduates of an approved apprenticeship program for this apprenticeable occupation, but (a) no apprenticeship program had been approved by the DIR before January 1, 1995, for this apprenticeable occupation; and (b) these workers commenced working in this apprenticeable occupation before DIR approval of an apprenticeship program for that occupation in the county in which the Project is located.

The combined hours of work performed by skilled journeypersons listed in Section C.1 and Section C.2 meets the percentage requirements as set forth in Education Code section 17407.5 and Public Contract Code sections 2600-2602, with no more than half of this percentage requirement being satisfied by the hours performed by skilled journeypersons listed in Section C.2.c.

☐ **D. Failure of a Subcontractor to Demonstrate Compliance**

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of the following subcontractor(s):

The value of the monthly billing for the listed subcontractor(s) is \$. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

I certify that the subcontractor(s) will be substituted pursuant to Public Contract Code section 4100 *et seq.*, unless that subcontractor provides a plan to achieve compliance consistent with Public Contract Code section 2602(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20_ , at _____[city], California.

[Name]

EXHIBIT B

FINAL GMP AND CONSTRUCTION FEE

[TO BE COMPLETED AND EXECUTED FOLLOWING COUNCIL APPROVAL]

The GMP shall be \$_____. The GMP consists of: (i) the Design Fee of \$_____; and (ii) the Construction Fee of_____, and shall be paid in accordance with Article IV. Except as otherwise provided in the General Conditions, the Design-Builder shall assume the risk of all costs in excess of the GMP in the performance of such work and shall not be entitled to additional payments because of such excess costs.

DESIGN-BUILDER:

a California corporation

BY: _____

TITLE: President, Vice President, or Chairman

BY: _____
TITLE: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

OWNER:

City of Lemoore

BY: _____

TITLE: City Manager

EXHIBIT E

GENERAL CONDITIONS

ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The “Contract Documents” consist of the Agreement between Owner and Design-Builder (hereinafter the Agreement), all attachments and exhibits to the Agreement, Conditions of the Contract (General, Supplementary, and any other Conditions), the Request for Proposal including all design requirements and the pilot program summary (i.e., “Bridging Documents”), Design-Builder’s proposal, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810), Workers’ Compensation Certification, Drug-Free Workplace Certification, Iran Contracting Act Certification, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Design-Builder, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The “Contract” represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Design-Builder, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Design-Builder. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the City Council.

1.1.3 THE WORK

The “Work” shall include all labor, materials, services and equipment necessary for the Design-Builder to fulfill all of its obligations pursuant to the Contract Documents, including but not limited to preparation of the 100% complete design of the Project (the “Design”), performance of all construction work, including punch list items, and submission of documents to Owner. It shall include the initial obligation of any Design-Builder or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner’s representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully

understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Design-Builder or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The “Site” refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work. The Work shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

1.1.4 THE PROJECT

The “Project” is the total design and construction of the work of improvement, and includes the Work performed in accordance with the Contract Documents.

1.1.5 THE DRAWINGS

The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

“Or” shall include “and/or.”

1.1.9 COMPLETION AND COMPLETE

Statutory definitions of “Completion” and “Complete” shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, “Completion” and “Complete” mean the point in the Work where (1) Design-Builder has fully and correctly performed all Work in all parts and requirements, including design, construction, and corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute “Completion” or “Complete.”

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work.

1.2.1.2 ***Coverage of the Contract Documents.*** The Contract Documents generally describe the work to be performed by Design-Builder. It is not intended to mention every item of Work. All materials or labor for Work, which are required by the Contract Documents or the Design (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Design-Builder whether or not the Work is expressly covered in the Contract Documents. It is intended that the Work be of sound, quality construction, and the Design-Builder shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Design-Builder.

1.2.1.3 ***Conflicts.*** Without limiting Design-Builder's obligation to identify conflicts in the Contract Documents for resolution by the Owner, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

1.2.1.4 ***Conformance With Laws.*** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Design-Builder shall check and review the Contract Documents for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Design-Builder observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Design-Builder shall promptly notify Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Design-Builder shall comply with all applicable Federal, State and local laws.

If, as, and to the extent that Public Contract Code section 1104 is deemed to apply after the award of the Contract, Design-Builder shall not be required to assume responsibility for the completeness and accuracy of the Contract Documents, notwithstanding any other provision in the Contract Documents, except to the extent that Design-Builder discovered or should have

discovered and reported any errors and omissions to the Owner, including but not limited to as the result of any review of the plans and specifications by Design-Builder required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Design-Builder.

1.2.1.5 **Ambiguity.** Before commencing any portion of the Work, Design-Builder shall carefully examine all Contract Documents and other information given to Design-Builder as to materials and methods of construction and other Project requirements. Design-Builder shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Contract Documents in the manner provided herein. If the Design-Builder or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the time for performance. If Design-Builder performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Design-Builder which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Design-Builder's written direction and/or approval.

1.2.1.6 **Execution.** Execution of the Agreement Between Owner and Design-Builder by the Design-Builder is a representation that the Design-Builder has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.3 INTERPRETATION

1.2.3.1 **Titles.** Organization of the Contract Documents into divisions, sections and articles shall not control the Design-Builder in dividing the Work among Subcontractors or in establishing the extent of work to be performed.

1.2.3.2 **As Shown, Etc.** Where "as shown," "as indicated," "as detailed," or words of similar import are used, reference is made to the Contract Documents unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** "Provide" means "provided complete in place," that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 **General Conditions.** The General Conditions and any Supplementary or other Conditions are a part of each and every section of the Contract Documents.

1.2.3.5 **Abbreviations.** In the interest of brevity, the Contract Documents may be written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Design-Builder shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Contract Documents are mandatory. Omitted words or phrases shall be supplied by inference.

1.2.3.6 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 **Metric.** The Contract Documents may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.8 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to Completion of any part of the Work, the Design-Builder may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Contract Documents, shall have full force and effect as though printed in the Contract Documents. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Contract Documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Design-Builder may retain one contract record set. Neither the Design-Builder nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Contract Documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Design-Builder’s record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Contract Documents prepared by the Architect, and copies thereof furnished to the Design-Builder, are for use solely with respect to this Contract. They are not to be used by the Design-Builder or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other contracts or for additions to this Contract outside the scope of the Work without the specific written consent of the Owner and the Architect. The Design-Builder, Subcontractors, Sub-subcontractors, and

material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Contract Documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Contract Documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner and/or the Owner's authorized representatives, including but not limited to architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or Construction Manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 INTENTIONALLY LEFT BLANK

2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Design-Builder.

2.2.3 SOILS

2.2.3.1 *Owner Furnished Services.* When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.2.3.2 *Design-Builder Reliance.* Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the

Design-Builder and the Design-Builder has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Design-Builder shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Design-Builder of any of its agents. Nothing herein contained shall be deemed a waiver by the Design-Builder to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Design-Builder.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Design-Builder, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Design-Builder may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Design-Builder may not rely upon, and must question in writing to the Owner and the Architect, any information which appears incorrect based upon Design-Builder's Site inspection, knowledge of the Work, and prior experience with similar projects), unless specifically stated in writing that the Design-Builder may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL,RELOCATION

2.2.6.1 *Removal, Relocation.* Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Design-Builder shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Design-Builder for the costs of locating, repairing damage not due to the failure of the Design-Builder to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 *Assessment.* These subparagraphs shall not be construed to preclude assessment against the Design-Builder for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner to indicate the presence of existing service

laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

2.2.6.3 Notification. If the Design-Builder, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Design-Builder shall immediately notify the Owner and the utility in writing.

2.2.6.4 Underground Utility Clearance. It shall be Design-Builder's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Design-Builder shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Design-Builder shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any delays caused by factors beyond the Owner's control including but not limited to any other local, State or federal agency's review of bids, change order requests, RFI's or any other documents.

2.2.9 COPIES FURNISHED

The Design-Builder will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Design-Builders), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents or the Design, or persistently fails to carry out Work in accordance with the Contract Documents or the Design, the Owner, after providing Notice pursuant to paragraph 2.4, may order the Design-Builder to stop the Work or any portion thereof, until the Design-Builder corrects the deficiencies. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any

other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Design-Builder fails or refuses to carry out the Work in accordance with the Contract Documents or the Design, Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the Contract with Design-Builder. Owner may exercise this right at any time during the Design-Builder's Work.

Owner shall first provide written notice to Design-Builder of Design-Builder's failure or refusal to perform. The notice will provide the time period within which Design-Builder must begin correction of the failure or refusal to perform. If the Design-Builder fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Design-Builder shall not be eligible for the award of the contract. The Design-Builder may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Design-Builder's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Design-Builder, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Design-Builder are not sufficient to cover that amount, the Design-Builder shall pay the difference to the Owner.

ARTICLE 3

THE DESIGN-BUILDER

3.1 DEFINITION

The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. To the extent that any portion of the Work is provided with the Design-Builder's own forces, any reference to Subcontractors shall be equally applicable to the Design-Builder.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 DESIGN-BUILDER

The Design-Builder shall supervise and direct the Work using the Design-Builder's best skill and attention, which shall meet or exceed the standards in the industry. The Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. Owner and Construction Manager shall schedule and coordinate the activities of Design-Builder with the other contractors and Owner. Design-Builder agrees to accept the Owner's and Construction

Manager's construction schedules, schedule updates, overall sequence and coordination of construction for the Project. Design-Builder realizes that work by other contractors or Owner may occur simultaneously with Design-Builder's Work in any given area. Design-Builder is responsible for its own sequences that may occur within a given activity or set of activities. Design-Builder shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Design-Builder shall provide layout of its Work at the request of any other contractor or Owner.

3.2.2 DESIGN-BUILDER RESPONSIBILITY

The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Design-Builder or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY OTHER'S ACTIONS

The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

3.2.4 DESIGN-BUILDER RESPONSIBILITY FOR READINESS FOR WORK

The Design-Builder shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 PROJECT MEETINGS

During its Work, Design-Builder shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and the Project, and the future progress of the Work and the Project. Design-Builder shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Design-Builder shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder.

3.3.2 STAFF

The Design-Builder and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 RIGHT TO REMOVE

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Design-Builder, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 DESIGN-BUILDER TO PROVIDE

Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents and the Design. The Design-Builder shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Design-Builder at no cost to the Owner.

3.4.4 DISCIPLINE

The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the

Project.

3.5 WARRANTY

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5, and 12.2.6), the Design-Builder warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and the Design, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents and the Design. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty does not cover damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

Design-Builder will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES ANDNOTICES

3.7.1 PAYMENT

The Design-Builder shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project. Owner shall be responsible for all testing and inspection on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 COMPLIANCE

The Design-Builder shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 CONTRACT DOCUMENTS

It is not the Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Design-Builder knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Design-Builder shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be

accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Design-Builder performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Design-Builder shall assume full responsibility for such Work, and shall bear the attributable cost of correction and delay to the Work, other contractor's work, and the Project.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Design-Builder shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities against whom the Design-Builder makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 ***Prompt Selection.*** Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 ***Cost.*** Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 ***Cost Included in Contract Sum.*** Design-Builder's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 ***Contract Sum Adjustment.*** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual cost and the allowances under paragraph 3.8.2.2 and the change in the Design-Builder's costs under paragraph 3.8.2.3.

3.9 DESIGN-BUILDER'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Before the Design-Builder's commencement of Work or within two (2) weeks of issuance of all required permits, whichever is earlier, Design-Builder shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which shall conform to the Contract Documents' requirements.

Design-Builder shall submit an updated schedule by the first day of every month, and whenever else requested by the Owner. Each schedule update must include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Design-Builder shall submit its daily logs for the prior month with the updated schedule.

The schedule and updates shall conform, at a minimum, to industry standards for (a) critical path scheduling and (b) facilitation of Owner's Project management and evaluation of Design-Builder Claims for additional money or time.

The schedule and updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Design-Builder at the beginning of the Work. The original schedule and all updates shall accurately reflect Work performed to date, reasonable dates for future Work, all construction tasks (including procurement), the critical path schedule for Completion of the remainder of the Project, and the percentage of the Work Completed. The original schedule and updates shall include all delay days for weather not unusually severe, even though that weather will not entitle Design-Builder to additional time or money.

The construction schedule shall be in the form of either a tabulation, chart, or graph, unless otherwise stated in the Contract Documents, and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and Completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Project. Whenever in the Contract Documents Design-Builder is required to provide a schedule and/or schedule updates, the Design-Builder shall provide the schedule and updates in electronic format as well as hard copy. Design-Builder shall be solely responsible for the accuracy, utility and reasonableness of all of its schedules. Owner's acceptance, approval or non-rejection of Design-Builder's schedules shall not affect Design-Builder's responsibility for its schedules.

The Design-Builder and Owner shall use any float on a "first come, first served" basis. The original schedule and updates shall reflect Design-Builder's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Design-Builder, but it is a jointly owned expiring Project resource available to both parties as needed to meet schedule milestones. For the original schedule and updates, Design-Builder shall use a critical path network format with the critical paths clearly indicated. Design-Builder shall use an MS Project, Primavera, or an equivalent or better program. Design-Builder shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Design-Builder shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Design-Builder shall use calendar days.

If any change in Design-Builder's method of operations will cause a change in the construction schedule, Design-Builder shall submit to Owner, Architect, and any construction manager, a

revised construction schedule within seven (7) days of the change, unless a different time period is stated in the Contract Documents.

If, in the Owner's opinion, the Design-Builder is not prosecuting the Work at a rate sufficient to meet the Work schedule or a contractual milestone, or to Complete the Work within the Contract Time as adjusted by change orders, or if the Design-Builder's actual progress falls behind the Work schedule or it is apparent to Owner that Design-Builder will not meet contractual milestones or Complete the Work within the Contract Time as adjusted by change orders, the Owner may require that the Design-Builder prepare and submit a recovery plan. Design-Builder must submit a recovery plan within seven (7) days of a demand for the plan, unless a different time period is stated in the Contract Documents. At a minimum, the recovery plan must include a revised schedule that gets the Work back on schedule and Completes all Work by the contractual milestones and within the Contract Time as adjusted by change orders or by other dates Owner specifies in the demand for a recovery plan. The recovery plan shall state the corrective actions Design-Builder will undertake to implement it. The recovery plan shall also list any additional money that Design-Builder believes it should receive if Owner orders Design-Builder to fully or partially implement the recovery plan. If the Owner orders Design-Builder to implement the recovery plan, Design-Builder shall do so, but the order shall not act constitute an admission by Owner that Design-Builder is entitled to additional money. To recover additional money, Design-Builder must comply with General Conditions Articles 4.5, 7 and 8.

All schedules Design-Builder submits shall be certified as true and correct, as follows:

I, _____ [name of declarant], declare the following:

_____ [Design-Builder company name] has contracted with _____ [public entity name] for the _____ [name of project] Project. _____ [Design-Builder company name] authorized me to prepare schedules for _____ [public entity name] for this Project, and I prepared the attached schedule. I am the most knowledgeable person at _____ [Design-Builder company name] regarding the scheduling of this Project.

The attached schedule does not breach the Contract between _____ [Design-Builder company name] and _____ [public entity name] for this Project, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate as-built and as-planned dates of work on the Project (including supporting data), and is not a false claim.

The attached schedule is submitted in compliance with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment,

and/or other serious legal consequences for myself and/or _____[Design-Builder company name].

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____[Design-Builder company name]) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20 , at _____, California.

_____ [name of declarant]

3.9.2 DDW REVIEW PROCESS

In connection with the DDW Review Process which includes inspection cards and review of changes to the construction documents, the Design-Builder must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DDW procedures.

3.9.3 FAILURE TO MEET REQUIREMENTS

Failure of the Design-Builder to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Design-Builder, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Design-Builder shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Design, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Design-Builder shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner, upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 *Shop Drawings.* The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Design-Builder, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes:

illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Design-Builder shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 **Samples.** The term "samples" as used herein are physical examples furnished by Design-Builder to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Design-Builder conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 **Design-Builder's Responsibility.** Design-Builder shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Design-Builder's "Schedule for Submission of Shop Drawings and Samples" provisions in the Contract Documents and in accordance with the Design-Builder's original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. No extensions of time will be granted to Design-Builder or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer's descriptive data for the review of the Owner, the Design-Builder, and the Architect through the Design-Builder. By submitting shop drawings, product data, and samples, the Design-Builder or submitting party (if other than Design-Builder) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a

substitution, the procedure for which is defined in paragraph 3.11.4, “Substitutions.” Review by Owner and Architect shall not relieve the Design-Builder or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Design-Builder shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner’s or Architect’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Design-Builder will be returned unreviewed for resubmission by the Design-Builder.

3.11.1.4 ***Extent of Review.*** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect’s review shall neither be construed as a complete check nor relieve the Design-Builder, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Design-Builder has, in writing, called the Architect’s attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect’s review shall not relieve the Design-Builder or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Design-Builder and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 ***Transmittal Letter and Other Requirements.*** All shop drawings must be properly identified with the name of the Contract and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Contract and to the Specification section number for identification of each item clearly stating in narrative form, as well as “clouding” on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Design-Builder. Each drawing shall have a clear space for the stamps of Architect and Design-Builder. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 ***Copies Required.*** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Design-Builder, of: manufacturers’ descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 ***Corrections.*** The Design-Builder shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Design-Builder shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Design-Builder pursuant to paragraph 4.4.

3.11.2.4 ***Approval Prior to Commencement of Work.*** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Design-Builder to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Contract, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with identification of each item. Each tag or sticker shall have clear space for the review stamps of Design-Builder and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Design-Builder with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Design-Builder will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Design-Builder. In the event of a specification that

allows Design-Builder to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Design-Builder has furnished. The Design-Builder will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Design-Builder's Work and prior to Application for Final Progress Payment, the Design-Builder will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Design-Builder shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Design-Builder shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Design-Builder's Application for Final Progress Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Design-Builder, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 ***Owner's Property.*** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 SUBSTITUTIONS

3.11.4.1 ***One Product Specified.*** Unless the Contract Documents state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Design-Builder may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 ***Two or More Products Specified.*** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Design-Builder. Design-Builder shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Design-Builder will be responsible for the professional fees incurred by the Architect or Architect's

consultants in reviewing the proposed substitution which fees may be withheld from progress payments and/or retention.

3.11.4.3 *Substitution Request Form.* Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner prior to the deadline for submittal of proposals. Any Requests submitted less than fourteen (14) days prior to the deadline for submittal of proposals will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Design-Builder. The Design-Builder shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but not limited to all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to DDW review, or the approval of any other governmental agency having jurisdiction, of a requested substitution shall be on the requesting party.

3.11.4.4 *List of Manufacturers and Products Required.* The Subcontractor shall prepare and submit to the Design-Builder within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Design-Builder's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Design-Builder and the Architect.

3.11.5 DEFERRED APPROVALS

Deferred approvals shall be submitted and processed pursuant to the requirements of Contract Documents. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The Design-Builder shall be responsible for cutting, fitting, or patching required to Complete the

Work or to make its parts fit together properly.

3.12.2 CONSENT

The Design-Builder shall not damage or endanger a portion of the Work or fully or partially Completed construction of the Owner or a separate contractor by cutting, patching, or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Design-Builder's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Design-Builder.

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 DESIGN-BUILDER'S RESPONSIBILITY

The Design-Builder shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Design-Builder shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.13.2 FAILURE TO CLEANUP

If the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Design-Builder and the cost thereof shall be invoiced to the Design-Builder and withheld from progress payments and/or retention. Each Subcontractor shall

have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Design-Builder must do so.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the Owner or the Architect, Design-Builder and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Design-Builder or Subcontractor. If the Design-Builder does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Design-Builder shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Design-Builder shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Design-Builder has reason to believe the required design, process, or product is an infringement of a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 REVIEW

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Design-Builder in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 SCOPE: DESIGN-BUILDER

To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless the Owner, the Construction Manager, Architect, Architect's consultants, the Inspector of Record, City Council, members of the Council, and directors ("Indemnitees"), from and

against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Design-Builder's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Design-Builder's or its Subcontractors' use of the Site; the Design-Builder's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Design-Builder or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Design-Builder, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Design-Builder shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Builder.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold

harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 *Joint and Several Liability.* In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnatee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnatee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnatee has by law or equity.

3.16.3 NO LIMITATION

The Design-Builder's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Design-Builder or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Design-Builder to fulfill its obligations under the Contract. Design-Builder shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Design-Builder believes that acts or omissions of Owner (including but not limited to Owner caused delay) have prevented Design-Builder from performing the Work as required by the Contract Documents and Design-Builder intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Design-Builder's nonperformance or to support, among other things, Design-Builder's requests for time extensions under Section 4.5, below, Design-Builder shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Design-Builder fails to timely submit the written notice, Design-Builder shall have waived any right to later rely on the acts or omissions as a defense to Design-Builder's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Design-Builder acknowledges that these written notices are of critical

importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative, and shall also refer to all consultants under the Architect's direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several Owner's representatives during construction, through release of all retention, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when Completed, will be in accordance with the

Contract Documents.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Design-Builder shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Design-Builder.

4.2.5 PAYMENT APPLICATIONS

The Design-Builder shall submit payment applications to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

4.2.6 REJECTION OF WORK

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Design-Builder, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Architect will prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 WARRANTIES UPON COMPLETION

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Design-Builder. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Design-Builder or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Design-Builder's comprehensive list of items to be completed or corrected for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Design-Builder and withheld from payment and/or retention.

4.2.9 INTERPRETATION

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Design-Builder. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 *Architect's Interpretations and Decisions.* Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Design-Builder and will not show partiality to either. The Work shall be executed in conformity with, and the Design-Builder shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 *Typical Parts and Sections.* Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 *Dimensions.* Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

One or more Project inspectors ("Inspector of Record") may be employed by the Owner to inspect the Work.

4.3.2 INSPECTOR OF RECORD'S DUTIES

All Work shall be under the observation of or with the knowledge of the Inspector of Record.

The Inspector of Record shall have free access to any or all parts of the Work at any time. The Design-Builder shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Design-Builder from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Design-Builder's responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall the Inspector of Record's approval of the Work and methods relieve the Design-Builder of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 INSPECTOR OF RECORD'S AUTHORITY TO REJECT OR STOP WORK

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Design-Builder shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Design-Builder from any of its obligations pursuant to the Contract Documents.

4.3.4 INSPECTOR OF RECORD'S FACILITIES

Within seven (7) days after notice to proceed, the Design-Builder shall provide the Inspector of Record with the temporary facilities as required under Division 1 of the Specifications.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Design-Builder, the Design-Builder shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages. If payments then or thereafter due to the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Design-Builder.
- B. Services made necessary due to the defects or deficiencies in the Work of the Design-Builder.
- C. Services required by failure of the Design-Builder to perform according to any provision of the Contract Documents.

- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Design-Builder, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing Claims submitted by the Design-Builder in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Design-Builder to prosecute the Work in a timely manner in compliance within the specified time for Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Design-Builder identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Design-Builder requests additional money or time, or if the Design-Builder believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Design-Builder shall follow the procedures in this Section 4.5 and Article 7, otherwise Design-Builder shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Design-Builder specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Design-Builder's obligation to know and comply with the requirements of the Contract Documents, including but not limited to Section 4.5 and Articles 7-9, and Owner has no obligation to notify Design-Builder of any failure to comply with those requirements.

4.5.1 NOTICE OF POTENTIAL CHANGE

Design-Builder shall submit a written Notice of Potential Change for extra work, critical path delay, or additional money or time. Design-Builder shall submit written Notices of Potential Change to Owner within ten (10) days of Design-Builder becoming aware of the issues creating the potential for change, unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Design-Builder must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the

Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work, Design-Builder shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Design-Builder shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Design-Builder intends to rely on Owner's acts or omissions in support of a request for a time extension, then Design-Builder must also provide the notice set forth in section 3.18, above.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Design-Builder of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Design-Builder acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDERS REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Design-Builder continues to believe that it is entitled to additional money or time (including but not limited to grant of a time extension; payment of money or damages arising from work done by, or on behalf of, the Design-Builder, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the Owner) based on an issue, then Design-Builder shall submit a Change Order Request ("COR") to Owner within twenty (20) days of the earlier of (i) becoming aware of the issues creating a potential change, or (ii) the date by which it should have become aware of the issues creating a potential change. If the COR is not submitted within 20 days, a reasonable explanation shall be provided. A rejection at any time or a lack of a rejection by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to comply with any of the COR requirements in the Contract shall constitute a complete waiver by Design-Builder of any right to later submit a COR or Claim on that issue, or to later pursue any additional money (including time extensions) in any manner related to that issue, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Design-Builder shall include all information supporting the COR.

Design-Builder shall certify the COR using the form set forth in Section 4.5.5.1, except that every reference to "Claim" shall be changed to "COR." If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of section 4.5.2. If the COR is not timely certified, Design-Builder will have completely waived its rights to any money or time for that issue. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. If the Owner requests additional information, then the Design-Builder shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 DEFINITION OF CLAIM

A “Claim” is a separate demand by the Design-Builder sent by registered mail or certified mail for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents, (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Design-Builder pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by the Owner. A claim includes any claim within the scope of Public Contract Code section 20104 et seq. Resubmittal in any manner of a COR which was previously rejected under Section 4.5.2 constitutes a Claim, whether the COR was rejected in whole or in part, and whether the COR was rejected expressly or deemed rejected by Owner inaction. A Claim includes any dispute Design-Builder may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and includes an alleged breach of contract by the Owner. A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. In the event of a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, Section 4.5 shall take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; except that if insufficient time remains before the Claim deadline (see Article 4.5.4) for Design-Builder to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Design-Builder may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR’s and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

A Claim does not include vouchers, invoices, progress payment applications, or other routine or authorized forms of requests for progress payments on the Contract; however, those documents remain “claims” for purposes of the California False Claims Act. A Claim does not include a Government Code Claim. (“Government Code Claim” means a claim under Government Code sections 900 et seq. and 910 et seq.)

4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Design-Builder shall submit all Claims to the Owner's Construction Manager (or in the absence of a Construction Manager, to Architect and Owner) within fifteen (15) days of the earliest of the following events: (a) The Completion of the Work; (b) the thirtieth (30th) continuous day without labor by Design-Builder; and (c) Design-Builder's submission of a final progress payment application. Owner's rejection, or lack of rejection, of a COR at any time does not affect the deadline for filing a Claim.

In addition, on or before submitting its request for a final progress payment based on 100% Completion of the Work, Design-Builder shall submit to Owner, in writing, a summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed and which were fully compliant with the Contract's requirements for Claims. The submission of an Application for Payment for the Final Progress Payment shall constitute a complete waiver of all Claims against Owner under or arising out of this Contract, except those identified in the above summary, as Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim, failure to include a Claim in the Claim summary, or failure to comply with any of the Claim requirements in the Contract, including but not limited to this Article 4, will act as a complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6.4), and (c) initiate any action, proceeding or litigation for the money or time, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Design-Builder reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 Claim Format; Waiver

Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Design-Builder, and the Design-Builder shall furnish reasonable documentation to support each Claim.

In addition, the Design-Builder shall include a certification with each and every Claim at the time of submission, as follows:

I, _____ [name of declarant], declare the following:

_____ [Design-Builder company name] has contracted with _____ [public entity name] for the _____ [name of Contract] Contract. _____ [Design-Builder company name] authorized me to prepare the attached Claim for money and/or time extension for _____ [public entity name] regarding this Contract (dated _____, 20__, entitled _____, and requesting \$ _____ and/or ____ additional days), and I prepared the attached Claim. I am the most knowledgeable person at _____ [Design-Builder company name] regarding this Claim.

The attached Claim complies with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or _____ [Design-Builder company name].

The attached Claim does not breach the Contract, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that [public entity name] is responsible under its Contract with _____ [Design-Builder company name].

While preparing this declaration and Claim I consulted with others (including attorneys, consultants, or others who work for _____ [Design-Builder company name]) when necessary to ensure that the statements were true and correct.

Design-Builder understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner, or Owner's representatives, may reject the Claim on that basis; and that unless Design-Builder properly and timely files the Claim with the certification, Design-Builder cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 2__, at _____, California.

_____ [name of declarant]

Design-Builder's failure to timely submit a certification will constitute a complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.4) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 *Claims for Additional Money*

Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Design-BUILDER could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Design-BUILDER be allowed to reserve its rights to assert a Claim for money at a later time, unless the Owner expressly agrees in writing to allow the reservation. Any costs, direct or indirect, not asserted shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

4.5.5.3 Claims for Additional Time

4.5.5.3.1 Notice of Extent of Claim

If the Design-Builder wishes to make a Claim for an increase in the Contract Time (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, and a current schedule and delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Design-Builder could not mitigate the delay impacts.

In the case of a continuing delay, only one (1) initial Claim is necessary that is based on estimates of when the continuing delay will end, but within thirty (30) days of the end of the continuing delay an updated final Claim must be submitted, which shall also be certified. In no event will the Design-BUILDER be allowed to reserve its rights to assert a Claim for a time extension, unless the Owner expressly agrees in writing to allow the reservation. Any time extension not asserted shall be waived.

4.5.5.3.2 Unusually Severe Weather Claims

If unusually severe weather is the basis for a Claim for additional time, Design-BUILDER must provide Owner data and facts showing that the weather conditions were abnormal for the period

of time, could not have been reasonably anticipated or mitigated, and had an adverse effect on the critical path of the scheduled construction.

4.5.5.4 “Pass Through” Claims

A Subcontractor or supplier to Design-Builder may not submit a request for additional time or money directly to the Owner. If a subcontractor or supplier submits a request for additional money or time to Design-Builder and Design-Builder wishes to pass it through to Owner, then Design-Builder must comply with all requirements of Section 4.5, including Notices of Potential Change, Change Order Requests, and Claims. Design-Builder must prepare and submit its own analysis of the Subcontractor’s request, and the Claim must include a copy of the Subcontractor’s request along with any other necessary supporting documentation.

In addition to other requirements in the Contract Documents, including but not limited to this Section 4.5, the Design-Builder’s analysis of the Subcontractor’s request must include Design-Builder’s detailed explanation as to why the Subcontractor or supplier’s request is the Owner’s responsibility, including Design-Builder’s analysis of (a) why the amount of damages the Subcontractor or supplier requests is justified and appropriate, (b) how Design-Builder’s breach of the subcontract caused the Subcontractor or supplier to incur these damages, and (c) how the Owner’s breach of the Contract caused the Design-Builder’s breach of the subcontract. Any Design-Builder Claim that fails to include the above information, or that states that Owner is responsible for the Subcontractor’s request only in the event that Design-Builder is found to owe money to Subcontractor, shall act as a complete waiver of Design-Builder’s rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.4) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTION 9204)

Claims are subject to this section 4.5.6 and Public Contract Code section 9204, as well as the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5 and the rest of the Contract Documents. Claims of \$375,000 or less must also comply with Public Contract Code sections 20104 et seq., but to the extent that one of the procedures in Sections 20104 et seq. conflicts with the procedures in Section 9204, the requirements of Section 9204 shall control.

4.5.6.1 Claims

The Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45-day period, plus any extension, Owner may request, in writing, additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Design-Builder. Owner shall review any additional documentation Design-Builder supplies in response to that request within the 45 day, plus any extension, timeline.

After receipt of a Claim, the 45-day period may be extended by Owner and Design-Builder. The

written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its City Council to provide the written response, and the City Council does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the City Council to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 Meet and Confer

If the Design-Builder disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Design-Builder may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner'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 a written demand sent by registered or certified mail return receipt requested, the Owner shall schedule a meet and confer conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Design-Builder, the conference may take place during regularly scheduled Project meetings.

If Design-Builder fails to timely notify the Owner that it wishes to meet and confer pursuant to the previous paragraph, then Design-Builder will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6) for such money or time, and (c) initiate any action, proceeding or litigation for such money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the meet and confer conference, the Owner shall give a written statement to the Design-Builder identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written statement. Within ten (10) business days of issuance of Owner's written statement, Design-Builder shall identify in writing the disputed portion of the Claim that shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Design-Builder sharing the costs equally. The Owner and Design-Builder shall mutually agree to a mediator within ten (10) business days after the Design-Builder has identified in writing the disputed portion of the Claim. If they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. (Each party shall bear the fees and costs its respective mediator charged in connection with the selection of the neutral mediator). The parties may mutually waive in writing the requirement for mediation. If Design-Builder fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, Design-Builder will have waived all right to further pursue the Claim pursuant to section 4.5.4. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible. Owner's failure to respond to the Claim

within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 Government Code Claim

If the Claim or any portion remains in dispute after the mediation and Design-Builder wishes to pursue it, the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures coming first.

Failure to timely file a Government Code Claim shall act as complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Design-Builder shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall be tolled from the time the Design-Builder submits a written Claim under Article 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite submission or rejection of a Notice of Potential Change, COR or Claim, the Design-Builder shall proceed diligently with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract.

4.5.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.8.1 Trenches or Excavations Less Than Four Feet Below the Surface

If Design-Builder encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Design-Builder shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Design-Builder believes that such conditions differ materially and will cause an increase in the Design-Builder's cost of, time required for, or performance of

any part of the Work, Design-Builder must comply with the provisions above for Notice of Potential Change, Change Order Request, and Claims (beginning with Section 4.5.1).

4.5.8.2 Trenches or Excavations Greater Than Four Feet Below the Surface

Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Design-Builder shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

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

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

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

4.5.8.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 In the event that a dispute arises between the public entity and the Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the Work, the Design-Builder shall not be excused from any deadline for Completion provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Design-Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the

matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Design-Builder shall follow Section 4.5.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Design-Builder to perform a portion of the Work at the Site. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Design-Builder is utilized in the Contract Documents, it shall have the same meaning as the term “Subcontractor.”

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a “Specialty Contractor” as defined in section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor’s specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

In accordance with Public Contract Code sections 4107 and 4107.5, no Design-Builder whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Design-Builder’s total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Design-Builder or its

Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Design-Builder whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor's written bid, is presented to the Subcontractor by the Design-Builder;
- B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;
- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the Design-Builder set forth in Public Contract Code section 4108.
- E. When the Design-Builder demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.
- I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 **No Change in Contract.** Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for the Completion of the Work.

5.2.2.2 Substitution Due to Clerical Error. The Design-Builder, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Design-Builder prior to bid opening. Any listed Subcontractor who has been notified by the Design-Builder in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Design-Builder written objection to the Design-Builder's claim of inadvertent clerical error.

In all other cases, the Design-Builder must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefore. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Design-Builder and to the listed Subcontractor of a hearing by the awarding authority on the Design-Builder's request for substitution as provided in Public Contract Code section 4107. The determination by the awarding authority shall be final.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all obligations and responsibilities, which the Design-Builder, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Design-Builder shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable

portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Design-Builder by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the contrary in the Subcontractor's contract subject to the limitations of section 5.3.

5.5.1 SUPERVISION BY SUBCONTRACTORS

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Design-Builder any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Builder concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 DISCIPLINE AND ORDER

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Design-Builder shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Design-Builder, the Owner and Architect, or other Subcontractors as Design-Builder elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be

considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Builder over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each Subcontractor shall submit to the Owner, the Design-Builder, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies.

Subcontractor shall fully cooperate with Design-Builder in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Builder with respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Builder in the Subcontract Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Builder. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Builder or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each Subcontractor may be subject to the Design-Builder's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and

selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Design-Builder under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Design-Builder, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub.

Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Builder may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Builder's own forces.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, the Subcontractor shall continue to proceed diligently with the performance of the Work.

Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Design-Builder shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Design-Builder for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

Design-Builder agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Design-Builder for coordination among the Owner, the Owner's consultants, Architect, Design-Builder, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-Site record keeping systems established by the Design-Builder and shall, upon the request of the Design-Builder, provide the Design-Builder with such information and reports as the Design-Builder may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE DESIGN-BUILDERS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 OWNER'S RIGHTS

The Owner reserves the right to perform Project work related to the Contract with the Owner's own forces, or to award separate contracts in connection with such other work or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Design-Builder. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 DESIGNATION AS DESIGN-BUILDER

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Design-Builder" in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Design-Builder Agreement.

6.1.3 DESIGN-BUILDER DUTIES

The Design-Builder shall have overall responsibility for coordination and scheduling of the activities of the Owner's own forces and of each separate contractor with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall

then constitute the schedules to be used by the Design-Builder, separate contractors, and the Owner until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Design-Builder under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 NOTICE BY DESIGN-BUILDER

If part of the Design-Builder's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work or property shall be borne by the party responsible. Should Design-Builder cause damage to the work/Work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Design-Builder shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, below, and the Design-Builder shall be liable to Owner for any damages suffered by Owner, including liquidated damages for delay. Owner may withhold from progress payments and/or retention the cost of delay or damage to another contractor's work or damage to another contractor's property, and Owner's damages, caused by Design-Builder.

6.2.4 CORRECTION OF DAMAGE

The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to

completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Design-Builder, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Design-Builder to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Design-Builder with money or grant extra time for any extra work ordered by the Owner to be performed. Design-Builder shall follow the provisions of 7.6 and 7.7 when requesting additional money or additional time. Design-Builder shall expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Design-Builder shall follow 7.5 and 7.7 in providing the credit to Owner. Design-Builder shall bring all potential credits to the Owner's attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work or payments under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under Section 4.5 and authorized by, and the cost thereof approved in writing by, Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless request for such extension is properly made under Section 4.5 and such time is thereof approved in writing by Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

7.1.2 AUTHORITY TO ORDER MINOR CHANGES

The Owner has authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

7.2 CHANGE ORDERS (“CO”)

A CO is a written instrument signed by the Owner and the Design-Builder, stamped (or sealed) and signed by Architect, and approved by the Owner’s City Council, stating the agreement of Owner and Design-Builder upon all of the following:

- A. A change in the Work;
- B. The amount of the adjustment in the Contract Sum, if any; and
- C. The extent of the adjustment in the Contract Time, if any.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Design-Builder constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Design-Builder waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier.

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)

7.3.1 DEFINITION

A CCD is a written unilateral order signed by the Owner, and if necessary by the Architect, directing a change in the Work and stating an adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD shall be used in the absence of agreement on the terms of a CO. If Design-Builder disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change, COR and Claim procedures of Section 4.5 if

Design-Builder believes it is entitled to changes in the Contract Sum or Contract Time.

7.4 REQUEST FOR INFORMATION (“RFI”)

7.4.1 DEFINITION

An RFI is a written request prepared by the Design-Builder asking the Owner to provide additional information necessary to clarify an item which the Design-Builder feels is not clearly shown or called for in the Contract Documents, or to address problems which have arisen under field conditions.

7.4.2 SCOPE

The RFI shall reference all portions of the applicable Contract Documents. The Design-Builder shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents.

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Design-Builder shall submit RFI’s directly to the Architect, with copies forwarded to the Owner. Design-Builder shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Design-Builder’s requested order of priorities. The Owner and Design-Builder agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect’s receipt of an RFI, unless the Owner and Design-Builder agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect’s professional judgment to permit adequate review and evaluation of the RFI. If Design-Builder informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI’s submitted concurrently and the reprioritization of pending RFI’s submitted by the Design-Builder, among other things. If Design-Builder believes that the Architect’s response results in a change in the Work that warrants additional money or time, or that Architect’s response was unreasonably delayed and caused delay to the Work’s critical path, Design-Builder shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect’s receipt of the RFI. Design-Builder shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold \$100 from progress payments or retention in addition to any other remedies which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Design-Builder shall be invoiced by the Owner for any costs incurred for professional

services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL(“RFP”)

7.5.1 DEFINITION

An RFP is Owner’s written request asking the Design-Builder to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Contract Sum and the Contract Time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Design-Builder to provide the cost breakdowns required by section 7.7. The Design-Builder shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST(“COR”)

7.6.1 DEFINITION

A COR is a written request prepared by the Design-Builder asking the Owner for additional money or time. The COR shall include all information necessary to establish the Design-Builder’s entitlement to additional money or time.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per section 7.7 to validate any proposed change in Contract Sum.

7.6.3 CHANGES IN TIME

Where a change in Contract Time is requested, a COR shall also include delay analysis to validate any proposed change to the Contract Time, and shall meet all requirements in these General Conditions, including but not limited to Section 8.4. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Work schedule as defined in section 3.9 and Division 1 of the Specifications.

7.7 PRICE OF CHANGEORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall

include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Design-Builder's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Design-Builder;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. Daily Reports by Design-Builder.

a) General: At the close of each working day, the Design-Builder shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Design-Builder. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the Design-Builder.

b) Labor: Show names of workers, classifications, and hours worked.

c) Materials: Describe and list quantities of materials used.

d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.

e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. **Basis for Establishing Costs.**

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Design-Builder establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Design-Builder if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, it shall be returned unless the Design-Builder elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be

required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Design-Builder or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the Application for Payment.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the Application for Payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead, premiums and profit. For overhead, including direct and indirect costs, submit with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research for Owner initiated changes, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Design-Builder to communicate proposed additions and deductions to the Contract.

	<u>EXTRA</u>	<u>CREDIT</u>
A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____
C. Equipment (attach any invoices)	_____	_____
D. Subtotal	_____	_____
E. If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of item D.	_____	_____

F.	Liability and Property Damage Insurance, Worker's Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G.	Subtotal	_____	_____
H.	General Design-Builder's Overhead and Profit, not to exceed fifteen percent (15%) of Item G; and for work performed by subcontractors, not to exceed five percent (5%).	_____	_____
I.	Subtotal	_____	_____
J.	Bond not to exceed one percent (1%) of Item I.	_____	_____
K.	TOTAL	_____	_____

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Design-Builder's costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including but not limited to delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 DISCOUNTS, REBATES, AND REFUNDS

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Design-Builder, and the Design-Builder shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Design-Builder's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 ACCOUNTING RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Design-Builder shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Design-Builder is required to maintain under the Contract Documents.

7.7.6 NOTICE REQUIRED

Design-Builder shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Design-Builder to the same extent required of the Design-Builder.

7.8 WAIVER OF RIGHT TO CLAIM MONEY OR TIME

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Design-Builder's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 NOTICE TO PROCEED

Design-Builder shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Design-Builder or of persons or entities for whom the Design-Builder is responsible.

8.1.3 DAYS

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 SUFFICIENT FORCES

Design-Builders and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

8.2.2 PERFORMANCE DURING WORKING HOURS

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 LABOR CODE APPLICATION

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Design-Builder or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Design-Builders in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Design-Builder or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Design-Builder, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Design-Builder is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the Contract Documents to be done outside the Design-Builder's or the Inspector of Record's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Design-Builder to do work outside regular working hours for the Design-Builder's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Design-Builder by the Owner and withheld from progress payments and/or retention. Design-Builder shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Design-Builder elects to perform work outside the Inspector of Record's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Design-Builder by the Owner and withheld from progress payments and/or retention.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Design-Builder and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The Design-Builder shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Design-Builder. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The Design-Builder shall proceed expeditiously to perform the Work, with adequate forces, labor, materials, equipment, services and management, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 CONDITIONS ALLOWING FOR EXTENSIONS OF TIME TO COMPLETE THE WORK, ONLY (EXCUSABLE DELAY)

The Design-Builder shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

- (a) The delay was beyond the control of Design-Builder and its subcontractors and material suppliers;
- (b) The delay was caused by events about which Design-Builder was not advised at or before the time of bidding;
- (c) All float in the schedule had been used, and the delay impacted and delayed (i) the controlling items of Work (i.e., the as-built critical path, as determined from the as-planned schedule and the actual progress of the Work), or (ii) the achievement of a Milestone Deadline, or the Completion of the whole Work within the Contract Time;
- (d) The delay was not caused by Design-Builder or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;

(e) The delay was not associated with loss of time resulting from the necessity of submittals to Owner for approval, or from necessary Owner surveys, measurements, inspections and testing;

(f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and

(g) The delay could not have been prevented by the exercise of care, prudence, foresight, and diligence by Design-Builder.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusually and uncommonly severe weather for the time of year, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Design-Builder has the burden of proving that any delay was excusable.

8.4.2 COMPENSABLE DELAY (TIME AND MONEY)

Compensable delays are those excusable delays for which Design-Builder is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; *however*, Design-Builder shall not be entitled to monetary compensation when (a) Design-Builder could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay under Section 2.2.8 above or a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Design-Builder has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency.

8.4.3 NOTICE BY DESIGN-BUILDER REQUIRED; PROCEDURES FOR DEMANDING ADDITIONAL TIME OR MONEY

For notice and other required procedures related to requests by Design-Builder for additional time or money related to delay, Design-Builder shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7, above.

8.4.4 EARLY COMPLETION

Regardless of the cause therefore, the Design-Builder may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within

which to perform the Work on the Project.

8.4.5 LIQUIDATED DAMAGES

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents, or delaying another contractor's work on the Project, shall subject the Design-Builder to liquidated damages as described in Article III of the Agreement. For purposes of liquidated damages, the concept of "substantial completion" shall not constitute Completion and is not part of the Contract. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time, or if another contractor on the Project were to fail to timely Complete its work, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Work or other contractors' work on the Project, disruption of activities, costs of administration, supervision, the incalculable inconvenience and loss suffered by the public, and Owner's inability to recover its delay damages from other contractors whose work was delayed by Design-Builder.

Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work, or other contractors' work, is delayed beyond the Contract Time as adjusted by Change Orders.

If the Design-Builder fails to complete the Work within the Contract Time as adjusted by Change Orders, or another contractor cannot timely Complete its work due to Design-Builder, and liquidated damages therefore accrue, the Owner, in addition to all other remedies provided by law, shall have the right to assess liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all retention or progress payments, which would otherwise be or become due the Design-Builder. In addition, if it is reasonably apparent to the Owner before expiration of the Contract Time (as adjusted by Change Orders) that the Design-Builder cannot or will not complete the Work within the Contract Time, or that another contractor cannot timely Complete its work due to Design-Builder, Owner may assess and withhold, from retention or progress payments, the estimated amount of liquidated damages that will accrue in the future. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of the Design-Builder incurred under this Article, the Design-Builder and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of Completion and liquidated damages.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any delays or damages related to the time required to obtain

government approvals.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum or GMP is stated in the Agreement, later adjusted by Change Orders and Construction Change Directives, and is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Contract Documents. The Contract Sum shall be made up of two components: (i) the Design Fee; and (ii) the Construction Fee. These two components are separately stated in the Agreement.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Design-Builder shall furnish the following:

- A. Prior to approving the proposed Construction Fee, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. Each item in the schedule of values shall include its proper share of the overhead and profit.
- B. Within ten (10) days of approving the Construction Fee, a schedule of estimated monthly payment requests (cash flow) due the Design-Builder showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Owner may require;
- C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;
- D. Within ten (10) days of approving the Construction Fee, the name, address, telephone number, fax number, license number and classification, and public works contractor registration number of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 OWNER ACCEPTANCE REQUIRED

The Owner shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Design-Builder shall submit to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise, an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month. Such application shall be notarized, if required, and supported by the following or such portion thereof as the applicable entity requires:

- A. The amount paid to the date of the Application to the Design-Builder, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Design-Builder on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;
- E. The Owner approved additions to and subtractions from the Contract Sum and Time;
- F. A summary of the retentions (each Application related to the Construction Fee shall provide for retention, as set out in Article 9.6);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Design-Builder's Work by line item;
- I. A statement showing all payments made by the Design-Builder for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts the Design-Builder does not intend to pay to subcontractors or others because of a dispute or other reason; and
- J. Design-Builder's monthly reports, daily reports, and monthly schedule updates for all months of Work prior to the Application for Payment that Design-Builder has not previously submitted.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the Design-Builder is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Design-Builder, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Design-Builder and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 WARRANTY OF TITLE

The Design-Builder warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment all work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Design-Builder, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 OWNER ACCEPTANCE

The Owner will, within seven (7) days after receipt of the Design-Builder's Application for Payment, either accept such payment or notify the Design-Builder in writing of the Owner's reasons for withholding acceptance in whole or in part as provided in paragraph 9.5.1.

9.4.2 OWNER'S REVIEW

The review of the Design-Builder's Application for Payment by the Owner will be based, at least in part, on the Owner's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the Application for Payment if it is not complete under section 9.3. The issuance of a Certificate for

Payment will constitute a representation that the Design-Builder is entitled to payment in the amount certified, subject to any specific qualifications Owner expresses in the Certificate for Payment. However, Design-Builder's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Certificate for Payment will not be a waiver by the Owner of any defects in the Work covered by the Application for Payment, nor will it be a representation that the Owner has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Design-Builder's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may withhold from a progress payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

- A. Defective or incomplete Work not remedied;
- B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop notice claimant's anticipated interest and court costs and an amount to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Design-Builder at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Design-Builder, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment

and performance bond sureties.

- C. Liquidated damages against the Design-Builder, whether already accrued or estimated to accrue in the future;
- D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Sum or by the Completion deadline;
- E. Damage to the property or work of the Owner, another contractor, or subcontractor;
- F. Unsatisfactory prosecution of the Work by the Design-Builder;
- G. Failure to store and properly secure materials;
- H. Failure of the Design-Builder to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;
- I. Failure of the Design-Builder to maintain record drawings;
- J. Erroneous estimates by the Design-Builder of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents;
- L. Failure of the Design-Builder to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;
- M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;
- N. Failure by Design-Builder to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Design-Builder's failure to pay prevailing wage and any assessment of statutory penalties;
- O. Overpayment to Design-Builder on a previous payment;
- P. Credits owed to Owner for reduced scope of work or work that Design-Builder will not perform;
- Q. The estimated cost of performing work pursuant to Section 2.4;
- R. Actual damages related to false claims by Design-Builder;

- S. Breach of any provision of the Contract Documents;
- T. Owner's potential or actual loss, liability or damages caused by the Design-Builder; and
- U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Design-Builder. (See e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions))

Owner may, but is not required to, provide to Design-Builder with the progress payment written notice of the items for which Owner is withholding amounts from the payment. To claim wrongful withholding by the Owner, or if Design-Builder otherwise disputes any amount being withheld, Design-Builder must submit an inquiry in writing to Owner within thirty (30) days of receipt of the notice, and Owner shall respond within fifteen (15) days of receipt of the inquiry. If any disputed issues remain unresolved after Owner's response, Design-Builder shall timely submit a Claim pursuant to Section 4.5.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Design-Builder to cover the excess amount. If available funds are not sufficient, Design-Builder shall pay Owner the difference.

9.5.2 PAYMENT AFTER CURE

When Design-Builder removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Design-Builder to perform in accordance with the terms and conditions of the Contract Documents.

9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD

Neither Owner's overpayment to Design-Builder, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Design-Builder or to otherwise pursue recovery of those amounts from Design-Builder.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO DESIGN-BUILDER

Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment for the Construction Fee, Design-

Builder shall be paid a sum equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall retain the other five percent (5%) of the undisputed value of the Work. The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Design-Builder, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Design-Builder shall base an Application for Payment only on the original Contract Sum plus any fully executed and Council-approved Change Orders. Design-Builder shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

The Design-Builder shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplished with. Payment shall not be a waiver of any such direction.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, the Design-Builder shall pay to each Subcontractor, out of the amount paid to the Design-Builder on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of such Subcontractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of Completion or amounts applied for by the Design-Builder, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT

The Owner shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An accepted Application for Payment, issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance

or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

9.6.7 JOINT CHECKS

Owner shall have the right, if necessary for the protection of the Owner, to issue joint checks made payable to the Design-Builder and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. However, Owner has no duty to issue joint checks. In no event shall any joint check payment be construed to create any contract between the Owner and a Subcontractor of any tier, any obligation from the Owner to such Subcontractor, or rights in such Subcontractor against the Owner.

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

When the Design-Builder considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Design-Builder a comprehensive list of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Design-Builder, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in Section 9.3 and 9.9). The Design-Builder and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Design-Builder believes the Punch List Work is Complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Design-Builder of any items that are not Complete or correct. Design-Builder shall promptly Complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner's governing body may formally accept the Work as Complete at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Design-Builder's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6).

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Design-Builder to make inspections to confirm Completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all

subsequent costs will be invoiced to Design-Builder and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any Completed, or partially Completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Design-Builder of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

The Owner and the Design-Builder shall agree in writing to 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. When the Design-Builder considers a portion complete, the Design-Builder may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner, the Architect and the Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION

9.9.1 FINAL APPLICATION FOR PROGRESS PAYMENT

When, pursuant to Section 9.7.1, the Owner finds all of the Work is Completed in accordance with the Contract Documents, it shall so notify Design-Builder, who shall then submit to the Owner its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Owner shall issue a final Certificate of Payment, based on its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Owner in connection with the Work, that such Work has been Completed in accordance with the Contract Documents. If required to do so under Labor Code section 1773.3(d), Owner shall withhold final payment.

9.9.2 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT

The Application for Final Progress Payment pursuant to Section 9.9.1 shall be accompanied by the same details as set forth in paragraph 9.3, and in addition, the following conditions must be fulfilled:

- A. The Work shall be Complete, and the Design-Builder shall have made, or caused to have been made, all corrections to the Work which are required to remedy any

defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.

- B. Each Subcontractor shall have delivered to the Design-Builder all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work, and Design-Builder delivered them to the Owner.
- C. The Design-Builder shall deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Design-Builder's Work "as built," with the Design-Builder's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents.
- D. Design-Builder shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of Final Progress Payment shall constitute a complete waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of Final Progress Payment.

9.9.3 RELEASE OF RETAINAGE

Owner may withhold from release or payment of retainage (or "retention") up to 150% of disputed amounts listed in Section 9.5. If retainage is held in an escrow account pursuant to an escrow agreement under Public Contract Code section 22300 (see Section 9.10) and Owner withholds from release of retainage based on a breach of the Contract, or other default, by Design-Builder, Owner may withdraw the withheld retainage from the escrow account. Owner shall release the undisputed retainage within sixty (60) days after Completion of the Work. For this purpose, "Completion" is defined in Public Contract Code section 7107(c). No interest shall be paid on any retainage, or on any amounts withheld, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Design-Builder under Public Contract Code section 22300.

9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Design-Builder, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Design-Builder. Upon completion of the Contract, the securities shall be returned to the Design-Builder if Owner has no

basis to withhold under the Contract Documents.

Securities eligible for investment under this section shall include those listed in Government Code section 16430, 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 Design-Builder and the Owner.

The Design-Builder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

Any escrow agreement entered by Owner and Design-Builder pursuant to Public Contract Code section 22300, shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 DESIGN-BUILDER RESPONSIBILITY

The Design-Builder shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Design-Builder shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Design-Builder will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 SUBCONTRACTOR RESPONSIBILITY

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Design-Builder for the Project, which will cover all Work performed by the Design-Builder and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 COOPERATION

All Subcontractors and material or equipment suppliers, shall cooperate fully with Design-Builder, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 ACCIDENT REPORTS

Subcontractors shall promptly report in writing to the Design-Builder all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Design-Builder shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 FIRST-AID SUPPLIES AT SITE

The Design-Builder will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 THE DESIGN-BUILDER

The Design-Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Design-Builder or the Design-Builder's Subcontractors or Sub-subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 DESIGN-BUILDER NOTICES

The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

10.2.3 SAFETY BARRIERS AND SAFEGUARDS

The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

When use or storage of explosives, other hazardous materials or equipment, or unusual methods

are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Design-Builder shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Design-Builder and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work, or 30 days after Completion of the Work. The Design-Builder and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

10.3.2 PROTECTION FOR ELEMENTS

The Design-Builder will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Design-Builder shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Design-Builder shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Design-Builder. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Design-Builder shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Design-Builder at no cost to the Owner.

10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The Design-Builder and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the Owner's and the Design-Builder's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 SITE ACCESS

The Design-Builder and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 PROTECTION OF MATERIALS

The Design-Builder and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Design-Builder evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the Design-Builder shall take any action necessary, at the Design-Builder's discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 ACCIDENT REPORTS

The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the Design-Builder encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material

defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Design-Builder shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Design-Builder, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Design-Builder, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Design-Builder.

10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Design-Builder shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY DESIGN-BUILDER

In the event the presence of hazardous materials on the Site is not caused by the Design-Builder, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Design-Builder for any delay or additional costs incurred in accordance with the applicable provisions of Articles 7 and 8 herein. Owner shall defend, indemnify and hold harmless the Design-Builder and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Design-Builder's active negligence, sole negligence or willful misconduct. By providing this indemnification, District does not waive any immunities.

10.5.4 NATURALLY OCCURRING ASBESTOS

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible for, all applicable NOA requirements of the California Air Resources Board (CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures

and a monitoring plan.

10.5.5 INDEMNIFICATION BY DESIGN-BUILDER FOR HAZARDOUS MATERIAL CAUSED BY DESIGN-BUILDER

In the event the presence of hazardous materials on the Site is caused by Design-Builder, Subcontractors, materialmen or suppliers, the Design-Builder shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Design-Builder shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.6 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.7 ARCHEOLOGICAL MATERIALS

In the event the Design-Builder encounters or reasonably suspects the presence on the Site of archeological materials, the Design-Builder shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Design-Builder's receipt of written notice from the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1. DESIGN-BUILDER'S LIABILITY INSURANCE

11.1.1 LIABILITY INSURANCE REQUIREMENTS

11.1.1 By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Design-Builder from claims set forth below, which may arise out of or result from the Design-Builder's operations under the Contract and for which the Design-Builder may be legally liable, whether such

operations are by the Design-Builder, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1** claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Design-Builder's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
- 11.1.1.2** claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
- 11.1.1.3** claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 11.1.1.4** claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
- 11.1.1.5** claims involving blanket contractual liability applicable to the Design-Builder's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Design-Builder and the Subcontractors; and
- 11.1.1.6** claims involving Completed Operations, Independent Design-Builders' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its City Council, members of its Council, officers, employees, agents and volunteers; or the Design-Builder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Design-Builder shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Design-Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Design-Builder shall name, on any policy of insurance, the Owner and the Architect as additional insureds. Subcontractors shall name the Design-Builder, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Design-Builder shall provide workers' compensation insurance for all of the Design-Builder's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Design-Builder's work is sublet, the Design-Builder shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Design-Builder's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Design-Builder shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Design-Builder shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the Design-Builder fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Design-Builder being injured or killed, and withhold from progress payments and/or retention the amount of the premium for such insurance.

11.1.6 BUILDER'S RISK/"ALL RISK" INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Unless provided by Owner at Owner's sole discretion, Design-Builder, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, earthquake (for projects not solely funded through revenue bonds, limited to earthquakes equivalent to or under 3.5 on the Richter Scale in magnitude), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect's services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Design-Builder shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder's Risk/Course-of Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder's Risk/Course-of-Construction insurance, as well as any other hazard which might result in damage to the Work, is that of the Design-Builder and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Design-Builder.

11.1.7 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 FIRE INSURANCE

Before the commencement of the Work, the Design-Builder shall procure, maintain, and cause to be maintained at the Design-Builder's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense

to the Owner.

11.1.9 OTHER INSURANCE

The Design-Builder shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.1.10 PROOF OF CARRIAGE OF INSURANCE

The Design-Builder shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.
- (d) The Design-Builder and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 COMPLIANCE

In the event of the failure of any Design-Builder to furnish and maintain any insurance required by this Article, the Design-Builder shall be in default under the Contract. Compliance by Design-Builder with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Design-Builder from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Design-Builder shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Contract Sum is increased in accordance with the Contract Documents, the Design-Builder shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Builder will release the surety. If the Design-Builder fails to furnish the required bond, the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Design-Builder and to require Design-Builder to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Design-Builder must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed work at the Design-Builder's expense without change in the Contract Sum or Time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the Work has been covered which the Owner has not specifically requested to

observe prior to its being covered, the Owner may request to see such work, and it shall be uncovered by the Design-Builder. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such work is not in accordance with Contract Documents, the Design-Builder shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Design-Builder.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 CORRECTION OF REJECTED WORK

The Design-Builder shall promptly correct the work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or completed. The Design-Builder shall bear costs of correcting the rejected work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

12.2.2 REMOVAL OF NONCONFORMING WORK

The Design-Builder shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Design-Builder or accepted or approved by the Owner.

12.2.3 OWNER'S RIGHTS IF DESIGN-BUILDER FAILS TO CORRECT

If the Design-Builder fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design-Builder, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Design-Builder should have borne, the Design-Builder shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If progress payments or retention then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Owner.

12.2.4 COST OF CORRECTING THE WORK

The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether Completed or partially Completed, caused by the Design-Builder's correction or removal of the nonconforming work.

12.2.5 WARRANTY CORRECTIONS (INCLUDES REPLACEMENT)

Pursuant to the warranty in Sections 3.5 and 9.7.1, if within one (1) year after the Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Design-Builder shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Design-Builder shall correct the Work promptly, and passage of the applicable warranty period shall not release Design-Builder from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Design-Builder's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under the Contract and termination of the Contract.

12.2.6 NO TIME LIMITATION

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5, 9.7.1, and 12.2.5 relates only to the specific warranty obligation of the Design-Builder to correct the Work after the date of commencement of warranties, and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Design-Builder has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Design-Builder that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related Work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

The Owner and the Design-Builder respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, any written notice required by the Contract Documents shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Design-Builder's cost, timely notify Design-Builder of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE

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

13.4.2 NO WAIVER

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 COMPLIANCE

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with all requirements imposed by DDW, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 INDEPENDENT TESTING LABORATORY

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory or the Owner's representative and not by the Design-Builder. However, if Design-Builder requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Design-Builder shall pay any additional shipping or transportation costs or expenses (mileage and hours). If Owner pays such additional costs or expenses instead of Design-Builder, then Owner may invoice such costs or expenses to the Design-Builder or withhold such costs or expenses from progress payments and/or retention.

13.5.3 ADVANCE NOTICE TO INSPECTOR OF RECORD

The Design-Builder shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Design-Builder shall notify the Inspector of Record a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

Any material shipped by the Design-Builder from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

13.5.6 COSTS FOR RETESTING

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Design-Builder shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Design-Builder, and, among other remedies, can be withheld from progress payments and/or retention.

13.5.7 COSTS FOR PREMATURE TEST

In the event the Design-Builder requests any test or inspection for the Project and is not completely ready for the inspection, the Design-Builder shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 [INTENTIONALLY LEFT BLANK]

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE FEET

Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Design-Builder shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 EXCAVATION SAFETY

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

13.7.3 NO TORT LIABILITY OF OWNER

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

13.7.4 NO EXCAVATION WITHOUT PERMITS

The Design-Builder shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.8 WAGE RATES

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the City Council has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations (“Director”). These rates are on file with the Clerk of the City Council, and copies will be made available to any interested party on request. The Design-Builder shall post a copy of such wage rates at the Site.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

The Design-Builder shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design-Builder or any Subcontractor and such workers.

13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 FORFEITURE AND PAYMENTS

Pursuant to Labor Code section 1775, the Design-Builder and any subcontractor under the Design-Builder shall as a penalty to the Owner, forfeit not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Design-Builder or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the Design-Builder or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the Design-Builder or subcontractor; and (2) whether the Design-Builder or subcontractor has a prior record

of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the Design-Builder or subcontractor. Labor Code section 1777.1 shall also apply.

13.8.6 MINIMUM WAGE RATES

Any worker employed to perform Work, which Work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the Work to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

13.8.7 PER DIEM WAGES

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 POSTING OF WAGE RATES AND OTHER REQUIRED JOB SITE NOTICES

The Design-Builder shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 APPLICATION OF LABOR CODE

Pursuant to section 1776 of the Labor Code:

(a) Each Design-Builder and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-

Builder on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and as may be required by the Labor Commissioner under Labor Code section 1771.4. The Design-Builder and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement of the Department of Industrial Relations ("DIR"). If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Design-Builder, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Design-Builder.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement of the DIR or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Design-Builder or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated to prevent disclosure of an individual's name, address and social security number. The name and address of the Design-Builder awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available

for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The Design-Builder shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The Design-Builder or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Design-Builder or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from progress payments then due. Design-Builder is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

13.10 APPRENTICES

13.10.1 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the Design-Builder to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any preemployment activities, as set forth in Labor Code section 1777.5.

13.10.2 APPRENTICE LABOR POOL

When the Design-Builder to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Design-Builder and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Design-Builder or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Design-Builder or Subcontractor, shall arrange for the dispatch of apprentices to the Design-Builder or Subcontractor in order to comply with this section. Every Design-Builder and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Design-Builders or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Design-Builder shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Design-Builder shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Design-Builder or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Design-Builder that he or she employs

apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Design-Builder from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 *Apprenticeable Craft or Trade.* “Apprenticeable craft or trade” as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Design-Builder from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 RATIO EXEMPTION

When exemptions are granted to an organization which represents Design-Builders in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Design-Builders will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 APPRENTICE FUND

A Design-Builder to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she

employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Design-Builder or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 PRIME DESIGN-BUILDER COMPLIANCE

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Design-Builder.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this section 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code section 1777.1, in the event a Design-Builder or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, among other things:

- (a) If a Contractor or Subcontractor willfully fails to comply, the Labor Commissioner may deny to the Design-Builder or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.
- (b) A Design-Builder or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars (\$100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the contract progress payments or retention then due or to become due.
- (c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the Design-Builder or subcontractor to provide apprentice employment equivalent to the

work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design-Builder or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Final Progress Payment to the Design-Builder, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 AUDIT

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Design-Builder, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor

General of the State of California for a period of three (3) years after release of all retention under this Contract. Design-Builder shall preserve and cause to be preserved such books, records, and files for the audit period. During the progress of the Work and for three (3) years after release of all retention under the Contract, Owner shall also have the right to an audit, and Design-Builder must cooperate by producing all information requested within seven (7) days.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Design-Builder shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Design-Builder, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Design-Builder may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE DESIGN-BUILDER FOR CAUSE

Design-Builder may not terminate for convenience. Design-Builder may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Design-Builder, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Design-Builder is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Design-Builder may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Design-Builder may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate the Contract if the Design-Builder:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion within the Contract Time;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);
- D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- E. Otherwise is in breach of the Contract Documents.

14.2.2 NOTIFICATION OF TERMINATION

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Design-Builder of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). If Design-Builder fails to **either** (a) completely cure the grounds for termination within seven (7) days **or** (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Design-Builder's surety on the performance bond ("Surety"):

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- B. Accept assignment of subcontracts pursuant to section 5.4; and
- C. Complete the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 PAYMENTS WITHHELD

If the Owner terminates the Contract for one of the reasons stated in section 14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is Complete.

14.2.4 PAYMENTS UPON COMPLETION

If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Design-Builder. If such costs exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. This payment obligation shall survive Completion of the Contract.

14.2.5 INCLUSION OF TERMINATION FOR CONVENIENCE

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Design-Builder in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 *Adjustments.* An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible; or
- B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 *Adjustments for Fixed Cost.* Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.2.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER

Any suspension or termination by Owner for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Design-Builder or others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE

The Design-Builder and the Owner may mutually agree in writing to terminate this Contract for convenience. The Design-Builder shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.



711 West Cinnamon Drive • Lemoore, California 93245 • (559) 924-6700 • Fax (559) 924-9003

Staff Report

Item No: 5-2

To: Lemoore City Council

From: Michelle Speer, Assistant City Manager/ASD

Date: April 4, 2019

Meeting Date: April 16, 2019

Subject: First Reading – Ordinance 2019-01 Amending Article A of Chapter 7 of the City of Lemoore Municipal Code Relating to Water Use and Service

Strategic Initiative:

- | | |
|--|--|
| <input type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input checked="" type="checkbox"/> Operational Excellence |
| <input type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:

Approve the introduction of Ordinance 2019-01 amending Article A of Chapter 7 to update the water ordinance and hold its first hearing on the proposed Ordinance, waive the reading of the Ordinance in its entirety, and set the second hearing for the next regular Council meeting.

Subject/Discussion:

The current water ordinance, Ordinance 2018-07, was brought before City Council in September of 2018 to make some updates in regards to:

- Clarifying deposits for utility accounts
- Establishing rates for customers outside city limits
- Guarantee that bills will be paid by the property owners
- Penalties, discontinuation of services, and debt collection
- Notification of vacant premises

Since the adoption of Ordinance 2018-07, staff has been notified of recent law changes with regard to discontinuing water services, and the notification process. Ordinance 2019-01, attached, does not specifically address the recent bill changes, it establishes the

ability for City Council to update the billing cycle and process through Resolution for expedited means of updating the process in the future. A resolution addressing the new laws, which must take effect by February 2020, will come before City Council at a later date.

Financial Consideration(s):

None at this time

Staff Recommendation:

Staff recommends that the City Council introduce and hold its first hearing on the proposed Ordinance, waive the reading of the Ordinance in its entirety, and set the second hearing for the next regular Council meeting. The Ordinance will take effect 30 days following adoption.

Attachments:

- ☐ Resolution:
- ☒ Ordinance: 2019-01
- ☐ Map
- ☐ Contract
- ☐ Other
- List:

Review:

- ☒ Asst. City Manager
- ☒ City Attorney
- ☒ City Clerk
- ☒ City Manager

Date:

- 4/10/19
- 4/10/19
- 4/11/19
- 4/10/19

ORDINANCE NO. 2019-01

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMOORE
AMENDING SECTION 4-1-6 OF CHAPTER 1 OF TITLE 4 PERTAINING TO THE
BILLING AND COLLECTION OF GARBAGE AND REFUSE FEES AND PENALTIES;
AMENDING SECTION 7-7A OF ARTICLE A OF CHAPTER 7 OF TITLE 7
PERTAINING TO THE BILLING AND COLLECTION OF WATER USE AND
SERVICE FEES AND PENALTIES; AND AMENDING SECTION 7-7B-6 OF ARTICLE
B OF CHAPTER 7 OF TITLE 7 PERTAINING TO BILLING AND COLLECTION OF
SEWER SERVICE RATES, CHARGES AND PENALTIES**

WHEREAS, the Municipal Code of the City of Lemoore contains certain terms and conditions regarding the City's provision of garbage and refuse collection, water use and sewer utility services ("Utility Services");

WHEREAS, the code requirements are sometimes unclear regarding the procedures for billing, collection, delinquencies, penalties and appeals; and

WHEREAS, it is in the interest of the people of the City of Lemoore to clarify the City's processes for billing, collection, delinquencies, penalties and appeals for its utility services..

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEMOORE DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 4-1-6. Chapter 9 of Title 4 of the Lemoore Municipal Code is hereby amended to read as follows:

4-1-6: REFUSE COLLECTION FEES:

A. Application: In every case in which any property owner or his agent desires refuse services from the City to be placed in their name, an application must be made to the Utility Billing Department.

Each applicant for refuse service may be required to establish credit before service will be initiated. Credit will be deemed established if the applicant meets any or all conditions established by City Council resolution.

- a. If a deposit is made or required to establish credit, it shall be paid to the Utility Billing Department, which will deposit it into a special, non-interest-bearing account dedicated exclusively for such purposes. In the event the service account becomes delinquent or when service is terminated, the deposit will be applied to the customer's unpaid bill(s). If the deposit exceeds the amount of the bill(s), the excess amount will be refunded to

the customer. The deposit shall be refunded to a customer who has paid all bills for refuse service without delinquency for the prior twelve (12) consecutive months. If the City draws against the deposit to cover delinquent payments, the City may require the customer to restore the deposit to its original amount as a condition of providing ongoing refuse service.

Before any such application for refuse service is granted, the Utility Billing Department shall confirm that applicant has paid any delinquent utility services account with the City in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service. If it is discovered later that any customer had an outstanding delinquent account with the City for utility services at the time of the application in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service, then the outstanding balance of any such account shall be added on to the balance of the customer's new account.

B. Billing Cycle, Penalties, and Fees: The billing cycle and all penalties, and fees shall be set by Resolution of the City Council after a duly noticed public hearing regarding the establishment of said billing cycle, penalties, and fees.

C. Payment of Fees; Delinquencies:

1. All refuse charges shall be collected together with, and not separately, from the charges for any utility service rendered by the City, and all charges shall be billed upon the same bill and collected as one item. When the refuse customer does not receive city water and/or sewer service, a separate bill for refuse service and any civil penalties shall be mailed monthly to the customer who owns or controls the premises served.
2. The owner or owners of any parcel of real property, together with any and all occupants of such real property, shall be jointly liable for all charges incurred by reason of the use of said waste and refuse pick-up service by any and all occupants of such real property.

SECTION 2. Sections 7-7A-5, 7-7A-5.5, 7-7A-9 and 7-7A-10 of Article A of Chapter 7 of Title 7 of the Lemoore Municipal Code are hereby amended to read as follows:

7-7A-5: APPLICATION FOR WATER SERVICE:

In every case in which any property owner or his agent desires a connection to be made to the water mains of the City, an application must be made to the Utility Billing Department. Applications from public agencies, landowners, developers, or commercial businesses for water service outside the City boundaries shall be evaluated and approved consistent with Section 7-7C-2, subdivisions (B) and (C).

Each applicant for water service may be required to establish credit before service will be initiated. Credit will be deemed established if the applicant meets any or all conditions established by City Council resolution.

- A. If a deposit is made or required to establish credit, it shall be paid to the Utility Billing Department, which will deposit it into a special, non-interest-bearing account dedicated exclusively for such purposes. In the event the service account becomes delinquent or when service is terminated, the deposit will be applied to the customer's unpaid bill(s). If the deposit exceeds the amount of the bill(s), the excess amount will be refunded to the customer. The deposit shall be refunded to a customer who has paid all bills for water service without delinquency for the prior twelve (12) consecutive months. If the City draws against the deposit to cover delinquent payments, the City may require the customer to restore the deposit to its original amount as a condition of providing ongoing water service.
- B. The Water Division shall furnish temporary service, if feasible, to any applicant on the following conditions:
 - 1. Applicant will be required to pay the estimated cost of installing and removing the facilities necessary to furnish service in advance; and
 - 2. Applicant will be required to establish credit in the manner set forth in Subsection (A) above.
- C. Before any such application for water service is granted, the Utility Billing Department shall confirm that applicant has paid any delinquent utility services account with the City in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service. If it is discovered later that any customer had an outstanding delinquent account with the City for utility services at the time of the application in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service, then the outstanding balance of any such account shall be added on to the balance of the customer's new account.

7-7A-5.5: WATER METERS; NEW SERVICE:

As a condition of new water service, a suitable water meter to measure the water service shall be installed on the water service facilities in accordance with Chapter 8 (commencing with Section 500) of the California Water Code. The cost of installation of the meter shall be paid by the water user, and the City does hereby impose the cost of the installation of the meter in the amounts set forth in Resolution No. 8808 (adopted May 17, 1988, and as amended, from time to time,

thereafter). The provisions of this section shall be construed consistent with the provisions of Section 110 of the Water Code and Chapter 8 of Division 1 of the Water Code.

A. New applicants for domestic service, which is defined as an existing non-metered service, may select to maintain the unmetered service and to pay the established unmetered flat rate. Once an applicant or customer has elected either a flat or metered rate, it shall be billed for its service under the selected rate schedule while it remains a customer. All new connections to the water system shall be metered with a meter of at least one inch in size and installation of such meters shall be at the sole cost and expense of the applicant.

1. Should a customer remodel, modify, change or alter its premises and the cost of such remodeling, modification, change or alteration exceeds five thousand dollars (\$5,000.00), the customer shall be required to install a water meter to measure water use at the customer's premises. The customer shall pay the total cost of the purchase and installation of the meter, including, without limitation, the cost of the meter-box.
2. Should any federal, State or local law, regulation or ordinance mandate the installation of water meters for any type of water use, including, without limitation, the installation of water meters on currently unmetered service connections, then on the date any such federal, State or local law, regulation or ordinance is passed, adopted or enacted, the installation of the required water meters shall be at the sole cost and expense of the owner of the real property upon which the meter is to be installed.
3. If a customer's premises are demolished, destroyed or removed from the real property upon which they are located, reconnection to the water system shall require a meter and all costs shall be borne by the customer.
4. Installation of all new water services, including, without limitation, water meters, shall be performed by contractors and/or subcontractors who are duly licensed by the California State Licensing Board. All methods, materials, work procedures, and workmanship shall conform to City standards and must be approved by the City's Utilities Director or their designee.
5. Customers who install meters shall only install City-approved meters, automated meter reading devices, and meter boxes. Determination of whether a turbine or compound meter is required shall be made by the Utilities Director or their designee. All meters, automated meter reading devices, and meter boxes installed to the City's satisfaction shall become and remain the sole property of the City and shall be serviced and maintained by the City.
6. Approved backflow devices that are required to be installed by the Utilities Director or their designee are required to be tested annually and repaired by a certified tester approved by the Utilities Director or their designee, so they remain in good working

order at the sole expense of the customer. If the customer fails to have the backflow device tested or repaired in the timeframes provided in the service notice from the Water Division, the City reserves the right (but shall not be required) to test and/or repair the device at the sole cost of the customer and to charge the customer for costs incurred and administrative and inspection fees established by a separate City Council resolution.

7. Paragraphs 1 through 6 of this subsection shall also apply to any customer premises located outside of the City limits, but within a county area receiving water service from the City.

B. Applicants for commercial service or industrial service shall be served under metered rates.

7-7A-9: SHUTTING OFF WATER:

- A. Repairs and Extensions: The City reserves the right to shut off the water at any time for the purpose of making repairs or extensions to the system or any other purpose and assumes no responsibility for any damage resulting from the water being turned off.
- B. Fires: When an alarm of fire is turned in, the water consumers on the City mains must immediately turn off all taps, faucets or any means of letting water run, which may at the time be open, and the water is not to be turned on again until such fire is known to be extinguished. (Ord. 8205, 10-5-1982)
- C. Delinquencies and Non-Payment: The City reserves the right to shut off the water at any time service charges become delinquent as described by Resolution of the City Council.
- D. Discontinuation of Water Service for reasons other than delinquency:
 1. Vacant Premises; Responsibility for Rates and Charges: A customer may have his or her water service discontinued by giving notice to the Water Division not less than two (2) days before the effective date of the discontinuance. Such customer shall be required to pay all service charges until the effective date identified in such notice. When such notice is not given, the customer shall be required to pay for all service until two (2) business days after the Water Division has knowledge that the customer vacated the premises or otherwise has discontinued water service.
 2. The City may discontinue water service without notice to the customer when the apparatus, appliances or equipment using water, in the sole opinion of the City, is found to be dangerous or unsafe. The City shall promptly notify the customer of the reasons for the discontinuance and the corrective action to be taken by the customer before service can be restored.

3. The City may discontinue service without notice to any customer when the use of water thereon by the apparatus, appliances, equipment or otherwise is found by the City in its sole discretion, to be detrimental or injurious to water service furnished to other customers. The City shall promptly notify the customer of the reasons for the discontinuance and the corrective action to be taken by the customer before service can be restored.
4. The City may discontinue water service without notice to any customer when it is determined by the City, in its sole discretion, that the customer has obtained water service by fraudulent means or has diverted the water service for unauthorized use. The City shall not restore service until the customer has complied with all the City's rules and regulations, and the City has been reimbursed for the full amount of the service rendered and the actual cost to the Water Division incurred by reason of such fraudulent or unauthorized use.

7-7A-10: WATER SERVICE RATES AND CHARGES:

- A. Powers of the City Council: The City Council may, by resolution, further define any of the uses classified herein, resolve any uncertainties regarding the proper rate under specified conditions, and establish rates for any use not herein specifically enumerated.
- B. Rates Established: The monthly rates to be collected by the City for water supplied from its waterworks to consumers shall be established by resolution of the City Council in accordance with City Ordinance 8205 and the provisions of Government Code Section 54354.5 as they may be amended from time to time. The City Council in establishing rates may require that services to premises located outside the City be billed at rates one and one-half times the calculated meter rate for metered services and one and one-half times the established flat rate for metered services. No water service shall be furnished to any customer free of charge.
- C. Payment of Water Rates and Charges: All water charges shall be collected together with, and not separately from, the charges for any other utility service rendered by the City, and all charges shall be billed upon the same bill and collected as one item.
 1. The owner or owners of any parcel of real property together with any and all occupants of such real property shall be jointly liable for all charges incurred by reason of the use of said water service by any and all occupants of such real property.
- E. Billing Cycle, Penalties, and Fees: The billing cycle and all penalties, and fees, shall be set by Resolution of the City Council after a duly noticed public hearing regarding the establishment of said billing cycle, penalties, and fees.

SECTION 3. Section 7-7B-6 of Article B of Chapter 7 of Title 7 of the Lemoore Municipal Code is hereby amended to read as follows:

7-7B-6: APPLICATION; PAYMENT OF CHARGES; DELINQUENCIES:

A. Application: In every case in which any property owner or his agent desires sewer services from the City, an application must be made to the Utility Billing Department.

Each applicant for sewer service may be required to establish credit before service will be initiated. Credit will be deemed established if the applicant meets any or all conditions established by City Council resolution.

- b. If a deposit is made or required to establish credit, it shall be paid to the Utility Billing Department, which will deposit it into a special, non-interest-bearing account dedicated exclusively for such purposes. In the event the service account becomes delinquent or when service is terminated, the deposit will be applied to the customer's unpaid bill(s). If the deposit exceeds the amount of the bill(s), the excess amount will be refunded to the customer. The deposit shall be refunded to a customer who has paid all bills for sewer service without delinquency for the prior twelve (12) consecutive months. If the City draws against the deposit to cover delinquent payments, the City may require the customer to restore the deposit to its original amount as a condition of providing ongoing sewer service.

Before any such application for sewer service is granted, the Utility Billing Department shall confirm that applicant has paid any delinquent utility services account with the City in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service. If it is discovered later that any customer had an outstanding delinquent account with the City for utility services at the time of the application in the name of the applicant, the applicant's spouse, any co-resident, business firm or association with which the applicant is or has been associated in such a way as to benefit directly from the City's utility service, then the outstanding balance of any such account shall be added on to the balance of the customer's new account.

- B. All sewer charges shall be collected together with and not separately from the charges for any other utility service rendered by the City, and all charges shall be billed upon the same bill and collected as one item.
- C. Billing Cycle, Penalties, and Fees: The billing cycle and all penalties, and fees shall be set by Resolution of the City Council after a duly noticed public hearing regarding the establishment of said billing cycle, penalties, and fees.

SECTION 4. This Ordinance shall take effect 30 days after its adoption.

SECTION 5. The City Clerk is hereby directed to cause a summary of this Ordinance to be published by one insertion in a newspaper of general circulation in the community at least five (5)

days prior to adoption and again (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which the ordinance is adopted, and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Lemoore held on the 16th day of April 2019 and passed and adopted at a regular meeting of the City Council held on the 7th day of May 2019 by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

ATTEST:

APPROVED:

Marisa Avalos
City Clerk

Edward Neal
Mayor



119 Fox Street • Lemoore, California 93245 • (559) 924-6700 • Fax (559) 924-9003

Staff Report

Item No: 5-3

To: Lemoore City Council

From: Michelle Speer, Assistant City Manager

Date: April 8, 2019 Meeting Date: April 16, 2019

Subject: Bid Award - CIP 5712 - Lemoore Police Department Dispatch Center

Strategic Initiative:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input checked="" type="checkbox"/> Operational Excellence |
| <input checked="" type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:

Award bid to JTS Modular in the amount of \$1,860,000.00 and authorize the City Manager to sign the contract following review and approval by the City Attorney.

Subject/Discussion:

On June 19, 2018, City Council authorized city staff to move forward with the dispatch center project in order to provide dispatching services for the Police Department and the Lemoore Volunteer Fire Department. Completion of the project will provide a better level of service to both the Police and Fire Departments as well as to the citizens of Lemoore.

The City solicited bids from qualified contractors for the Dispatch project. The estimated cost for this project was \$1,800,000. Bids were opened on March 12, 2019 and were as follows:

Company	Bid
Accelerated Modular Concepts	\$2,420,959.00
JTS Modular	\$1,690,000.00

Staff is recommending the project be awarded to JTS Modular, in the amount of \$1,860,000; \$1,690,000 base bid plus a 10% contingency (\$170,000). The contingency

is utilized to fund any potential change orders. If no change orders are issued during the course of the project, the city retains the funds associated with the contingency. The project will commence upon contract approval.

Financial Consideration(s):

The current budget for CIP 5712 is \$3,580,000 for fiscal year 2018-2019. The dispatch project is funded through multiple sources; general fund, state grants, law and fire development impact fees.

Alternatives or Pros/Cons:

Pros:

- Provides for the space necessary for development of the City of Lemoore Dispatch.
- Provides for the space necessary to accommodate staff.
- Will provide for better service to public safety personnel and the public.

Cons:

- None noted

Commission/Board Recommendation:

N/A

Staff Recommendation:

Staff recommends that the City Council award the bid for the Dispatch Project per bid specification to JTS Modular, in the amount of \$1,860,000.00 and authorize the City Manager to sign the contract.

Attachments:

- ☐ Resolution:
- ☐ Ordinance:
- ☐ Map
- ☐ Contract
- ☒ Other Bid Proposal

Review:

- ☒ Assistant City Manager
- ☐ City Attorney
- ☒ City Manager
- ☒ City Clerk

Date:

04/11/19

04/12/2019
04/11/2019

**BID PROPOSAL TO THE
CITY COUNCIL
CITY OF LEMOORE
KINGS COUNTY, CALIFORNIA
FOR
CITY OF LEMOORE
MODULAR BID PACKAGE FOR POLICE DISPATCH BUILDING**

BID OF JTS Modular, Inc. (hereinafter called "Bidder")
organized and existing under the laws of the State of California, doing business as
JTS Modular, Inc. a corporation.*

* Insert "a corporation," "a partnership," or "an individual" as applicable.

TO: The City Council, City of Lemoore
(Hereinafter called "City")

The undersigned, as bidder, declares that he has carefully examined the location of the proposed work, that he has thoroughly examined all the Contract Documents and Plans, and that this bid is made without collusion with any other person, firm, or corporation, and that all laws and ordinances relating to the interest of public officers in the contract have been complied with in every respect; AND he proposes and agrees, if this bid is accepted, that he will contract with the City in the form of contract contained herein to provide all necessary machinery, tools, equipment, and other means of construction, and to furnish all materials and provide superintendence, overhead expenses, and all labor and expenses of whatever nature to construct the work in accordance with the Plans and the detailed Specifications and other contract provisions contained herein or reasonably implied thereby, or as necessary to complete the work in the manner and within the time named herein and according to the requirements and to the reasonable satisfaction of the Director, and to indemnify the City against any loss or damage arising from any act of the undersigned as Contractor and that he will take as full payment therefore the sum stated below.

Bidder hereby agrees to commence work under this contract on or before the date specified in the written *Notice to Proceed* from the City, and to fully complete the project within the time allotted in the Special Provisions. Bidder further agrees to forfeit and pay the City for each calendar day of delay in the completion of the project as provided for in the Special Provisions.

The undersigned understands that the quantities given are approximate only, being given as a basis for the comparison of bids, and the City of Lemoore does not, expressly or by implication, warrant that the given quantities of work will be performed but reserves the right to increase or decrease the amounts of any portion of the work, or to omit portions of the work as may deemed necessary or advisable by the Public Works Director, without claim for damage or loss of anticipated profit. The undersigned understands that payment will be made only on the basis of the actual quantities or work performed.

This Bid Proposal Form consists of the following:

- a. Bid Form showing unit prices and the amount bid for each item of work.

- b. Bidder's List of Subcontractors.
- c. Major Materials Suppliers Information.
- d. Equal Employment Opportunity Certificate.
- e. Public Contract Code Section 10285.1 Statement.
- f. Public Contract Code Section 10162 Statement.
- g. Public Contract Code Section 10232 Statement.
- h. Noncollusion Affidavit.
- i. Drug-free Workplace Certification.
- j. Information required of bidders.
- k. Completed Statement of Licensure.
- l. Certification of compliance of State Labor Code 3700.
- m. Bid security in the amount of ten percent (10%) of the total amount bid in accordance with the stated requirements contained in the General Conditions.
- n. Bid Certification Page.

Bidder's failure to properly complete the entire Bid Proposal Form may result in the bid being considered nonresponsive.

B I D FORM

TO THE CITY OF LEMOORE:

The undersigned declares that he has carefully examined the location of the proposed work, that he has carefully examined the Plans and Specifications and hereby proposes to furnish all materials and do all the work required to complete the said work in accordance with said Plans and Specifications, for the prices as listed below:

CITY OF LEMOORE MODULAR BID PACKAGE FOR POLICE DISPATCH BUILDING

Bid Proposal Amount. The undersigned Bidder proposes and agrees to perform the Contract including, without limitation, providing and furnishing any and all of the labor, materials, tools, equipment and services necessary to complete in workmanlike manner all of the Work of the Project known as CITY OF LEMOORE MODULAR BID PACKAGE FOR POLICE DISPATCH BUILDING and other obligations required by the contract documents.

Total Amount of Base Bid (written in words) is ONE MILLION SIX HUNDRED NINETY THOUSAND Dollars and ZERO Cents.

In the event of discrepancy between words and figures, the words shall prevail. In case of discrepancy between unit prices and totals, the unit price shall prevail. 1,690,000.00

If written notice of the Award of Contract is mailed, faxed, or delivered to the undersigned at any time before this bid is withdrawn, the undersigned shall, within ten (10) days after the date of such mailing, faxing, or delivering of such notice, execute and deliver an agreement in the form of agreement present in these Contract Documents and give Performance and Payment Bonds in accordance with the specifications and bid as accepted.

The undersigned hereby designates as the office to which such Notice of Award of Contract may be mailed, faxed, or delivered:

7001 McDivitt Dr., Bakersfield, CA 93313

Bidder's Public Liability and Property Damage Insurance is placed with:
The Travelers Indemnity Company of America (Travelers)

Bidder's Workers' Compensation Insurance is placed with:
Travelers

A bidder shall not submit a bid unless the bidder's California contractor's license number appears clearly on the bid, the license expiration date and class are stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid submitted by a contractor who is not licensed pursuant to Business and Professions Code section 7028.15 shall be considered nonresponsive and shall be rejected.

NOTE: Each bid must give the full business address of the bidder and be signed by bidder with bidder's usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

The undersigned declares under penalty of perjury under the laws of the State of California that the representations made in this bid are true and correct.

Print or Type Name : Phil Enlger

Title: President

Name of Company as Licensed: JTS Modular, Inc

Business Address: 7001 McDivitt Drive, Bakersfield
CA, 93313

Telephone Number: 661-835-9270

California Contractor License No.: 798919

Class and Expiration Date: B 8/31/2019

State of Incorporation, if Applicable: California

(x) Evidence of authority to bind corporation is attached.

Dated: March 11, 2019

Signed:  _____

BIDDER'S LIST OF SUBCONTRACTORS

Pursuant to the provisions of Section 4100 to 4113 inclusive, of the Government Code of the State of California, every bidder shall set forth the name and location of the place of business of each subcontractor who will perform work or labor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the Bidder's total bid. If the Bidder fails to specify a subcontractor for any portion of the work in excess of one half (1/2) of one percent (1%) of the Bidder's total bid, he agrees to perform that portion himself. The following is the required list of subcontractors:

<u>Type of Work</u>	<u>Name, Address and Phone Number of Subcontractors</u>	<u>Contractor's License No. / DIR Registration</u>
<u>Foundation/slab</u>	JTS Construction, 7001 McDivitt Dr., Bakersfield, CA, 661-835-9270	701750 1000002468
<u>EMS</u>	L & H Airco, 5466 Lamona Ave STE 102, Fresno, CA, 559-253-9660	591093 1000045587
<u>Fire Alarm</u>	TechTime Communications Inc, 5801 Norm's Road, Bakersfield, CA 661-397-0792	750569 1000002263
<u>Portland Cement Plastering</u>	Tarilton and Son Inc, 3562 S. Elm, Fresno, CA, 559-486-0584	342341 1000004368
<u>Automated Door Operators</u>	FACT Automated Entrances Inc, 1819 E Lamona, Fresno, CA, 559-495-3228	711805 1000007516
<u>Casework</u>	C & W Custom Cabinets Inc, 813 West Ave L-8 #B, Lancaster, CA, 661-942-5311	804186 1000004347
<u>Drywall</u>	Art's Drywall, 9101 Yvonne St, Bakersfield, CA, 661-831-6534	514942 1000005371
<u>Painting</u>	Elite Painting & Wall Covering Inc, 11100 Artist St, Bakersfield, CA, 661-587-0607	662387 1000004955
<u>Ceramic Tile & Thin Brick Veneer</u>	J. Dean Ballard And Sons Tile And Marble Co, 3141 N. Angyle, Fresno, CA, 559-291-6946	297029 1000002729
<u>Flooring</u>	Michael Flooring Inc, 6500 District Blvd, Bakersfield, CA, 661-833-2444	874947 1000017164
<u>Low Voltage & Data</u>	3D Datacom, 11365 Sunrise Gold Circle, Rancho Cordova, CA, 916-859-9111	757157 1000000172
<u>Fire Sprinklers^{1/2}</u>		
Date	(Contractor's Signature)	

(ATTACH ADDITIONAL SHEETS IF NECESSARY)

Note: The Bidder's List of Subcontractors is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this form.

BIDDER'S LIST OF SUBCONTRACTORS

Pursuant to the provisions of Section 4100 to 4113 inclusive, of the Government Code of the State of California, every bidder shall set forth the name and location of the place of business of each subcontractor who will perform work or labor in or about the construction of the work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the Bidder's total bid. If the Bidder fails to specify a subcontractor for any portion of the work in excess of one half (1/2) of one percent (1%) of the Bidder's total bid, he agrees to perform that portion himself. The following is the required list of subcontractors:

[illegible]

(ATTACH ADDITIONAL SHEETS IF NECESSARY)

Note: The Bidder's List of Subcontractors is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this form.

MAJOR MATERIAL SUPPLIERS INFORMATION

The bidder shall indicate opposite each item of material listed below the name of the manufacturer or supplier of the material proposed to be furnished under the bid. Failure to comply with this requirement may render the bid informal and may cause its rejection.

Equipment/Material	Manufacturer or Supplier
1. HVAC Unit	<u>CARRIER</u>

Awarding a contract under this bid will not imply approval by the City of manufacturers or suppliers listed by the bidder. No substitution will be permitted after award of contract unless equipment or material of the listed manufacturer or supplier cannot meet the specifications.

*(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS BID
SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF
THOSE CERTIFICATIONS WHICH ARE A PART OF THIS BID)*

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder JTS Modular, Inc., proposed subcontractor _____, hereby certifies that he has X, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

PUBLIC CONTRACT CODE

Public Contract Code Section 10285.1 Statement

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has , has not **x** been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a checkmark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this Statement.

Public Contract Code Section 10162 Questionnaire

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes No **x**

If the answer is yes, explain the circumstances in the following space.

Note: The above Statement is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this Statement.

Public Contract Code 10232 Statement

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this Statement.
Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

NONCOLLUSION AFFIDAVIT
(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY of LEMOORE

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares as follows:

I am the President of JTS Modular, Inc., the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on March 12, at 8:36 am, 2019.

Signature:  _____

Name (Print) Phil Engler

Title: President

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification is required pursuant to Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;

(b) Establishing a drug-free awareness program to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace;
- (2) The person's or organization's policy of maintaining a drug-free workplace;
- (3) The availability of drug counseling, rehabilitation and employee-assistance programs;
- (4) The penalties that may be imposed upon employees for drug abuse Violations;

(c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the City determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract or grant awarded herein is subject to suspension of payments, termination, or both. I further understand that should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

I acknowledge that I am aware of the provisions of Government Code Section 8350 *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

JTS Modular, Inc.

Name of Contractor


Signature

Phil Engler

Print Name

3/12/2019

Date

INFORMATION REQUIRED OF BIDDER

The bidder shall furnish the following information. Failure to comply with this requirement may render the Bid non-responsive and may cause its rejection. Additional sheets shall be attached as required.

(1) Number of years as a contractor in construction work of this type: 19

(2) Names and titles of all officers of contractor's firm:

Phil Engler President

Shellie Anderson Assistant Secretary

Mark Witcher Treasurer

(3) Name of person who inspected site of proposed work for your firm: N/A

Date of Inspection: N/A

(4) Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract: Valley Surety Insurance Agency

947 Enterprise Drive Unit A, Sacramento, CA 95825

916-567-6676

(5) ATTACH TO THIS BID the experience resume of the person who will be designated chief construction superintendent.

(6) List five projects completed as of recent date involving work of similar type and complexity:

Project: Riverside Prep School Expansion Modular

Contract Price: \$2,202,000.00

Name, address and telephone number of owner: Oro Grande School District,

19900 National Trails Highway, Oro Grande CA 92368

Name and telephone number of Contact Person: D. Redmond Asst. Superintendent

760-246-5884

Project: Goshen Elementary School Administration/Library Modular

Contract Price: \$1,148,000.00

Name, address and telephone number of owner: Visalia Unified School District

5000 W Cypress Ave, Visalia. CA. 93277

Name and telephone number of Contact Person: Robert Groeber Assistant Super.

Project: Mary Chapa Academy Admin/Library
Contract Price: \$1,644,000.00
Name, address and telephone number of owner: Mary Chapa Academy, 490 El Camino Real
Greenfield, CA 93927 (831) 674-5586
Name and telephone number of Contact Person: David Chow, Regional Director
5500 Ming Ave Ste 155 Bakersfield, CA 93309 661-836-4300

Project: MSHS Maintenance and Weight Room Modular Building
Contract Price: \$1,880,000.00
Name, address and telephone number of owner: Madera Unified School District
1902 Howard Rd. Madera Ca 93637 (559)675-4500
Name and telephone number of Contact Person: Susan Harautuneian (559)675-4500

Project: Lamonica Stadium
Contract Price: \$872,000.00
Name, address and telephone number of owner: Lamonica and Merriman at Clovis High
Fowler and Barstow Avenues Clovis, CA 93611
Name and telephone number of Contact Person: David Busch (559)584-1575

Note: The above information is part of the Bid Proposal Form. Signing the Bid Certification Page shall also constitute signature of this Statement.

Alfredo Alonso

JTS MODULAR, INC.

Superintendent

Since 2/14/2014 to Current

Alfredo's Job Duties Consist of The following:

Direct , onsite management, supervision and activity coordination for all phases of construction projects. This includes in plant and various locations within the State of California. He is responsible to keep projects on schedule and within budget by arranging and securing all essential material, equipment, and resources to ensure plans and specifications are strictly followed using substantial communication and collaboration. He is responsible for subcontractor, vendor, scheduling and overseeing scope, ensuring work is performed as contractually agreed upon.

Essential Functions:

- Responsible for compliance with applicable Federal, State, and local laws and ordinances
- Participates in strategic budgeting with Project Managers, handles resources allocation, and forms staffing plans.
- Ensures that all policies, procedures, and processes are followed
- Full understanding of plans, specifications, general and special conditions, addendums, subcontract requirements, and bid paperwork to include requests for information.
- Ensure cost effective measures are taken in all areas and consistently reviews areas for improvements.
- Procures equipment and supplies, secures and manages on site inventory.
- Allocates resources and equipment for full effective and appropriate utilization
- Secures on site resources and equipment of full effective and appropriate utilization
- Oversees subcontractor and vendor work, ensuring the right materials are used, correct safety health, and environmental quality standards are met while executing scope of work as agreed.
- Issues notices of non compliance
- Provides intensive follow up regarding previous issues and problems while managing them properly.
- Ensures As- Built plans are updated each week
- Ensures three week schedule is updated each week, meeting the master CPM schedule and coordinating with the project manager to work out any issues
- Ensures daily reports and punch lists are submitted according to timing and internal accounting cost codes.
- Reviews and approves invoices weekly
- Responsible to provide a safe, clean and organized work environment

Alfredo's Qualifications:

- More than Five years work experience.
- Clean motor vehicle report
- Passed Background investigation, drug test and live scan fingerprinting
- Ethical and punctual fulfilling obligations as promised
- Dependable and reliable
- Computer literate with working knowledge of JTS Modular chosen software.
- Proven ability to problem solve
- Proven ability to meet deadlines

Past Projects :

Have been written on Bid Forms.

STATEMENT OF LICENSURE

UNDER PENALTY OF PERJURY, I swear that the license or certificate of licensure (a copy of which is attached hereto) is mine, is current and valid, and is in a classification appropriate to the work to be undertaken.

JTS Modular, Inc.
Licensee

798919 8/31/2019
Contractor's License Number and Expiration Date

B
License Classification

Signed: _____



If the bidder possesses a current City of Lemoore Business License at Bid Day, the bidder certifies its number is N/A, dated _____.

**CERTIFICATION OF COMPLIANCE WITH
STATE LABOR CODE SECTION 3700**

In compliance with State Labor Code Section 1861:

I am aware 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 I will comply with such provisions before commencing the performance of the work of this contract.

Dated: March 12, 2019

JTS Modular, Inc.

Contractor

By:



Phil Engler

(Seal if Corporation)

BID CERTIFICATION PAGE

Accompanying this bid is

BIDDER'S BOND

(NOTICE: INSERT THE WORDS "CASH(\$ _____)," "CASHIER'S CHECK,"
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

The names of all persons interested in the foregoing bid as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.

President: Phil Engler

Secretary: Shellie Anderson

Treasurer: Mark Witcher

Manager: _____

Licensed in conformance with an act providing for the registration of Contractors,

License No. 798919

Classification(s) B

ADDENDA

This Bid is submitted with respect to the changes to the contract included in addenda number/s

1, 2, 3, 4, 5, SR, 6

(Fill in addenda numbers if addenda have been received and insert, in this Bid, any
Engineer's Estimate sheets that were received as part of the addenda.)

By my signature on this bid I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this bid I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: March 12, 2019

Sign



Here

[Signature]

President

Signature and Title of Bidder

Business Address 7001 McDivitt Dr, Bakersfield CA. 93313

Place of Business JTS Modular, Inc.

Place of Residence Bakersfield CA.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that JTS Modular, Inc.
, as Principal, and
Travelers Casualty and Surety Company of America, as Surety, are hereby held and firmly
bound UNTO THE City of Lemoore as Owner in the penal sum of Ten Percent*
, for the payment of which,
well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators,
successors, and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the City of Lemoore a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the CITY OF LEMOORE MODULAR BID PACKAGE FOR POLICE DISPATCH BUILDING in the City of Lemoore for the City of Lemoore.

NOW THEREFORE.

- (a) If said bid shall be rejected, or in the alternate,
- (b) If said bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said bid) and shall furnish a bond for this faithful performance of said contract and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as stated herein.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall in no way be impaired or affected by any extension of time within which the City may accept such bid; and said Surety does hereby waive notice of any such extension.

BID BOND, PAGE TWO

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by corporate officers, the day and year first set forth below.

Executed on March 7, 2019.

JTS Modular, Inc.

Principal

(Seal if Corporation)

By: 

Title: PRESIDENT

(Attached Acknowledgement of Authorized Representative of Principal)

Any claims under this bond may be addressed to:

Travelers Casualty and Surety Company of America

(name and address of Surety)

11070 White Rock Rd. Suite 130

Rancho Cordova, CA 95670

Valley Surety Insurance Agency

(name and address of Surety's agent for services and process in California, if different from above)

947 Enterprise Drive Unit A

Sacramento, CA 95825

916-567-6676

(telephone number of Surety's agent in California, if different from above)

(Attach Acknowledgement)

Travelers Casualty and Surety Company of America

Surety

Attorney-in-Fact

NOTICE: No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service and process in California. Certified copy of Power of Attorney must be attached.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Sacramento)
 On 3-7-18 before me, L. Chapman, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared JoBeth Swalley
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature L. Chapman
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **JoBeth Swalley**, of **Sacramento, California**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

By: _____

Robert L. Raney
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed 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 hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021



Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 7th day of March, 2019



Kevin E. Hughes
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

CERTIFICATE OF INSURANCE

**TO
CITY OF LEMOORE
Lemoore, California**

Only this Certificate
of Insurance Form
will be Accepted

This certifies to the City that the following described policies have been issued to the insured named below and are in force at this time.

Insured JTS Modular, Inc.

Address P O Box 41765, Bakersfield, CA 93384

Description of operations/locations/products insured (show contract name and/or number, if any) _____

POLICIES AND INSURERS	LIMITS	POLICY NUMBER	EXPIRATION DATE
°WORKERS COMPENSATION Travelers Property Casualty Co of America (Insurer) Best's Rating <u>A++ Superior</u>	Employers Liability \$ <u>1,000,000</u>	UB9M5188561925D	01/01/2020
°GENERAL LIABILITY Check Policy Type: <input type="checkbox"/> Comprehensive Or <input checked="" type="checkbox"/> Commercial Check Coverage Type: <input type="checkbox"/> "Claims-Made" -or- <input checked="" type="checkbox"/> "Occurrence" The Travelers Indemnity Co of Connecticut (Insurer) Best's Rating <u>A++ Superior</u>	Comprehensive General Liability Each Occurrence \$ _____ Aggregate \$ _____ Commercial General Liability Each Occurrence \$ <u>1,000,000</u> General Aggregate, either: per project/location \$ <u>2,000,000</u> -or- twice occurrence limit \$ _____	VT22E-CO-9F337888-TGT-19	01/01/2020
°BUSINESS AUTO POLICY Liability Coverage Symbol <u>1</u> Travelers Property Casualty Co of America (Insurer) Best's Rating <u>A++ Superior</u>	Each Person \$ _____ Each Accident \$ _____ Each Accident, Property Damage\$ _____ -or- Combine Single Limit \$ <u>1,000,000</u>	VTJCAP5644B400TIL19	01/01/2020
°UMBRELLA LIABILITY Check Coverage Type: <input type="checkbox"/> "Claims-Made" -or- <input checked="" type="checkbox"/> "Occurrence" Travelers Property Casualty Co of America (Insurer) Best's Rating <u>A++ Superior</u>	Occurrence/Aggregate \$ <u>10,000,000</u> Self-Insured Retention \$ _____	VTSMJCUP5644B412TIL19	01/01/2020

NOTE: If commercial general liability insurance is used or if aggregate limits are endorsed to the comprehensive general liability policy form, the general aggregate must apply per location/project or the aggregate limit must be at least twice the occurrence limit.

THE FOLLOWING ARE IN EFFECT:	Yes	NO
The City, the Director, their officials, officers, employees, and volunteers are named on all liability policies described above as Insured as respect: (a) activities performed for the City by or on behalf of the named Insured, (b) products and completed operations of the Named Insured, and (c) any premises owned, leased, or used by the Named Insured.	X	
Products and Completed Operations	X	
The undersigned will mail to the City 30 days' written notice of cancellation or reduction of coverage of limits.	X	
Cross Liability Clause (or equivalent wording)		
Personal Injury, Perils A,B and C	X	
Broad Form Property Damage	X	
X, C, U Hazards Included	X	
Contractual Liability Coverage applying to this Contract	X	
Liquor Liability		X
Coverage afforded the City, the Director, their officials, officers employees, and volunteers as Insured applies primary and not excess or contributing to any insurance issued in the name of the City.	X	
Waiver of Subrogation from Worker's Compensation insurer.	X	

This certificate is issued as a matter of information. This certificate is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, condition, of any contract or other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

Walter Mortensen Insurance/INSURICA

Insurance Agency or Brokerage

Insurance Company

8500 Stockdale Hwy, #200

Address

Home Office

Bakersfield, CA 93311
City State Zip

Clint Phillips
Authorized Signature

3-11-2019

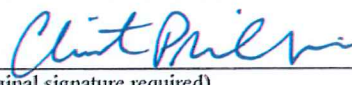
Date

Clint Phillips, Producer

Name of Person to be contacted

Telephone

Note: Authorized signature may be agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of official of insurer.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY SPECIAL ENDORSEMENT FOR <u>CITY OF LEMOORE</u> (the "Entity")		SUBMIT IN TRIPLICATE	
		ENDORSEMENT NO.	ISSUE DATE (MMDDYY) 03/11/2019
PRODUCER Walter Mortensen Insurance/INSURICA 8500 Stockdale Hwy, Suite 200 Bakersfield, CA 93311 Telephone 661-834-6222	POLICY INFORMATION: Insurance Company: Travelers Property Casualty Co of America Policy No.: UB9M5188561925D Policy Period: (from) 01/01/2019 (to) 01/01/2020		
NAMED INSURED JTS Modular, Inc.	OTHER PROVISIONS 		
CLAIMS: Underwriter's representative for claims pursuant to this insurance. Name: Jonet Higgs Lee Claims Account Executive Address: _____ Telephone: (925) 945-4455	EMPLOYER'S LIABILITY LIMITS \$ 1,000,000 (Each Accident) \$ 1,000,000 (Disease - Policy Limit) \$ 1,000,000 (Disease - Each Employee)		
In consideration of the premium charges and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:			
1. CANCELLATION NOTICE. This insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the Entity. 2. WAIVER OF SUBROGATION. The Insurance Company agrees to waive all rights of subrogation against the Entity, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the Named Insured for the Entity.			
Except as stated above nothing herein shall be held to waive, alter or extend any of the limits conditions, agreements or exclusions of the policy to which this endorsement is attached.			
ENDORSEMENT HOLDER			
ENTITY CITY OF LEMOORE 711 W. CINNAMON DRIVE LEMOORE, CA 93245 Attention: City Manager	AUTHORIZED <input checked="" type="checkbox"/> Broker/Agent <input type="checkbox"/> Underwriter <input type="checkbox"/> REPRESENTATIVE I, <u>Clint Phillips</u> (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereby do so bind this company to this endorsement. Signature <u></u> (original signature required) Telephone (661) 364-5104 Date Signed 3/11/2019		



711 West Cinnamon Drive • Lemoore, California 93245 • (559) 924-6700 • Fax (559) 924-6708

Staff Report

To: Lemoore City Council
From: Marisa Avalos, City Clerk / Executive Assistant
Date: April 9, 2019 **Meeting Date:** April 16, 2019
Subject: Activity Update

Strategic Initiative:	<input type="checkbox"/> Safe & Vibrant Community	<input type="checkbox"/> Growing & Dynamic Economy
	<input type="checkbox"/> Fiscally Sound Government	<input type="checkbox"/> Operational Excellence
	<input type="checkbox"/> Community & Neighborhood Livability	<input checked="" type="checkbox"/> Not Applicable

Attendance Roster for Boards and Commissions

➤ January to March 2019

EDDIE NEAL - Mayor
Appointed to Boards/Commissions 1/15/19
YELLOW = ABSENT

Indian Gaming Local Community Benefit Committee	Kings County Association of Governments (KCAG)		Kings Waste & Recycling JPA Board	League of California Cities * <i>General Membership</i> + <i>Executive Board</i>
	Transportation Policy Committee (TPC)	Kings County Vehicle Abatement Committee (AVA)		
<i>Assumed Primary 2/5/19</i>	January 23, 2019	January 23, 2019	January 30, 2019	January 10, 2019 +
February 2019 - No Meeting	<i>Primary assumed by Brown effective 2/5/19</i>		February 27, 2019 - No Meeting	February 7, 2019 *
March 2019 - No Meeting			March 27, 2019	March 14, 2019 +

CHAD BILLINGSLEY - Mayor Pro Tem*Appointed to Boards/Commissions 1/15/19*

YELLOW = ABSENT

Indian Gaming Local Community Benefit Committee	Kings County Economic Development Committee	Kings County Emergency Shelter and Food Committee	Kings Mosquito Abatement District	San Joaquin Valley Air Quality Control Board Special Selection Committee
January 2019 - No Meeting	January 2019 - No Meeting	January 2019 - No Meeting	<i>Assumed Primary 2/5/19</i>	January 2019 - No Meeting
<i>Primary assumed by Neal effective 2/5/19</i>	February 25, 2019	February 2019 - No Meeting	February 20, 2019	February 2019 - No Meeting
	March 25, 2019	March 2019 - No Meeting	March 20, 2019	March 2019 - No Meeting

DAVE BROWN - Council Member

 Page 1 of 2 *Appointed to Boards/Commissions 1/15/19*

YELLOW = ABSENT

Cross Valley Rail Corridor Joint Powers Authority	Kings County Area Public Transit Authority (KCAPTA)	Kings County Association of Governments (KCAG)		Kings Mosquito Abatement District
		Transportation Policy Committee (TPC)	Kings County Vehicle Abatement Committee (AVA)	January 16, 2019
Janury 2019 - No Meeting	<i>Assumed Primary 2/5/19</i>	<i>Assumed Primary effective 2/5/19</i>		<i>Primary assumed by Billingsley effective 2/5/19</i>
February 2019 - No Meeting	February 28, 2019	February 27, 2019	February 2019 - No Meeting	
March 2019 - No Meeting	March 27, 2019	March 27, 2019	March 27, 2019	

Lemoore Finance Committee	LVFD Qualification Review Committee	South Fork Kings Sustainable Groundwater Management Act JPA Board
Janury 2019 - No Meeting	Janury 2019 - No Meeting	January 17, 2019
February 2019 - No Meeting	February 2019 - No Meeting	February 21, 2019
March 2019 - No Meeting	March 2019 - No Meeting	March 21, 2019

STUART LYONS - Council Member
Appointed to Boards/Commissions 1/15/19
YELLOW = ABSENT

Kings County Community Action Organization (KCAO)			Kings County Area Public Transit Authority (KCAPTA)	Kings County Commission on Aging	Kings County Gang Awareness Advisory Committee
Board of Directors Meetings	Real Estate Committee Meetings	Marketing Committee Meetings			
January 16, 2019	January 2019 - No Meeting	January 2019 - No Meeting	January 23, 2019	January 17, 2019	January 2019 - No Meeting
February 20, 2019	February 2019 - No Meeting	February 2019 - No Meeting	<i>Primary assumed by Brown effective 2/5/19</i>	February 21, 2019	February 2019 - No Meeting
March 20, 2019	March 7, 2019	March 2019 - No Meeting		March 21, 2019	March XX, 2019 - No Meeting