

Request for Proposal

Dry Creek Wastewater Treatment Plant Influent Pump Station Replacement Project



City of Roseville
Environmental Utilities Department

January 2010

NOTE: Due Date: February 18, 2010



DRY CREEK WWTP INFLUENT PUMP STATION
REPLACEMENT PROJECT

TABLE OF CONTENTS

Introduction	1
Available Information	2
Scope of Work	2
City's Responsibilities	4
Selection of CONTRACTOR	4
Proposal Requirements and Contents	6
Proposal Outline	6
Cost Proposal	11
Schedule	12
Pre-Proposal Meeting	13
Submittal of Proposal	13
Proposal Terms and Conditions	13

LIST OF APPENDICES

APPENDIX A – DESIGN ASSIST CONSTRUCTION AGREEMENT

- Exhibit A - Guaranteed Maximum Price, Cost of Work, and Fee
- Exhibit B - Scope of Work and Facility Performance Requirements
- Exhibit C - CONTRACTOR's Baseline Schedule
- Exhibit D - In Lieu of Securities Escrow Agreement
- Exhibit E - Performance, Labor and Material, and Warranty Bond Forms
- Exhibit F - Hazardous Materials
- Exhibit G - Certificates (Insurance, Non-Collusion Affidavit, & Drug-Free Workplace)
- Exhibit H - Technical Specifications (Volumes 1 and 2 – bound separately)
- Exhibit I - Drawings (bound separately)
- Exhibit J – Standard Details (bound separately)

APPENDIX B - KEY PROJECT MILESTONES

APPENDIX C - NON-COLLUSION AFFIDAVIT

APPENDIX D - CERTIFICATION OF DRUG-FREE WORKPLACE REQUIREMENTS

APPENDIX E - REFERENCE DOCUMENTS

- Geotechnical Exploration Report
- Technical Memorandum – Assessment of Potential Environmental Hazards
- Typical PLC Control Panel Drawings

REQUEST FOR PROPOSALS (RFP)
FOR
DRY CREEK WWTP INFLUENT PUMP STATION
REPLACEMENT PROJECT

City of Roseville
Environmental Utilities Department
January 2010

INTRODUCTION

The City of Roseville (CITY) intends to proceed with the construction of new raw sewage pump station, odor control, and standby power improvements at the Dry Creek WWTP, to replace aged infrastructure performing similar functions. The CITY has elected to use a Design Assist procurement method to construct these improvements. The City of Roseville has retained the services of CH2M HILL, Inc. (ENGINEER) to provide design, office services during construction and construction management/inspection services. Proposals will be used to select the Design Assist Contractor (CONTRACTOR) for this Project. Project background and requirements are included within this RFP and within the supplemental technical documents prepared by the ENGINEER. The available information, scope of work, proposal requirements, and schedule are presented below.

The selected CONTRACTOR shall be responsible for the work of its own forces and its selected subcontractors. The CONTRACTOR shall manage Project construction in close association with the CITY and ENGINEER.

Construction will be monitored by CITY and ENGINEER and will be performed within a guaranteed maximum price ("GMP").

In accordance with the provisions of California Public Contract Code, Section 3300, City of Roseville has determined that CONTRACTOR shall possess a valid Class A Contractor License at the time of proposal submission and for the duration of the Agreement. Failure to possess the specified license shall render the Proposal as nonresponsive and shall act as a bar to award of the Design Assist Construction Agreement to any CONTRACTOR not possessing said license at the time of Proposal submission.

Questions regarding the RFP should be directed to Wayne Pearson, P.E., CH2M HILL, Inc., (530) 229-3351, email wpearson@ch2m.com.

The complete RFP is available on the City website at
http://www.roseville.ca.us/eu/news_n_information/request_for_proposal.asp.

AVAILABLE INFORMATION

The following sections provide a brief description of the Design Assist Project, details of the RFP process, and proposal submittal procedures.

Appendix A of the RFP contains the detailed Design Assist Construction Agreement (Agreement) for this Project. Technical Specifications have been included in Exhibit H of the Agreement. These specifications provide the minimum level of quality and required manufacturers. Drawings are included in Exhibit I and Standard Details are included in Exhibit J of the Agreement.

SCOPE OF WORK

The Scope of Work for this Project includes construction of new raw sewage pumping facilities with odor control and electric power supply, additional standby power generation equipment, a pond return pump station, demolition of select existing facilities, and all related and associated Work. New and modified systems must meet the testing and performance criteria established in the RFP and specifications. The following is a summary of Work to be completed on the Project to aid in the development of the GMP for Contractor's proposal. Specifications for the Project are provided in Exhibit H and drawings for the Project are provided in Exhibit I. Existing facilities requiring modification as part of the Project are designated below with an (E).

Screenings Facility (E)

- Construct foul air ductwork modifications
- Replace existing Square D PLC remote I/O rack with new Modicon PLC remote I/O rack

Raw Sewage Pump Station

- Construct pump station structure
- Furnish and install electrically operated slide gates
- Furnish and install submersible style pumps
- Furnish and install piping and valves
- Furnish and install duplex sump pumps
- Furnish and install dry well air supply and exhaust fans

Electrical Building

- Construct CMU block building
- Furnish and install building HVAC equipment
- Assist Roseville Electric with installation of new service including utility transformer
- Furnish and install MCC and AFDs
- Furnish and install new Modicon PLC
- Install existing HMI operator workstation relocated from Pump Station Annex

Standby Engine Generator with External Load Bank

- Construct concrete equipment pad
- Furnish and install engine generator unit with outdoor weather protection and sound attenuation enclosure
- Furnish, install, and connect external load bank unit

Biofilter Foul Air Blower Structures

- Furnish and install foul air fans
- Construct foul air fan support structures
- Furnish and install foul air ductwork and supports
- Furnish and install foul air flowmeters
- Furnish and install foul air humidifier systems

Odor Control Biofilter Cells

- Construct odor control biofilter structures
- Furnish and install air distribution piping
- Furnish and install biofilter media
- Furnish and install spray irrigation systems

Pond Return Pump Station

- Construct pond return duplex pump station
- Furnish and install submersible pumps
- Construct pump station access stairway and handrail

Old Raw Sewage Pump Station (E)

- Demolish 1960's vintage raw sewage pump station

Pump Station Annex (E)

- Disconnect power supply feeder circuit to Screenings Facility
- Relocate existing HMI operator workstation to Electrical Building
- Demolish Pump Station Annex (Optional Work – Provide separate GMP)

Site Work (E)

- Construct site work improvements
- Furnish and install buried and exposed yard piping
- Furnish and install exposed and buried foul air ductwork
- Install Electrical Building power supply conduits and conductors
- Construct site electrical improvements
- Furnish and install asphalt concrete pavement

The CITY plans to contract with another Contractor to construct the adjacent Levee Relocation Project during the spring, summer, and fall of 2010. The work to be performed on the adjacent Levee Relocation Project is in the area of the emergency storage ponds located very close to the work site for this Project. The selected CONTRACTOR will be required to closely coordinate his work activities with Contractor performing the work on this adjacent project to allow both projects to proceed ahead smoothly with minimum disruption to the work being performed by both contractors.

The successful CONTRACTOR will be required to provide the expertise, equipment, materials, and labor to complete the services as outlined in the Agreement. The following is a summary of the requirements:

- A. Assist the ENGINEER in developing construction documents, working drawings, and specifications for the construction of raw sewage pump station facilities.
- B. Provide all supervision, specified testing, construction equipment, labor, materials, tools, subcontractors and services to complete the construction within the contract time, as identified in Agreement.
- C. Design Assist Phase:
 - 1. Participate as a member of the project team, with CITY and ENGINEER.
 - 2. Analyze and evaluate drawings and specifications for constructability, suggest alternative design solutions, and provide input to preferences for construction sequencing and methods.
 - 3. Participate with team to develop a comprehensive construction plan to address project risk and minimize existing plant disruptions.
 - 4. Develop cost estimates for alternatives and other potential optional work items.
 - 5. Develop project schedule, and partial schedules in the evaluation of alternatives.
- D. Construct the Project in accordance with the design as developed within the design assist phase.
- E. Provide start-up and testing services for the constructed facilities.

The CONTRACTOR's responsibilities are further defined in the Agreement.

CITY'S RESPONSIBILITIES

The CITY will provide and pay for the services of the ENGINEER.

CITY will select and approve the Major Equipment to be provided by CONTRACTOR. The CITY prefers that the CONTRACTOR procure and supply either the specified Flygt Pumps or ABS Pumps, for the submersible pumps required for this Project.

The CITY and ENGINEER will attend weekly meetings to be held on-site by the CONTRACTOR. During each progress meeting, key elements of the project shall be identified including progress schedule, submittal review, and plant tie-in. The CITY or CITY's Representative shall provide review of the progress schedule and submittal review for conformance to the project intent within thirty (30) days. The project schedule shall reflect progress schedule reviews and submittal reviews.

The CITY's responsibilities are further defined in the Agreement.

SELECTION OF CONTRACTOR

The selection committee, consisting of members of CITY's staff and consultants selected by CITY, will evaluate and rank the proposals.

CITY may conduct such investigations, as CITY deems necessary, to establish the responsibility, qualifications, and financial ability of the CONTRACTOR to perform the Work.

In evaluating and ranking proposals, CITY will consider whether or not Proposals comply with and provide the best value to the CITY using the following criteria:

- ◆ Project understanding
- ◆ Past performance record of CONTRACTOR and electrical subcontractor, if this work is not self performed.
 - Timely completion of work
 - Experience in wastewater treatment plant construction
 - Prompt warranty service
 - Payment and treatment of subcontractors
 - Overall successful completion
- ◆ Qualifications of key personnel
 - Key Personnel Experience, and role in project
 - Key Personnel Availability
 - Relevant Project Experience
- ◆ Similar experience and expertise in the type of work required
- ◆ Ingenuity in proposed construction materials and methods, which achieve a more efficient, lasting, and effective operation of new pump station facilities and equipment.
- ◆ Project Scheduling
- ◆ Safety Record
- ◆ CONTRACTOR's Accounting System for Job Costs
 - Sample job cost report to illustrate CONTRACTOR's capabilities for tracking costs for progress billings to City.
 - Sample progress billing.
- ◆ Financial Condition and Status
 - Most recent reviewed or audited Financial Statement; or
 - Certified Credit Report; or
 - Bank letter on opinion of credit worthiness and current line of credit.
 - Information on any past or pending Claims/Disputes
- ◆ Clarity and conciseness of response to this RFP
- ◆ Cost of Project
 - Guaranteed Maximum Price proposed by CONTRACTOR
 - Proposed Overhead and Profit Markups by CONTRACTOR
 - Labor rates for CONTRACTOR's Foremen and Field Labor Crafts
 - Labor rates for Management and Administrative Employees
 - Equipment rates for CONTRACTOR owned equipment.

CITY will enter into negotiations with the highest ranked CONTRACTOR. Following successful negotiations, a recommendation will be made to City Council for award of the contract. In the event that negotiations are not successful, CITY reserves the right to enter into negotiations with the next highest ranked firm.

The CONTRACTOR shall perform the work under the terms of the Agreement. This includes, but is not limited to the following conditions, as identified in the Agreement.

- Faithful Performance and Payment bonds, each in the amount of the contract
- Compliance with prevailing wage laws
- A 10 percent retention
- Two corporate officers to sign the Agreement (if a corporation);
- Compliance with insurance requirements identified in the Agreement.

PROPOSAL REQUIREMENTS AND CONTENTS

Proposals submitted for this Project are to follow the outline described below and must address all requested information. Any additional information that the CONTRACTOR wishes to include that is not specifically requested should be included in an appendix to the proposal. CONTRACTORS are encouraged to keep the proposals brief and to the point, but sufficiently detailed to allow evaluation of the project approach. Unless otherwise indicated, proposals should be prepared using 8½-inch x 11-inch size sheets.

PROPOSAL OUTLINE

Section 1 Project Understanding and Special Project Considerations (5 page maximum)

Provide a narrative description of the project based on your proposed Scope of Work and information gathered about the project. Include any issues that you believe will require special consideration for this Project. Identify any unique approaches or strengths that your firm may have related to this Project. CITY will assess your understanding of all aspects of the project based on the overview.

Section 2 Project Team (8 page maximum)

Include a one-page organization chart listing all key project team members. In addition the following items shall be addressed:

- Identify all key member's roles, availability, qualifications, and responsibility for the project. Resumes for all key members shall be provided within an appendix.
- All Subcontractors shall be identified along with tasks assigned to them, including testing firms. Identify years of experience in construction of wastewater facilities.
- CONTRACTOR's Electrical Subcontractor, if this work is not self-performed by CONTRACTOR.
 - Provide list of similar size and type of projects completed by Electrical Subcontractor.
 - Provide resumes and project experience of key personnel assigned to the project by the Electrical Subcontractor.
- If Electrical work is self-performed by CONTRACTOR, please provide explanation of CONTRACTOR's in-house capacity and proven capabilities to perform this work with its own forces.

- Has any member of the team failed to remain on a project through completion of a Contract during the past five (5) years, if so, please explain?
- Provide name of entities, as well as contact information, with whom the CONTRACTOR has associated in alternative delivery projects including design build and design assist projects, fast track projects, or projects with owner supplied equipment during the past five (5) years. Provide name of entities with whom the CONTRACTOR has implemented value engineering during the past five (5) years. Provide a list of all wastewater and water projects completed in California in the past five (5) years, including owner contact information for each project.
- Identify the CONTRACTOR's license classification, license number, expiration date and citations, if any.

Section 3 Detailed Scope of Work (10 page maximum)

Provide a detailed description of the tasks and duties required to implement this Scope of Work, from completion of design through startup. The Scope of Work shall include all necessary equipment, materials, and labor to conduct the Work. Provide a listing of all assumptions made (by work task), including anticipated level of work assistance to be provided by the CITY and the Engineer. Identify any steps required that have not been specifically identified in the Scope of Work. Also, identify any unique approaches or strengths that your team may have related to this Project.

Provide a list of Major Equipment that CONTRACTOR proposes to provide in compliance with the specifications for the project, include equipment name, equipment manufacturer, and model number. Major Equipment includes motor operated gates, raw sewage pumps, foul air fans, pond return pumps, motor control center (MCC), engine generator, and variable frequency drives (VFDs).

Section 4 Project Schedule (4 page maximum)

Include a Project Schedule showing all key Project milestones. A list of key milestones is included in Appendix B. Include a list of all assumptions used in developing the Schedule for the Scope of Work presented in Section 3, but not limited to the following:

- Project Meetings
- Design Milestones
- Construction Milestones
- Anticipated Shutdowns
- Equipment and Material Procurement
- Civil Construction
- Equipment Installation
- Electrical Construction
- Training and Demonstration Periods
- Submission of O&M Manuals
- Point of Substantial Completion
- Demolition
- Final Completion of the Work.

The Schedule included with CONTRACTOR's proposal can be on 11-inch x 17-inch size sheets.

Section 5 Safety Record (no page limit)

Please acknowledge if the CONTRACTOR or Electrical Subcontractor, if any, has been cited for violations of OSHA Standards and Requirements within the past five (5) years. If so, please explain.

Has CONTRACTOR earned any industry safety awards in the past five (5) years? If so, please provide an explanation of award(s).

Provide the Average Lost Workday Incident Rates (LWIR), Average Recordable Incident Rates (RIR) and most recent Experience Modification Rate (EMR) in the format presented below.

The Average LWIR and the Average RIR are requested for evaluation of the safety history relating to the CONTRACTOR's construction operations only. Home office staff labor hours and the corresponding injury and illness figures for home office staff shall not be included in the calculation of these rates. Similar information for parent companies, subsidiaries, or other company divisions not directly engaging in construction activities shall not be considered in these rate calculations. All data used in the calculations shall be specific to the company operation who will construct this Project if awarded the Contract.

The Experience Modification Rate (EMR) is established by the CONTRACTOR's worker's compensation insurance carrier and is based on the CONTRACTOR's loss history. CONTRACTOR can provide either its Intrastate or Interstate EMR. Provide all requested information in the format presented below.

Average Lost Workday Incident Rate (LWIR).

Calculate and provide your company's LWIR for the past three (3) complete years in the format presented below. The lost workday information is listed on your OSHA forms No. 300 and 300A and is available from your worker's comp. insurance carrier.

$$\text{LWIR} = \frac{\text{Total number of lost workday incidents} \times 200,000}{\text{Total employee hours worked}}$$

Year	# of Lost Workday Incidents	Total Employee Hours Worked	Lost Workday Incident Rate
1-200____			
2-200____			
3-200____			
3 Year Average			

Average Recordable Incident Rate (RIR).

Calculate and provide your firm's RIR for the past three (3) complete years in the format presented below. The Incident Rate information is listed on your OSHA forms No. 300 and 300A and is available from your worker's comp. insurance carrier.

$$\text{RIR} = \frac{\text{Total number of recordable incidents} \times 200,000}{\text{Total employee hours worked}}$$

Year	# of Recordable Incidents	Total Employee Hours Worked	Recordable Incident Rate
1-200____			
2-200____			
3-200____			
3 Year Average			

Experience Modification Rate (EMR).

Provide your firm's EMR for the last three (3) complete years (this information is provided by your worker's comp. insurance carrier) in the format presented below. Identify if the EMR rates listed are intrastate or interstate.

Year	EMR
1-200____	
2-200____	
3-200____	
3 Year Average	

() Intrastate () Interstate

Identify if your firm is self-insured for Workers Compensation Insurance in California. If self-insured provide the self-insurance number and attach a certification in the Appendix to the proposal.

Provide the name of your Worker's Comp. Insurance Carrier(s) as well as their address, agent's name and telephone number.

Section 6 Accounting System (5 page maximum)

Provide a detailed explanation of CONTRACTOR's job cost accounting system and methods to accurately track job costs on time and materials projects. Provide an example of job cost report and progress billing that ties back to job cost report. Job cost report shall be broken down by area, structure and/or building in the same format as the typical specifications divisions and subdivisions. The cost breakdown shall be such that the CITY can easily identify portions of the Work in their review of progress billings.

Section 7 Financial Status

CONTRACTOR's must provide one or more of the following to assist the CITY in determining the CONTRACTOR's financial condition:

1. Copy of a reviewed or audited financial statement with accompanying notes and supplemental information. A financial statement that is not either reviewed or audited is not acceptable.
2. A certified Credit Report, current within thirty (30) days of the date proposals are due. This credit report shall show a Dun & Bradstreet, or equal, credit risk category rating.
3. A letter from the CONTRACTOR's bank certifying their opinion of the CONTRACTOR's credit risk category rating and CONTRACTOR's current available line of credit.

CONTRACTOR must provide a letter from its Surety or Surety Broker, which certifies that CONTRACTOR's current bonding capacity is sufficient for this Work based on the CONTRACTOR's Proposal and the terms of the Agreement.

CONTRACTOR shall identify any claims filed in court or arbitration **against** CONTRACTOR in the past five (5) years, which concerned CONTRACTOR's work on a construction project. For each claim, if any, the CONTRACTOR shall provide the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution). CONTRACTOR must identify and explain any pending claims against CONTRACTOR for which a loss of the claim(s), would adversely affect CONTRACTOR's financial position or ability to meet CONTRACTOR obligations if awarded the contract for this Project.

CONTRACTOR shall also identify any claims filed in court or arbitration by CONTRACTOR against a project owner in the past five (5) years concerning work on a project or payment for a contract. For each claim, if any, the CONTRACTOR shall provide the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution). Contractor must identify and explain any pending claims filed by CONTRACTOR against a project owner for which a loss of the claim(s), would adversely affect CONTRACTOR's financial position or ability to meet obligations if awarded the contract for this Work.

Section 8 Conflicts of Interest (1 page maximum)

CONTRACTOR submitting a proposal must disclose any actual, apparent, direct or indirect, or potential conflicts of interest that may exist with respect to the firm, management, or employees of the firm relative to the services to be provided under the Agreement. If a CONTRACTOR has no conflicts of interests, a statement to that effect shall be included in the Proposal.

Section 9 Proprietary Information (1 page maximum)

CONTRACTOR submitting a Proposal in response to this RFP must provide a statement that nothing contained in the submitted proposal will be proprietary. All proposals shall become the property of the CITY once submitted. To the maximum extent allowable by law, financial information provided in Section 7 will not be made public.

Section 10 Non-Collusion Affidavit

Only one Proposal from an individual firm, partnership, joint venture (or individual members of a joint venture), or corporation, under the same or different names, will be considered. Should it appear to CITY that any CONTRACTOR is interested in more than one Proposal for the Work contemplated, all Proposals in which such CONTRACTOR is interested will be rejected. Subcontractors may participate in more than one proposal. An authorized individual of the CONTRACTOR shall sign the Non-Collusion Affidavit included in Appendix C.

Section 11 Certification of Drug-Free Workplace

An authorized individual of the CONTRACTOR shall sign the Certification of Drug-Free Workplace included in Appendix D.

Section 12 Insurance (1 page maximum)

Provide confirmation of the limits and types of insurance to be maintained as identified in Article 10 of the Design Assist Construction Agreement.

Section 13 Signature (1 page maximum)

Proposals by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer duly authorized to sign). The corporate address and state of incorporation must be shown above the signature.

Proposals by partnerships must be executed by a partner whose title must appear on the line below the signature together with evidence of authority binding all partners unconditionally to the terms and conditions of the proposal. The partnership's address and state where articles of co-partnership are filed must be shown above the signature.

All names must be typed or printed on the line with the signature, along with the address and telephone number of the CONTRACTOR's representative.

COST PROPOSAL - (To be submitted in a Separate Sealed Envelope with CONTRACTOR's Proposal)

The CONTRACTOR's Cost Proposal shall include the following information:

- CONTRACTOR's Guaranteed Maximum Price (GMP) to complete all of the Work in accordance with this RFP, CITY's proposed Design-Assist Agreement and all Addenda issued. Provide separate prices to provide either the specified Flygt Pumps or ABS Pumps. Include a separate GMP deduct amount to not perform the Optional Work – Demolition of the Pump Station Annex.
- A Cost Breakdown of the CONTRACTOR's GMP to complete the Work shall be provided. The cost breakdown shall be by area or structure and broken down by typical specification division and subdivisions or other logical divisions of the Work. The cost breakdown shall include all proposed testing to be completed. CONTRACTOR shall have separate costs shown for Project Management/Administration and Direct Job

Overhead (see Exhibit A of the Agreement for further definition of Project Management and Direct Job Overhead costs allowed). Mobilization, markup fees, bonds, insurance, and other general costs shall be prorated to each breakdown cost item. This Cost Breakdown will only be used in the CITY's evaluation process of CONTRACTOR's proposal and will not be used after the Agreement is executed.

- CONTRACTOR's list of allowances, assumptions, clarifications, schedule, suggested Design-Assist Construction Agreement edits, or additions, suggested unit prices or the like which are the basis for the CONTRACTOR's GMP.
- Hourly Field Labor Rate Table which shows all direct labor costs for each worker classification anticipated to be used by CONTRACTOR in completing the Work. Hourly Field Labor Rate Table shall be in the same format as draft Table A-1 found at the end of Exhibit A of the Agreement.
- Hourly Labor Rate Table for all Management and Administrative labor anticipated to be used by CONTRACTOR in completing the Work. Hourly Labor Rate Table for all Management and Administrative labor shall be in the same format as draft Table found in Item 2.3 of Exhibit A of the Agreement.
- Equipment Rate Table for all CONTRACTOR-owned equipment anticipated to be used by CONTRACTOR in completing the Work. Equipment Rate Table shall be in the same format as draft Table found in Item 2.5 of Exhibit A of the Agreement. Please show manufacturer, model and size/capacity of each equipment item listed.
- CONTRACTOR's proposed Mark-up percentages for general overhead and profit shall be in the same format as draft Table found in Item 4 of Exhibit A of the Agreement.
- CONTRACTOR's proposed sharing of the difference between the total cost of the Work, plus the Contractor's Markup, and the GMP if the project is completed for less cost than the GMP (see paragraph 6.1 of the Design Assist Construction Agreement).
- CONTRACTOR's terms and agreements for purchase of the raw sewage pumps and the standby engine generator.

SCHEDULE

The anticipated preliminary planning schedule for this Project is included in Appendix B. The following are key milestones for the selection process:

RFP Issued:	January 14, 2010
Mandatory Pre-Proposal Meeting:	January 26, 2010, at 10:00 am
Proposals Due:	February 18, 2010 (by 3:00 pm)
Evaluation of Proposals:	February 19 – March 5, 2010
Selection of Successful Proposal and Contract Negotiations:	March 6 – April 9, 2010
Contractor Submit Executed Agreement, Bonds, & Insurance:	April 14, 2010
Earliest Anticipated Contract Award:	May 5, 2010 (City Council Meeting)

PRE-PROPOSAL MEETING

Proposers are required to attend a mandatory Pre-Proposal meeting and job site tour, which will be held at the Dry Creek Wastewater Treatment Plant, 1800 Booth Road, Roseville CA. At this meeting, representatives of CITY and Engineer will discuss the RFP Documents, site constraints, sequence of Work, and other items specific to this Project. A Project walk-through will follow. A sign-in sheet will be available up until the start of the meeting; date and start time for this meeting are provided above under paragraph Schedule. **Attendance at the entire pre-proposal meeting and walk-through is mandatory for proposing on this Project.**

A Proposal received from CONTRACTOR who did not sign the sign-in sheet and attend the meeting and walk-through will be returned to that CONTRACTOR unopened. Attendance by Subcontractors is not mandatory, but all interested prospective Subcontractors are encouraged to attend. The CITY will transmit to all recipients of complete sets of the RFP Documents such Addenda as CITY considers necessary in response to questions raised at the meeting and walk-through. Oral statements not confirmed by Addenda may not be relied upon and are not binding or legally effective.

Questions regarding the RFP Documents and/or proposed Work must be received in writing by February 10, 2010. This is to allow sufficient time to distribute questions and provide answers to all prospective firms. All questions should be directed to Wayne Pearson, P.E., CH2M HILL, Inc. at fax (530) 339-3351 or email at wpearson@ch2m.com. All emails sent to CH2M HILL, Inc. should request a delivery receipt for verification of receipt.

Address written questions to:

CH2M HILL, Inc.
2525 Airpark Drive
Redding, CA 96001
Attn: Wayne Pearson, P.E.

SUBMITTAL OF PROPOSAL

CONTRACTOR shall submit eight copies of the proposals to:

City of Roseville, Environmental Utilities Department
c/o City Clerk
311 Vernon Street
Roseville, California 95678
Attn.: Ken Glotzbach, P.E., Senior Engineer

Sealed Proposals will be received at the Office of the City Clerk until 3:00 pm on February 18, 2010. Proposals received after 3:00 pm may be declined.

PROPOSAL TERMS AND CONDITIONS

The CITY will not pay any costs incurred by the CONTRACTOR in preparing or submitting the proposal. The CITY reserves the right to modify or cancel, in part or in its entirety, this RFP. The CITY reserves the right to reject any or all proposals, to waive defects or informalities, and to offer to contract with any firm in response to any RFP. This RFP does not constitute any form of offer to contract.

APPENDIX A (RFP)

DESIGN ASSIST CONSTRUCTION AGREEMENT

JANUARY 2010

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363312.PS

**DRY CREEK WWTP INFLUENT PUMP STATION
REPLACEMENT PROJECT
DESIGN ASSIST CONSTRUCTION AGREEMENT
TABLE OF CONTENTS**

TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE 1 - DEFINITIONS	
1.1 APPLICABLE LAWS	1
1.2 APPLICATION FOR PAYMENT	1
1.3 BENEFICIAL OCCUPANCY	2
1.4 BUSINESS DAY	2
1.5 CHANGE DIRECTIVE	2
1.6 CHANGE ORDER	2
1.7 CHANGE PROPOSAL	2
1.8 CITY'S PROPOSED DESIGN	2
1.9 CONSTRUCTION ALLOWANCE ITEM	2
1.10 CONSTRUCTION DOCUMENTS	2
1.11 (RESERVED)	2
1.12 (RESERVED)	2
1.13 CONSTRUCTION WORK	3
1.14 CONTINGENCY COSTS	3
1.15 CONTRACT DOCUMENTS	3
1.16 CONTRACT OR AGREEMENT	3
1.17 CONTRACT TIME	4
1.18 CONTRACTOR	4
1.19 CONTRACTOR'S PLANT AND EQUIPMENT	4
1.20 CONTRACTOR EVENT OF DEFAULT	4
1.21 COST OF THE WORK	4
1.22 CPM	4
1.23 DAY OR DAYS	4
1.24 DELAY COSTS	4
1.25 DESIGN ASSIST CONTRACTOR	4
1.26 (RESERVED)	4
1.27 DESIGN WORK	4
1.28 ENGINEER	4
1.29 EXCUSABLE DELAY	5
1.30 FEE	5
1.31 FINAL COMPLETION	5
1.32 FORCE MAJEURE	5
1.33 FURNISH	5
1.34 GOVERNMENTAL APPROVALS	5
1.35 GUARANTEED MAXIMUM PRICE OR GMP	5
1.36 HAZARDOUS MATERIALS	5
1.37 HOLIDAYS	5
1.38 INDEMNIFIED PARTIES	5
1.39 INSTALL	6
1.40 LIQUIDATED DAMAGES	6

1.41	MILESTONE.....	6
1.42	MODIFICATION	6
1.43	NOTICE OF COMPLETION	6
1.44	NOTICE TO PROCEED	6
1.45	PARTY	6
1.46	PERFORMANCE, LABOR AND MATERIAL, AND WARRANTY BONDS	6
1.47	PROJECT	6
1.48	PROJECT MANAGER.....	6
1.49	PUNCH LIST	7
1.50	RETENTION.....	7
1.51	SCHEDULE.....	7
1.52	SCOPE CHANGE COSTS	7
1.53	SEPARATE CONTRACTORS.....	7
1.54	SHALL	7
1.55	SITE	7
1.56	SUBCONTRACTOR.....	7
1.57	SUBSTANTIAL COMPLETION.....	7
1.58	SUPPLIER	7
1.59	SURETY.....	8
1.60	UNEXCUSABLE DELAY and INEXCUSABLE DELAY	8
1.61	WILL	8
1.62	WORK OR SCOPE OF WORK.....	8
1.63	WORK SITE	8

ARTICLE 2 - SCOPE OF WORK AND FACILITY PERFORMANCE REQUIREMENTS

2.1	SCOPE OF WORK - SUMMARY.....	8
2.2	SCOPE OF WORK - DESIGN ASSIST PHASE.....	9
2.3	SCOPE OF WORK - CONSTRUCTION PHASE	9
2.4	FACILITY PERFORMANCE REQUIREMENTS.....	9

ARTICLE 3 - PROJECT REQUIREMENTS

3.1	PERFORMANCE OF WORK.....	9
3.2	NORMAL WORKING HOURS.....	10
3.3	PROFESSIONAL STANDARD; OWNERSHIP OF DOCUMENTS.....	10
	3.3.1 Standards of Performance	10
	3.3.2 Use of Design Documents	10
3.4	LOCAL CONDITIONS; ENVIRONMENTAL SITE CONDITIONS.....	11
	3.4.1 Local Conditions	11
	3.4.2 Hazardous Materials	11
3.5	CONSTRUCTION DOCUMENTS.....	11
	3.5.1 General.....	11
	3.5.2 Reliance on Approvals	12
	3.5.3 Review of Contract Documents and Field Conditions.....	12
3.6	LEGAL REQUIREMENTS	12
3.7	SERVICES AND FACILITIES.....	12
	3.7.1 General.....	12
	3.7.2 Supervision	13
	3.7.3 Coordination	13

3.7.4	Cooperation	14
3.7.5	Management.....	14
3.7.6	Reports.....	14
3.7.7	Meetings	14
3.8	WARRANTY.....	15
3.9	TAXES	16
3.10	ACCESS BY CITY.....	16
3.11	USE OF SITE	16
3.11.1	General Constraints on Sequence and Scheduling of Work.....	16
3.11.2	Interruption of Treatment Processes	18
3.11.3	Compliance with National Pollution Discharge Elimination System	19
3.11.4	Requirements for Operation of Plant and Maintaining Continuous Operation of Existing Facilities	20
3.11.5	Tenancy.....	20
3.12	PATENTS, TRADEMARKS, COPYRIGHTS.....	20
3.13	RUBBISH; DEBRIS; CLEANUP.....	21
3.14	PERMITS, FEES, AND NOTICES	21
3.15	SHOP DRAWINGS, PRODUCT DATA, SAMPLES, AND OTHER SUBMITTALS .	21
3.15.1	Documents and Samples at the Site	21
3.15.2	Shop Drawings, Product Data, Samples, and Other Submittals	22
3.15.3	Responsibility.....	26
3.16	TESTS AND INSPECTIONS	26
3.16.1	Initial Contractor Quality Control Tests and Inspections	26
3.16.2	Additional Tests and Inspections.....	26
3.16.3	Required Certificates	27
3.16.4	Structural Inspections, Professional Observation, and Materials Testing.....	27
3.16.5	Timing of Testing	27
3.17	EXECUTION, CORRELATION, AND INTENT	27
3.17.1	Execution of Agreement.....	27
3.17.2	Intent of Contract Documents.....	27
3.17.3	Organization of Materials	27
3.17.4	Meaning of Words.....	28
3.18	LABOR AND MATERIALS; LIENS (STOP NOTICE CLAIMS); IDEMNITY	28
3.19	CUTTING AND PATCHING.....	28
3.19.1	Cutting and Patching of the Work.....	28
3.19.2	Damage to Work of CITY or Separate Contractors	28
3.20	UNCOVERING OF CONSTRUCTION WORK.....	28
3.20.1	Uncovering.....	28
3.20.2	Covering of Work Requested to be Observed	29
3.21	CORRECTION OF WORK	29
3.21.1	Work Rejected by CITY.....	29
3.21.2	One-Year Warranty.....	29
3.21.3	Removal of Work	29
3.21.4	Failure to Correct Nonconforming Work.....	29
3.21.5	Damaged or Destroyed Work.....	30
3.21.6	No Limitation.....	30
3.22	ACCEPTANCE OF NONCONFORMING WORK.....	30

ARTICLE 4 - CITY'S RIGHTS AND RESPONSIBILITIES

4.1	INFORMATION AND SERVICES REQUIRED OF CITY.....	31
4.1.1	CITY Designation of Authorized Representative	31
4.1.2	Communication.....	31
4.1.3	Governmental Approvals.....	31
4.2	WATER, CHEMICALS, POWER	31
4.3	DESIGN RESPONSIBILITIES	31
4.4	ACTIVITIES ON THE SITE BY CITY OR SEPARATE CONTRACTORS.....	31
4.4.1	City's Right to Award Separate Contracts	31
4.4.2	Integration of the Work with Separate Contractors.....	31
4.4.3	Coordination	32
4.4.4	Use of Site	32
4.4.5	Deficiency in Work of CONTRACTOR	32
4.4.6	Claims Involving Separate Contractors	32
4.5	ASSIGNMENT OF SEPARATE CONTRACTS	33
4.6	CITY'S RIGHT TO STOP THE WORK	33
4.7	CITY'S RIGHT TO CARRY OUT THE WORK	34

ARTICLE 5 - TIME

5.1	PROGRESS AND COMPLETION	34
5.2	SCHEDULE OBLIGATIONS.....	34
5.2.1	Contract Schedule and Notice to Proceed	34
5.2.2	Prosecution of the Work.....	35
5.3	PRE-CONSTRUCTION ACTIVITIES.....	36
5.4	EXTENTIONS OF TIME	36
5.4.1	General.....	36
5.4.2	Excusable Delays	36
5.4.3	Requirements for Schedule Amendment Due to Excusable Delays	37
5.4.4	Decision by CITY	38
5.5	ADJUSTMENT IN GMP ON ACCOUNT OF EXTENSIONS OF TIME	38
5.5.1	Certain Excusable Delays	38
5.5.2	Concurrent Delays	38
5.6	LIQUIDATED DAMAGES	39
5.6.1	General.....	39
5.6.2	Amount of Liquidated Damages	39

ARTICLE 6 - PAYMENT AND COMPLETION

6.1	GUARANTEED MAXIMUM PRICE ("GMP").....	39
6.2	SCHEDULE OF VALUES	39
6.3	APPLICATIONS FOR PAYMENT	39
6.4	AMOUNT OF PROGRESS PAYMENTS	40
6.5	RETENTION; ESCROW AGREEMENT; FINAL PAYMENT	40
6.6	EARLY RELEASE OF SUBCONTRACTOR RETENTION (RESERVED)	40
6.7	PAYMENT FOR ON-SITE AND OFF-SITE STORED MATERIALS (RESERVED)	40
6.8	TITLE TO CONSTRUCTION WORK	40
6.9	WITHHOLDING OF PAYMENT	41
6.10	FAILURE OF PAYMENT; INTEREST.....	41

6.11	OCCUPANCY BY CITY PRIOR TO ACCEPTANCE.....	41
6.12	SUBSTANTIAL COMPLETION.....	41
6.13	FINAL COMPLETION.....	42
6.13.1	Waiver of Claims at Final Payment	42
6.14	CONSTRUCTION ALLOWANCE ITEMS (RESERVED)	42
6.15	SUPERINTENDENT	42
6.16	INTENTIONALLY LEFT BLANK	43
6.17	CONTINGENCY (RESERVED)	43

ARTICLE 7 - CHANGES IN THE WORK; CLAIMS

7.1	CHANGES	43
7.2	CHANGE DIRECTIVES.....	43
7.3	CHANGE PROPOSALS	44
7.4	ITENTIONALLY LEFT BLANK.....	44
7.5	CLAIMS	44
7.6	CHANGE ORDERS INCREASING OR DECREASING SCOPE (SCOPE CHANGE COSTS).....	44
7.6.1	Increased Scope	44
7.6.2	Decreased Scope	45
7.7	CHANGE ORDERS ON ACCOUNT OF CONTINGENCIES	45
7.8	CHANGE ORDERS ON ACCOUNT OF EXCUSABLE DELAY.....	45
7.8.1	Construction Work	46
7.8.2	Intentionally Left Blank.....	46
7.8.3	Exceptions	46
7.9	FORCE MAJEURE	47
7.10	INTENTIONALLY LEFT BLANK	47
7.11	CHANGE ORDERS ON ACCOUNT OF DIFFERING SITE CONDITIONS	47
7.12	TIME EXTENSIONS ON ACCOUNT OF CHANGE ORDERS	47

ARTICLE 8 - CORRECTION OF WORK

8.1	CORRECTION OF WORK PRIOR TO COMPLETION	47
8.2	CORRECTION OF WORK AFTER COMPLETION.....	47
8.3	ACCEPTANCE OF NONCONFORMING WORK.....	48
8.4	NO EFFECT ON LIMITATIONS.....	48

ARTICLE 9 - SUBCONTRACTORS

9.1	SUBCONTRACTS.....	48
9.1.1	Incorporation of Contract Documents.....	48
9.1.2	Approval of Subcontracts	48
9.1.3	Subcontractors Bids.....	48

ARTICLE 10 - INSURANCE AND BONDS; IDEMNIFICATION

10.1	INSURANCE TO BE PROVIDED BY CONTRACTOR.....	49
10.1.1	Evidence of Coverage.....	49
10.1.2	Qualifying Insurers.....	49
10.1.3	Insurance Required.....	49

10.2	SPECIAL NOTICE - CLAIMS MADE COVERAGE	50
10.2.1	Liability Insurance	50
10.2.2	Comprehensive Automobile Liability	50
10.2.3	Statutory Workers' Compensation and Employer's Liability Insurance	50
10.2.4	Builder's Risk/Course of Construction Insurance	50
10.3	OTHER INSURANCE PROVISIONS	51
10.4	RIGHT TO WITHHOLD	52
10.5	INSURANCE TO BE PROVIDED BY CITY (NOT APPLICABLE)	52
10.6	PERFORMANCE, LABOR AND MATERIAL, AND WARRANTY BONDS	52
10.7	INDEMNIFICATION.....	52

ARTICLE 11 - PROTECTION OF PERSONS AND PROPERTY

11.1	SAFETY PRECAUTIONS AND PROGRAMS.....	53
11.1.1	Site Safety	53
11.1.2	Safety Notices.....	53
11.2	SAFETY OF PERSONS AND PROPERTY	53
11.2.1	Reasonable Precautions	54
11.2.2	Safeguards	54
11.2.3	Use of Explosives	54
11.2.4	Remedy of Damage	54
11.2.5	Designation of Safety Coordinator (Reserved)	55
11.2.6	Loads.....	55
11.3	SECURITY	55
11.4	DAMAGE TO PROPERTY AT THE SITE	55
11.5	DAMAGE TO PROPERTY OF OTHERS.....	55
11.6	FAILURE OF CONTRACTOR TO REPAIR DAMAGE	55
11.7	EMERGENCIES.....	55

ARTICLE 12 - DISPUTES

12.1	DISPUTES BETWEEN CITY AND CONTRACTOR.....	56
12.2	DISPUTE RESOLUTION PROCEDURES	56
12.2.1	Initial Meeting to Resolve Disputes	56
12.2.2	Meeting of Senior Management	56
12.2.3	Non-Binding Mediation.....	56

ARTICLE 13 - EVENTS OF DEFAULT AND REMEDIES; SUSPENSION AND TERMINATION

13.1	CONTRACTOR EVENTS OF DEFAULT	57
13.2	REMEDIES OF CITY UPON A CONTRACTOR EVENT OF DEFAULT	57
13.2.1	Termination of Contract.....	57
13.2.2	Recourse to Labor and Material and Performance Bonds	58
13.3	REMEDIES NOT EXCLUSIVE	58
13.4	TERMINATION OR SUSPENSION FOR CONVENIENCE	58
13.4.1	Termination for Convenience	58
13.4.2	Suspension for Convenience	59
13.4.3	Termination by the CONTRACTOR	59

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1	GOVERNING LAW.....	59
14.2	SUCCESSORS AND ASSIGNS.....	60
14.3	NOTICE.....	60
14.4	PREVAILING WAGES.....	60
14.5	MODIFICATIONS.....	61
14.6	INTERPRETATION	61
14.7	SERVABILITY	61
14.8	WHOLE AGREEMENT.....	61
14.9	ACCOUNTING RECORDS.....	61
14.10	INTENTIONALLY LEFT BLANK	61
14.11	NO WAIVER.....	62
14.12	CONTRACTOR SHALL ASSUME RISKS	62
14.13	GENERAL LIABILITY OF CONTRACTOR	62
14.14	ATTORNEY'S FEES AND VENUE.....	62
14.15	THIRD PARTY BENEFICIARIES.....	62
14.16	CONTRACTOR'S TAX AND CONSTRUCTION LICENSE IDENTIFICATION NUMBERS	62

LIST OF EXHIBITS:

Exhibit A	Guaranteed Maximum Price, Cost of Work, and Fee
Exhibit B	Scope of Work and Facility Performance Requirements
Exhibit C	CONTRACTOR's Baseline Schedule
Exhibit D	In Lieu of Securities Escrow Agreement
Exhibit E	Performance, Labor and Material, and Warranty Bond Forms
Exhibit F	Hazardous Materials
Exhibit G	Certificates (Insurance, Non-Collusion Affidavit, & Drug-Free Workplace)
Exhibit H	Technical Specifications (Volumes 1 and 2 – bound separately)
Exhibit I	Drawings (bound separately)
Exhibit J	Standard Details (bound separately)

**DESIGN ASSIST CONSTRUCTION AGREEMENT
(PROJECT: Dry Creek Wastewater Treatment Plant –
Influent Pump Station Replacement)**

This Design Assist Construction Agreement ("Agreement") is made and entered into this ____ day of _____, 2010, by and between the City of Roseville, a municipal corporation ("CITY") and *Name of Design Assist Contractor*, a California corporation ("CONTRACTOR").

RECITALS

WHEREAS, CITY has issued a Request for Proposals pursuant to which CITY solicited proposals from Design Assist Contractors to construct the **Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement** ("Project"); and

WHEREAS, CONTRACTOR, has submitted a Proposal, dated _____ and including a Guaranteed Maximum Price, Scope of Work, and Baseline Schedule that are attached hereto and made a part hereof as Exhibits A, B, and C, and CITY has selected CONTRACTOR to provide design and to provide construction services as set forth in this Agreement; and

WHEREAS, all Proposals received by CITY pursuant to said notice were examined by CITY; and

WHEREAS, the City Council has found and declared the Proposal of CONTRACTOR to be the best-value proposal; and

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

NOW, THEREFORE, CITY and CONTRACTOR agree as follows:

ARTICLE 1

DEFINITIONS

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

1.2 "Application for Payment" means the document prepared by CONTRACTOR and submitted to CITY showing CONTRACTOR's entitlement to progress payments, the requirements of which are more fully described in Section 6.3 hereof.

1.3 "Beneficial Occupancy" means the use by CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

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

1.5 "Change Directive" means a written order signed by CITY directing a change in the Work. A Change Directive shall state a proposed basis for adjustment, if any, in the Guaranteed Maximum Price (GMP) or Schedule. CITY may order changes in the Work within the general scope of the Contract, and a Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

1.6 "Change Order" means a written order signed by CONTRACTOR and CITY authorizing a change in the Work, which also may adjust the GMP and/or the Schedule, and which shall constitute a Modification. The GMP and/or Schedule may be changed only by Change Order.

1.7 "Change Proposal" means a proposal for a Change Order submitted by CONTRACTOR to CITY, either at the request of CITY, or at CONTRACTOR's own initiative.

1.8 "City's Proposed Design" is the description of the CITY's objectives which includes time criteria, space requirements and relationships, flexibility and expendability requirements, special equipment and systems, and site requirements. The CITY's Proposed Design is defined to be the City of Roseville's Request for Proposals (RFP) and associated attachments, appendices and or exhibits for Design Assist **Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement** and applicable addenda.

1.9 "Construction Allowance Item" shall mean an amount of money set aside under the Contract for a special purpose.

1.10 "Construction Documents" means the plans and specifications prepared by the Engineer for the Project, approved by CITY, and incorporated into this Agreement by reference after such approval, to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents. All amendments and modifications to the Plans and Specifications must be approved by CITY prior to incorporation into this Agreement.

1.11 (Reserved)

1.12 (Reserved)

1.13 "Construction Work" means that portion of the Work consisting of the provision of labor, materials, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.14 "Contingency Costs" means those items of Cost of the Work attributable to a contingency for which CITY is responsible and which are payable by CITY to CONTRACTOR pursuant to a Change Order as provided in Article 7.

1.15 "Contract Documents" The totality of the "Contract Documents" shall consist of the following documents, each of which, when completed, will be incorporated and made a part of the Contract by reference:

This Agreement including Exhibits A through J thereto;

1.15.1 Change Orders and written amendments to Work Authorizations signed by both the CITY and CONTRACTOR;

1.15.2 The most current Construction Documents approved by the CITY pursuant to Subparagraph 4.3;

1.15.3 CONTRACTOR's Design Assist Proposal for the Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement Project;

1.15.4 City of Roseville's Request for Proposals (RFP) for Design Assist Construction of the Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement (including, among other things stated therein, the City of Roseville's most current version of Construction Standards and Improvement Standards) and applicable addenda, to the RFP including assorted attachments, appendices and exhibits (e.g., Technical Specifications, Drawings, and Standard Details);

1.15.5 Insurance Certificates and Endorsements.

1.15.6 Faithful Performance, Labor and Material, and Warranty Bonds;

1.15.7 Notice to Proceed; and

1.15.8 There shall be no Contract Documents other than those listed above. In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

1.16 "Contract" or "Agreement" means this Design Assist Construction Agreement, its exhibits, and all amendments and/or modifications hereto executed by the parties.

1.17 "Contract Time" The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

1.18 "CONTRACTOR" means the individual or entity identified in the preamble to this Agreement. The term CONTRACTOR covers subcontractors, sub tier subcontractors, special services, equipment and material suppliers, and their employees.

1.19 "CONTRACTOR's Plant and Equipment" means the equipment, material, supplier and all other items, except labor, brought onto the site by the CONTRACTOR to carry out the Work, but not to be incorporated in the Work.

1.20 "CONTRACTOR Event of Default" shall have the meaning set forth in Section 13.1 hereof.

1.21 "Cost of the Work" consists of those items of Work, which are paid for by CITY to CONTRACTOR, and consist of those categories of costs set forth as allowable on Exhibit A. The "Actual Total Cost of the Work" is the aggregate amount of costs and allowable mark-ups actually chargeable to CITY under the provisions of Exhibit A, up to the GMP.

1.22 "CPM" means a critical path method schedule in the form of precedents, networks, and time sequences.

1.23 "Day" or "Days" means calendar days, including legal holidays, Saturdays and Sundays, unless specifically noted otherwise.

1.24 "Delay Costs" means those items of Cost of the Work attributable to an Excusable Delay for which CITY is responsible and which are payable by CITY to CONTRACTOR pursuant to a Change Order as provided in Article 7.

1.25 "Design Assist Contractor" see CONTRACTOR.

1.26 (Reserved)

1.27 "Design Work" means that portion of the Work consisting of the design services required to be provided in connection with the design of the Project as set forth in the Contract Documents, which shall be performed consistent with the standards of professional care set forth herein.

1.28 "Engineer" Design services as required for the Work shall be procured from licensed, independent design professionals retained by the CITY. The person or entity providing design services shall be referred to as the Engineer. Engineer will provide and be represented onsite during the construction phase of the Project by a resident

Construction Manager. **The Engineer for the Work is CH2M HILL, Inc., who shall be the Engineer for the Work unless substituted at the discretion of the CITY.**

1.29 "Excusable Delay" shall have the meaning set forth in Section 5.4.2 hereof.

1.30 "Fee", if applicable, means the fee payable to CONTRACTOR pursuant to this contract and as part of the GMP, if shown on Exhibit A attached hereto.

1.31 "Final Completion" means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including completion of all punch list items, and Notice of Completion has been filed with the City Clerk.

1.32 "Force Majeure" means labor dispute (excluding labor shortage), fire, unusual delay in transportation or delivery, unavoidable casualty, flood (assuming CONTRACTOR has taken reasonable precautions), earthquake, epidemic, civil disturbance, war, freight embargo, riot, sabotage (by persons other than CONTRACTOR or Subcontractors), material shortage or any other similar act or condition, in each case only to the extent the event in question is beyond the reasonable control of and without the fault or negligence of CONTRACTOR.

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

1.34 "Governmental Approvals" means those CITY approvals necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building or zoning regulations.

1.35 "Guaranteed Maximum Price" or "GMP" means the amount set forth on Exhibit A hereto, which may be increased or decreased in accordance with the provisions of the Contract Documents.

1.36 "Hazardous Materials" means those items identified on Exhibit F hereto.

1.37 "Holidays" means the legal holidays as designated by the CITY including: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

1.38 "Indemnified Parties" includes, but is not limited to, CITY, its agents, officers and employees and Engineer.

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

1.40 "Liquidated Damages" means the damages payable by CONTRACTOR to CITY in the event CONTRACTOR does not achieve specific Milestones and Final Completion of the Project by the dates required on the Schedule, as adjusted, as more fully described in Section 5.6 hereof.

1.41 "Milestone" means a principal event specified in the Contract Documents relating to an intermediate completion date of a separately identifiable part of the WORK or a period of time within which the separately identifiable part of the Work should be performed prior to Substantial Completion of all the Work.

1.42 "Modification" means an amendment to this Agreement executed by the parties after the date hereof.

1.43 "Notice of Completion" consists of a form signed by the Engineer recommending to the CITY that the Work is one hundred percent (100%) complete, including completion and acceptance of all punch list corrections and fixing the date of the Final Completion. After acceptance of the Work by the CITY's governing Board, the form is signed by the CITY and filed with the County Recorder. This filing starts the thirty (30) day lien-filing period on the Work.

1.44 "Notice to Proceed" consists of a written notice given by CITY to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

1.45 "Party" shall mean CITY or CONTRACTOR individually, and **"Parties"** shall mean CITY and CONTRACTOR collectively.

1.46 "Performance, Labor and Material, and Warranty Bonds" means the payment (labor & material) bond, performance, and warranty bonds issued by an admitted Surety covering the faithful performance and completion of the Construction Work, including payment for all materials and labor furnished or supplied in connection with the Construction Work, by CONTRACTOR.

1.47 "Project" means the construction of the **Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement**, together with all on-site infrastructure, site improvements and appurtenances to be designed, constructed and installed in connection therewith, as more fully set forth and described in the Contract Documents and as required thereby or reasonably inferred therefrom.

1.48 "Project Manager" means the person assigned by the director of the CITY administering department to monitor the Project and Work.

1.49 "Punch List" means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent Beneficial Occupancy.

1.50 "Retention" means the amount withheld from progress payments from CITY to CONTRACTOR from time to time, as more fully described in Article 6 hereof.

1.51 "Schedule" means the schedule pursuant to the Proposal and/or other Contract Documents to which CONTRACTOR has agreed to complete the Work. The Critical Path Method (CPM) Schedule, as presented in Exhibit C, shall show all Milestones, Substantial Completion, and Final Completion. The Schedule shall be adjusted and updated pursuant to the provisions of the Contract Documents. The Schedule shall be computer generated utilizing Primavera P3 or Suretrak scheduling programs.

1.52 "Scope Change Costs" means those items of Cost of the Work attributable to changes in scope of the Work and payable by CITY to CONTRACTOR pursuant to a Change Order, as provided in Article 7.

1.53 "Separate Contractors" means those individuals or entities (including, but not limited to, concessionaires) who have entered into arrangements with CITY for the provision of labor, materials or other services in connection with the Project.

1.54 "Shall" refers to actions entered into by the CONTRACTOR or the CITY as a covenant with the other party to do or to perform the action.

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

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

1.57 "Substantial Completion" means sufficient completion of the project or the portion thereof to permit a utilization of the project by the CITY for its intended purpose. Determination of substantial completion is solely at the discretion of the CITY. Substantial completion does not mean complete in accordance with the Contract nor shall substantial completion of all or any part of the project entitle the CONTRACTOR to acceptance under the Contract.

1.58 "Supplier" A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to

furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.59 "Surety" means one or more issuers of the Performance, Labor and Material, and Warranty Bonds, each of which shall be admitted and licensed to do business in the State of California.

1.60 "Unexcusable Delay" and "Inexcusable Delay" shall have the meaning set forth in Section 5.4.

1.61 "Will" See definition of "Shall".

1.62 "Work" or "Scope of Work" means the Project, inclusive of all labor, equipment, materials and services required to be performed or provided by CONTRACTOR officers, employees, agents, Subcontractors or Suppliers pursuant to the provisions of this Agreement (including Exhibits).

1.63 "Work Site" means any and all areas on CITY's Dry Creek Wastewater Treatment Plant affected by the work activities of CONTRACTOR.

ARTICLE 2

SCOPE OF WORK AND FACILITY PERFORMANCE REQUIREMENTS

2.1 Scope of Work - Summary. The CITY, in conjunction with the Engineer, developed the RFP, including minimum Technical Specifications, Drawings, and Standard Details to present the CITY's Proposed Design and timeline to meet the CITY's needs at the CITY's Dry Creek Wastewater Treatment Plant.

Based on this Proposed Design, and in accordance with the Contract Document, the CONTRACTOR will assist the CITY's Engineer in developing Construction Documents, drawings and specifications for the construction of the Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement as described in Exhibits H, I, and J. In accordance with the Baseline Schedule found in Exhibit C, the CONTRACTOR will commence construction at the site of the Work on portions of the Work based on partial Construction Documents, provided these documents have been approved by the CITY. The CONTRACTOR shall provide all supervision, testing, construction equipment, labor, materials, tools, subcontractors and services to complete the construction within the Contract Times listed in Section 5.1.

2.2 Scope of Work - Design Assist Phase. The Work to be performed by the CONTRACTOR during the Design Assist Phase includes the following:

- 2.2.1** Participate as a team member, with the Engineer, CITY's project personnel, and personnel from other agencies with regulatory and jurisdictional authority over the Project.
- 2.2.2** Analyze and evaluate plans and specifications for constructability, for opportunities to reduce costs and/or increase value through suggestions of alternative design solutions. Also provide input on preferences for construction sequencing and for construction methods.
- 2.2.3** Participate in a cooperative partnership relationship with CITY and Engineer to develop a comprehensive construction plan to address project risk and minimize existing facility disruptions.
- 2.2.4** Develop detailed partial Project cost estimates when requested by CITY so they may evaluate design options during the development and/or finalization of plans and specifications for construction.
- 2.2.5** Develop a detailed Project progress schedule and indicate how various alternatives being considered impact the Project progress schedule when requested by CITY.

2.3 Scope of Work- Construction Phase. The construction phase will include the Work necessary to complete the construction of the Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement, as described in the Technical Specifications, Drawings, Standard Details, Table 1 of Exhibit B, and as developed during the Design-Assist Phase.

2.4 Facility Performance Requirements. The Facility Performance Requirements are listed in Table 1 of Exhibit B. As added assurance that these Facility Performance Requirements will be met, the CONTRACTOR is solely responsible for the proper handling, storage, installation, testing and demonstration; all in accordance with the CITY's RFP and each manufacturer's recommendations/instructions. Failure of any performance requirement due to improper handling, storage, installation, testing or demonstrating will be corrected by the CONTRACTOR without an increase to the GMP.

ARTICLE 3

PROJECT REQUIREMENTS

3.1 Performance of Work. CONTRACTOR covenants and agrees that it shall be responsible for performing and completing, and for causing all Subcontractors to perform and complete, the Work in accordance with the Contract Documents, standard professional and trade practices, and Applicable Laws. CONTRACTOR covenants that

the Work and the materials provided thereunder shall be appropriate for the purposes stated in the Request for Proposal and Proposal. Although it is the responsibility of CONTRACTOR to conform the Work to Applicable Laws at all times, to the extent there is a change in one or more Applicable Laws after the date of execution of this Contract, and such change has the effect of increasing the cost or time of performance of the Work, such change may be the subject of a Change Order under the provisions of Article 7 hereof.

3.2 Normal Working Hours. Normal working hours at the construction site shall be between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday. Legal holidays are excluded. Certain utility connections may require night Work by the CONTRACTOR during low usage periods, provided pre-approval is obtained from CITY. The CONTRACTOR may also be required to prosecute the Work at night if, at any time, the CITY shall deem it necessary for the progress of the Work, or if emergencies arise. The CONTRACTOR shall promptly comply with any such requirements made in writing by the CITY. The CONTRACTOR will also be permitted to Work at night if he or she shall satisfy the CITY of the need therefore, in order to maintain the required progress or protect the Work from the elements. When required, ordered, or permitted to Work at night, the CONTRACTOR shall provide sufficient and satisfactory lighting and other facilities therefore. The CONTRACTOR shall receive no extra payment for night Work, if specified or if required to be performed during the normal progress of the Work, but compensation shall be considered as having been included in the price stipulated for the Work.

3.3 Professional Standard; Ownership of Documents.

3.3.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings, or work of complexity, quality, and scope comparable to the Work and the Project, and shall be performed by CONTRACTOR and its Subcontractors. CONTRACTOR shall comply with the performance standards described in Exhibit B. CONTRACTOR may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified. Nothing in this Agreement shall be construed to create any contractual liability between CITY and any Subcontractor.

3.3.2 Use of Design Documents. Any reuse of completed design documents or use of partially completed design documents without written verification or concurrence by Engineer will be at the CONTRACTOR's sole risk and without liability or exposure to the Engineer and CITY. CONTRACTOR shall indemnify and hold harmless the Engineer or CITY from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting therefrom.

3.4 Local Conditions; Environmental Site Conditions.

3.4.1 Local Conditions. CONTRACTOR represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent CONTRACTOR encounters subsurface or concealed conditions which differ materially from that actually known by CONTRACTOR on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents; then CONTRACTOR shall give notice to CITY promptly before conditions are disturbed and in no event later than two (2) Days after the first observance of the conditions if a Change Order is contemplated by CONTRACTOR due to such condition. Such materially different conditions may entitle CONTRACTOR to an equitable adjustment in the GMP and/or Schedule pursuant to the Change Order provisions of this Agreement.

3.4.2 Hazardous Materials. The Parties' agreement as to the handling of Hazardous Materials discovered at the Site (and not brought there by CONTRACTOR or any Subcontractor) is set forth in Exhibit F hereto, and the only duties and responsibilities of CONTRACTOR in connection therewith are as therein specified, notwithstanding any other provision of this Agreement.

3.5 Construction Documents.

3.5.1 General. The CONTRACTOR understands that all Construction Documents, working drawings and specifications "Submittals" must be coordinated with, and approved by, CITY prior to construction. CONTRACTOR shall allow CITY a minimum of thirty (30) Days for review of Submittals and corrections made thereto. CONTRACTOR shall work with the Engineer to prepare working drawings and specifications setting forth in detail the requirements for the construction of the Project in its entirety. CITY's review of the Construction Documents shall not relieve CONTRACTOR from its responsibilities under this Agreement, or be deemed to be an approval or waiver by CITY of any deviation from, or of CONTRACTOR's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by CONTRACTOR and approved by CITY. CONTRACTOR shall provide

CITY with a complete, accurate, and current set of project record documents prior to Final Completion.

3.5.2 Reliance on Approvals. CONTRACTOR shall be entitled to rely on the approvals of CITY with respect to the design documents. If CITY revokes, modifies or otherwise changes in a material way its approval of a given system after such system has been designed and approved, or modifies the original Scope of Work in a material manner requiring modification to one or more systems which have been designed and approved, CONTRACTOR shall be entitled to a Change Order in accordance with the provisions of Article 7 hereof, provided that prior to such approval CONTRACTOR has made CITY aware of future design decisions which may be affected by such approval. No Change Order shall be issued to the extent such modification is due to the fault or neglect of CONTRACTOR.

3.5.3 Review of Contract Documents and Field Conditions. CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to CONTRACTOR with the Contract Documents before commencing activities. CONTRACTOR shall perform the Work in accordance with the Contract Documents and Submittals approved in accordance with the procedures set forth in this Agreement.

3.6 Legal Requirements. CONTRACTOR shall comply with Applicable Laws, and shall give applicable notices pertaining thereto. Except with respect to Governmental Approvals, CONTRACTOR shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project. Notwithstanding the foregoing, CITY has informed CONTRACTOR that fees in connection with building permits, street use permits, and similar permits relating to construction will be waived and are not to be included in the GMP. If and to the extent charges in the future for such permits are imposed in the future, such charges shall be paid by CITY, or shall be the subject of a Change Order to the Contract in accordance with the Change Order provisions of this Agreement.

3.7 Services and Facilities.

3.7.1 General. CONTRACTOR shall provide everything required for the orderly progress and proper execution and completion of the Work and the Project in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

3.7.2 Supervision. CONTRACTOR shall supervise and direct the Work in accordance with its best skill and attention. CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety. CONTRACTOR shall be responsible to CITY for the acts and omissions of, and whenever this Contract refers to the negligence, fault or omission of CONTRACTOR, such term shall include the negligence, fault or omission of, CONTRACTOR's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under an agreement with CONTRACTOR. CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than CONTRACTOR.

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

3.7.3 Coordination. CONTRACTOR shall coordinate construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

3.7.3.1 Design Assist Development Coordination. CONTRACTOR understands and agrees that all Construction Documents and time schedules prepared by the Engineer must be coordinated with CONTRACTOR and CITY. CONTRACTOR shall participate and provide recommendations in the development of the drawings and other documents to fix and describe the size and character of the Project in its entirety as to structural, and electrical systems, materials and other essentials as may be necessary according to good engineering practice.

3.7.3.2 Construction Documents Coordination. [reserved]

3.7.4. Cooperation. CONTRACTOR shall cooperate with the CITY's design staff and all other designated representatives (e.g., Engineer's Construction Manager) during the design and construction of the Project.

3.7.5 Management. CONTRACTOR shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work.

3.7.6 Reports. CONTRACTOR shall prepare and submit to CITY monthly progress reports on the Work accomplished during the previous monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to CITY. Such reports shall be furnished at the time of submission of each monthly Application for Payment. As part of such report, CONTRACTOR shall provide an updated Schedule, including CPM, illustrating the progress that has been made, by reference to the initial CPM, and specifying whether the Work is on schedule or behind schedule and actions being taken to correct Schedule slippage. The monthly report shall also set forth CONTRACTOR's projected progress for the forthcoming month.

3.7.7 Meetings. The CONTRACTOR and the CITY shall each conduct meetings for the purposes of addressing issues related to the Work, reviewing and coordinating progress of the Work during Design Assist and construction phases and other matters of common interest. Meetings will include:

3.7.7.1 Kickoff Workshop. The CITY shall conduct a half-day workshop with the CONTRACTOR within two (2) weeks of Notice to Proceed. This workshop will provide the members of the Project an opportunity to clarify expectations and roles/responsibilities during the Work. In addition, special considerations or items that may require more detail will be identified in this workshop. Alternative design solutions as well as preferences for construction sequencing and construction methods will be evaluated.

3.7.7.2 Final Design and Construction Submittals. At one or more final design meetings, the Engineer will present final design drawings, specifications ("Construction Documents") and construction submittals. Preparation of construction submittals will be coordinated with the final design to ensure that submittals conform to the Construction Documents. Final design packages for civil, mechanical, electrical/instrumentation, structural and architectural design, along with associated construction submittals, and final protocols for quality control, testing, and inspection, will be submitted for approval in this final design.

3.7.7.3 Preconstruction Meeting. Upon issuance of the CITY's Notice to Proceed, when mutually agreeable, the CONTRACTOR, will arrange a Preconstruction meeting to review the CONTRACTOR's proposed schedule of operations, construction procedures, sequencing requirements, safety, inspection and other pertinent matters. This meeting shall be attended by the CONTRACTOR, CITY, Engineer, major subcontractors and others involved in the execution of the Work.

3.7.7.4 Progress Meetings. The CONTRACTOR shall schedule, arrange and conduct progress meetings. These meetings shall not be scheduled more than once per week in a mutually agreed upon place with the CITY. The purpose of the progress meetings is to expedite the Work, coordinate the Work, discuss potential problems, and resolve issues/conflicts. In attendance at each meeting will be the CITY's Project personnel, Engineer, CONTRACTOR, and subcontractors who are part of any agenda item.

3.7.7.5 Pre-Installation Meetings. The CONTRACTOR shall schedule pre-installation meetings with manufacturers and affected subcontractors of the following equipment items:

- a) Raw Sewage Submersible Pumps
- b) Engine Generator Equipment
- c) Roseville Electric to coordinate installation of new utility service
- d) Roseville Electric to coordinate disconnecting and removal of existing utility service to the Pump Station Annex

3.7.7.6 Shutdown Meeting. The CONTRACTOR shall schedule a meeting with the CITY and review proposed plant shutdowns one (1) week prior to the scheduled shutdown as described in Section 3.11.2.

3.7.7.7 Post Construction Meeting. The CONTRACTOR shall meet with the CITY and inspect the Work eleven (11) months after the date of Substantial Completion. Both parties will jointly inspect the Work and draft a list of defective items to be completed or corrected under warranty.

3.8 Warranty. CONTRACTOR warrants to CITY that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, 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. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by CITY at its sole discretion. **CONTRACTOR shall warranty the Work for a period of one-year commencing upon date CITY issues formal Notice of Substantial Completion to CONTRACTOR.** CONTRACTOR shall provide a warranty bond (guarantee bond) for the minimum sum of ten percent (10%) of the final

GMP. If within this one-year warranty period, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, CONTRACTOR shall correct it and commence correction of such warranty work/repair within ten (10) Days after receipt of written notice from CITY to do so. CITY shall give such notice promptly after discovery of the condition. CONTRACTOR shall bear the cost of correction, which shall not be considered Cost of the Work. In the event CONTRACTOR fails to commence warranty work/repair in accordance with the foregoing notice CITY may, at City's sole discretion, 1) pursue the Warranty Bond, or 2) perform the repair with CITY forces and/or contract for construction services chargeable to CONTRACTOR and/or its bond surety in accordance with the Warranty Bond. Work performed by CITY forces, amounts paid or incurred by CITY, and/or contracts let by CITY, may be deducted from payments due or to become due (including retention) to CONTRACTOR. Within thirty (30) Days after the expiration of the one-year warranty period, if CONTRACTOR or its Surety has fully complied with all warranty requirements, CONTRACTOR shall notify City of expiration and CITY shall return the original Warranty Bond to CONTRACTOR and execute any necessary paperwork to terminate the Warranty Bond and release the funds, if any, associated with said bond to CONTRACTOR.

3.9 Taxes. CONTRACTOR shall pay, as Cost of the Work, all existing and if known at the time of the Contract, future applicable federal, state and local sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work (excluding taxes based on CONTRACTOR's income). In the event CONTRACTOR is obligated to pay any new or increased taxes or duties adopted after the date hereof, the amount of such new or increased taxes shall increase the GMP pursuant to the Change Order provisions of this Contract. In the event, CONTRACTOR receives the benefit of a tax exemption or tax reduction taking effect after the date hereof, the amount of such exemption or reduction shall decrease the GMP pursuant to the Change Order provisions of this Contract

3.10 Access by CITY. CONTRACTOR shall afford CITY and its authorized designees access to the Project Site at all times, subject to reasonable prior notice for access outside of normal business hours.

3.11 Use of Site.

3.11.1 General Constraints on Sequence and Scheduling of Work.

3.11.1.1 The Dry Creek Wastewater Treatment Plant is CITY's only means of treating domestic and industrial wastewater prior to discharging to Dry Creek. Impairing the operational capabilities of this treatment plant will result in serious environmental damage and monetary fines.

3.11.1.2 CONTRACTOR shall conduct work in a manner that will not impair the operational capabilities of essential elements of the treatment process or reduce the capacity of the entire treatment plant below levels

sufficient to treat wastewater to the water quality limitations specified in the discharge permit.

3.11.1.3 The status of the treatment plant shall be defined as "operational" when it is capable of treating the entire quantity of raw wastewater received to the water quality limits specified in the discharge permit.

3.11.1.4 Work Sequence and Constraints: In addition to any requirements specified elsewhere in these Contract Documents, the CONTRACTOR is advised of the following constraints to the work sequence and schedule.

3.11.1.4.1 The CONTRACTOR shall note that not all valves and gates that may be used to isolate lines and facilities will completely seal. The CONTRACTOR shall allow for leakage in planning its work and may, with the CITY's concurrence, test certain valves and gates before work involving isolation is begun. The CONTRACTOR shall provide adequate temporary pumping and piping facilities to clear the work areas necessary of water, sewage, and sludge. The CONTRACTOR shall clean the work areas as required to perform the work.

3.11.1.4.2 Shutdown of existing facilities will be performed by CITY personnel or by the CONTRACTOR only under CITY personnel's supervision and with prior approval.

3.11.1.4.3 The work under this Contract shall be conducted in a manner that will minimize shutdowns, roadway closures, or traffic obstructions caused by construction. Shutdowns causing damage to adjacent public and private property shall not be permitted and any damage resulting shall be the sole responsibility of the CONTRACTOR.

3.11.1.4.4 The CONTRACTOR shall note that only certain structures, tie-ins and constraints are addressed in this section. All work, whether or not addressed here, shall be governed by applicable parts of this section, and schedules and procedures further submitted for approval.

3.11.1.4.5 Changes to existing utilities or any new connection thereto must be coordinated to provide the least possible interference with plant operations. Prior to any shutdown or flow diversion, all materials, fittings, supports, equipment and tools shall be on the site and all necessary labor scheduled prior to starting any connection work.

3.11.1.4.6 The CONTRACTOR shall include all work described in this section in the construction schedule. The sequence and constraints identified in this section shall be followed in the construction of the work. However, alternatives to these sequences and constraints may be submitted by the CONTRACTOR for review by the CITY.

3.11.1.4.7 Disruptions to plant operations shall be permitted only during dry weather periods (April 1 to October 31) and only when flow conditions are below peak levels. To minimize impact on CITY plant staff, all outages shall be limited to 8-hour periods, whenever possible. Planned utility service shutdowns to any service area or process unit of the Project shall be accomplished during periods of minimum use. In some cases this will require night or weekend work, which shall be at no additional cost to the CITY. The CONTRACTOR shall program work so that service will be restored in the minimum possible time and shall cooperate with the CITY in reducing shutdowns of the utility to a minimum.

3.11.1.4.8 No utility shall be disconnected without prior written approval from the CITY. When it is necessary to disconnect a utility, the CONTRACTOR shall give at least two (2) weeks written notice to the utility owner and to the CITY for approval of the proposed schedule.

3.11.1.4.9 The CONTRACTOR shall provide staff following shutdowns to monitor and ensure the proper operation of systems.

3.11.1.4.10 The CONTRACTOR is advised that any shutdown of facilities will place a considerable burden on the CITY's staff before, during, and after the shutdown. If through inadequate planning, lack of preparedness, faulty or inefficient workmanship or other causes controllable by the CONTRACTOR, delays, excessive time, or additional shutdowns are required that cause the CITY to incur extra cost, said extra cost will be assessed against the CONTRACTOR.

3.11.2 Interruption of Treatment Processes.

3.11.2.1 CONTRACTOR shall indicate required shutdowns of existing facilities or interruptions of existing operations on the progress schedule. Shutdowns will be permitted to the extent that existing operation of the plant will not be jeopardized and identified constraints are satisfied.

3.11.2.2 Modifications to the existing facilities, construction of new facilities, and the connection of new to existing facilities may require the

temporary outage or bypass of processes or facilities. In addition to the construction schedule, the CONTRACTOR shall submit a detailed shutdown plan and time schedule for all construction activities related to all shutdowns.

3.11.2.3 The written shutdown plans shall be submitted for the CITY's review and acceptance a minimum of two (2) weeks in advance of the time that such shutdowns are required.

3.11.2.4 The shutdown plans shall be coordinated with the construction schedule and shall meet the CONTRACTOR's planned method; the length of time required to complete said operation; and necessary temporary power, controls, instrumentation or alarms required to maintain control, monitoring and alarms; and the manpower, plant and equipment which the CONTRACTOR shall provide in order to ensure proper operation of affected facilities. In addition, the outage plan shall describe the CONTRACTOR's contingency plan that shall be initiated in the event that its temporary facilities fail or it becomes apparent that the time constraints described in the approved shutdown plan cannot be met. The contingency plan shall conform to all specified shutdown requirements. All costs for preparing and implementing both the shutdown and contingency plans shall be borne by the CONTRACTOR.

3.11.2.5 The CITY shall be notified in writing at least one (1) week in advance of the required shutdown if the schedule for performing the work has changed or if revisions to the outage plan are required. Any changes must be approved by the CITY prior to the outage.

3.11.2.6 The CONTRACTOR shall attend a meeting with the CITY one (1) week before the scheduled shutdown to review the plan.

3.11.3 Compliance with National Pollution Discharge Elimination System.

3.11.3.1 The existing facility is operating under the terms of a National Pollutant Discharge Elimination System (NPDES) Permit No. CA0079502, Order No. R5-2008-077, issued by the California Regional Water Quality Control Board (RWQCB) Central Valley Region. This permit specifies the water quality limits that the plant must meet prior to discharge of effluent. A copy of the existing permit is on file for review at the City of Roseville, 2005 Hilltop Circle, Roseville, CA 95747.

3.11.3.2 CONTRACTOR shall perform work in a manner that will not prevent the existing facility from achieving the finished water quality requirements established by the terms of its NPDES Permit and associated regulations.

3.11.3.3 CONTRACTOR shall bear the cost of penalties imposed on the CITY for water quality violations caused by actions of the CONTRACTOR. The cost of penalties will be paid by CONTRACTOR regardless of the timelines of issuance of any citations by the RWQCB.

3.11.4 Requirements for Operation of Plant and Maintaining Continuous Operation of Existing Facilities.

Include, but are not limited to, the following:

3.11.4.1 Electrical power including transformers, distribution wiring and motor control centers for existing effluent storage ponds, oxidation ditches, recycle water pump station, and effluent disinfection facilities.

3.11.4.2 Existing influent force main pipelines.

3.11.4.3 Existing piping at ponds and to outfall.

3.11.4.4 Fencing and gates.

3.11.4.5 Fiber Optic Communication System.

3.11.4.6 Telephone system.

3.11.4.7 Storm drainage.

3.11.4.8 Conduct the Work and provide temporary facilities required to keep the existing plant continuously operational.

3.11.4.9 Do not remove or demolish existing facilities required to keep the existing plant operational at the capacities specified until the existing facilities are replaced by temporary, new or upgraded facilities or equipment. The replacement facilities shall have been tested and demonstrated to be operational prior to removing.

3.11.5 Tenancy. All workers or representatives of the CONTRACTOR, subcontractors or suppliers are admitted to the Site only to effectuate the proper execution of the Work and have no tenancy without the express written permission of the CITY. Furthermore, no persons may occupy property owned by the CITY outside the limit of the Work, as indicated on the drawings, without the express written permission of the CITY.

3.12 Patents, Trademarks, Copyrights. CONTRACTOR shall pay, as a Cost of the Work, all-applicable royalties and license fees on any matters arising in connection with the Work. CONTRACTOR shall defend all suits or claims for infringement of patent, trademark, and copyrights against the Indemnified Parties, and shall save the

Indemnified Parties harmless from loss on account thereof for any and all matters arising in connection with the Work or the Project (such costs to be paid as Cost of the Work), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by CITY, other than pursuant to the recommendation or suggestion of CONTRACTOR or a subcontractor; provided however, if CONTRACTOR has reason to believe that the design, process or product so specified is an infringement of a patent, CONTRACTOR shall be responsible for any loss resulting unless CONTRACTOR has provided CITY with prompt written notice of CONTRACTOR's belief, and CITY has nevertheless elected to go forward with such design, process or product so specified.

3.13 Rubbish; Debris; Cleanup. During the performance of all on-site Work, CONTRACTOR shall at all times, as a Cost of the Work, keep the Site and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of CITY, CONTRACTOR shall promptly remove them. Upon Substantial Completion of the Work, or any portion or component thereof, CONTRACTOR shall remove from the Site, or applicable portion thereof, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the Site in a "broom clean" condition. If CONTRACTOR fails to clean up as provided in the Contract Documents, CITY may do so and the cost thereof shall be charged to CONTRACTOR as a Cost of the Work and may be deducted from payment(s) due to CONTRACTOR.

3.14 Permits, Fees and Notices. Unless otherwise provided in the Contract Documents, and subject to the provisions hereof, CONTRACTOR shall secure all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. To the extent there is a change in the type or cost of any of such permits, fees, licenses or inspection occurring after execution of this Agreement, there shall be an equitable adjustment in the GMP and Schedule on account of such change in accordance with the Change Order provisions. CONTRACTOR shall comply with and give notices required by Applicable Laws.

3.15 Shop Drawings, Product Data, Samples, and Other Submittals.

3.15.1 Documents and Samples at the Site. From and after commencement of the Construction Work, CONTRACTOR shall maintain at the site office one record copy of the Construction Documents, and any and all amendments thereto, in good order and marked to record changes and selections made during the construction phase. In addition, CONTRACTOR shall maintain at the site approved shop drawings, product data, samples and similar required submittals. These shall be provided to CITY upon completion of the Work.

3.15.2 Shop Drawings, Product Data, Samples, and Other Submittals.

3.15.2.1 Shop Drawings. Are drawings, diagrams, schedules and other data specially prepared for the Work by CONTRACTOR, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.15.2.2 Product Data. Are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate materials or equipment for some portion of the Work.

3.15.2.3 Samples. Are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.15.2.4 Shop Drawings, Product Data, Samples and Similar Submittals. Are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way CONTRACTOR proposes to conform the construction to the Construction Documents.

3.15.2.5 Submission of items listed in Section 3.15.2.4. [reserved]

3.15.2.6 Operations & Maintenance Manuals. Operation and Maintenance Manuals must be submitted and favorably reviewed by the CITY prior to the initiation of the Process Testing which includes the machinery or equipment. Four (4) copies of each favorably reviewed Operation and Maintenance Manual shall be provided.

All manuals shall be bound in a three-ring binder with rigid covers, marked to indicate the specific equipment furnished for this project, and shall utilize tab sheets to organize the information. Operation and maintenance manuals shall include:

3.15.2.6.1 Cover Page: Equipment Name, equipment tag number, project name, CITY's name, and other data as appropriate.
Laminated Table of Contents: General description of information provided within each tab section.

3.15.2.6.2 Equipment Summary Form: Completed form in the format attached below. Insert Equipment Summary Form after the tab sheet of each equipment section. The manufacturer's standard form will not be acceptable. Manuals submitted without equipment summary form fully completed, including equipment identification number, will be rejected and returned.

3.15.2.6.3 The manufacturer warrantee certificate.

3.15.2.6.4 Lubrication Information: Required lubricants and lubrication schedules.

3.15.2.6.5 Control Diagrams: Internal and connection wiring, including logic diagrams, wiring diagrams for control panels, ladder logic for computer based systems, and connections between existing systems and new additions, and adjustments such as calibrations and set points for relays, and control or alarm contact settings.

3.15.2.6.6 Start-up Procedures: Recommendations for installation, adjustment, calibration, and troubleshooting.

3.15.2.6.7 Operating Procedures:

- a. Step-by-step procedures for starting, operating, and stopping equipment under specified modes of operation.
- b. Include safety precautions and emergency operating shutdown instructions.

3.15.2.6.8 Preventative Maintenance Procedures: Recommended steps and schedules for maintaining equipment.

3.15.2.6.9 Overhaul Instructions: Directions for disassembly, inspection, repair and reassemble of the equipment; safety precautions; and recommended tolerances, critical bolt torques, and special tools that are required.

3.15.2.6.10 Parts List: Generic title and identification number of each component part of equipment; include bearing manufacturer, model and ball or roller pass frequencies for every bearing.

3.15.2.6.11 Spare Parts List: Recommended number of parts to be stored at the site and special storage precautions.

3.15.2.6.12 Drawings: Exploded view or plan and section views with detailed callouts.

3.15.2.6.13 Provide electrical and instrumentation schematic record drawings.

3.15.2.6.14 Source (Factory) Quality Control Test Results: Provide copies of factory test reports as specified in the Technical Specifications.

3.15.2.6.15 Field Quality Control Test Results: After field-testing is completed, insert field test reports.

3.15.2.7 Electronic Copy. All manuals shall be provided in an electronic format, which entails all information included by the CONTRACTOR in the three-ring binders. This will include providing the following electronic format documents:

3.15.2.7.1 All text portions of the Operations and Maintenance Manual specifically tailored for this project shall be provided in HTML format.

3.15.2.7.2 All graphical portions of the Operations and Maintenance Manual specifically tailored for this project shall be provided in GIF (schematics, line drawings, etc.) or JPEG (photos, etc.) format.

3.15.2.7.3 All shop drawings shall be provided in AutoCAD format – latest release at time of O&M preparation.

3.15.2.7.4 All forms that may be required for maintenance shall be provided in MS Word format.

3.15.2.7.5 All other documents including, but not limited to, brochures that need to be scanned that are specifically tailored for this project shall be provided in a searchable PDF format.

3.15.2.8 Project Record Documents. Maintain at Project site, available to CITY one (1) copy of the Contract Documents, shop drawings and other submittals, in good order. Contractor shall also maintain a neat and accurate set of Record Drawings, produced by marking up a full size copy of the Project Plans as follows:

3.15.2.8.1 Mark and record field changes and detailed information contained in submittals and Change Orders.

3.15.2.8.2 Record actual depths, horizontal and vertical location of underground pipes, duct banks and other buried utilities. Reference dimensions to permanent surface features.

3.15.2.8.3 Identify specific details of pipe connections, location of existing buried features located during excavation, and the final locations of piping, equipment, electrical conduits, manholes, and pull boxes.

3.15.2.8.4 Identify location of spare conduits including beginning, ending and routing through pull boxes, and manholes. Record spare conductors, including number and size, within spare conduits, and filled conduits.

3.15.2.8.5 Provide schedules, lists, layout drawings, and wiring diagrams.

3.15.2.8.6 Make annotations with erasable colored pencil conforming to the following color code:

Additions:	Red
Deletions:	Green
Comments:	Blue
Dimensions:	Graphite

3.15.2.8.7 Maintain documents separate from those used for construction. Label documents "RECORD DOCUMENTS."

3.15.2.8.8 Keep documents current, update at least weekly. Record required information at the time the material and equipment is installed and before permanently concealing.

3.15.2.8.9 At the end of the project, deliver one (1) copy of the marked up plan set to CITY. Deliver Record Documents with transmittal letter containing date, Project title, CONTRACTOR's name and address, list of documents, and signature of CONTRACTOR certifying that the Record Documents are a true representation of the Work as actually constructed.

3.15.2.8.10 Record Documents shall be available for the CITY to review and ascertain that changes have been recorded. Failure of the CONTRACTOR to keep current with the updating of the Record Documents shall be grounds for withholding monies from Progress Payments. The Work will not be formally accepted until the Record Documents are provided to, reviewed, and approved by the CITY. Final payment or a portion thereof may be withheld if final Record Documents are not provided.

3.15.2.9 Construction Photos. The CONTRACTOR shall take color photos of the Work Site prior to beginning construction, during construction, and at Final Completion in sufficient quantity to properly record actual field conditions, construction activities and significant events.

All photos, together with the negatives, and/or electronic copy on a CD shall be provided to the CITY at three (3) month intervals and upon Final Completion in a three-ring binder with transparent protective sleeves for storage. Failure of the CONTRACTOR to keep current with the photos as required shall be grounds for withholding monies from progress payments.

3.15.3 Responsibility. CONTRACTOR shall not be relieved of responsibility for the deviations from requirements of the Contract Documents by CITY's approval of Shop Drawings, Product Data, Samples or similar submittals unless CONTRACTOR has specifically informed CITY of such deviation at the time of the submittal and CITY has given written approval to the specific deviation. CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by CITY's approval thereof.

3.16 Tests and Inspections.

3.16.1 Initial Contractor Quality Control Tests and Inspections. Tests, inspections and approvals of portions of the Construction Work shall be made as required by the Contract Documents, Applicable Laws or normal construction practices and/or as directed by CITY. Unless otherwise provided, CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to CITY, or with the appropriate public authority. The costs of such tests, inspections and approvals shall be a cost paid by CONTRACTOR. CONTRACTOR shall give CITY timely notice of when and where tests and inspections are to be made so that CITY may observe such procedures. All costs of tests, inspections or approvals imposed upon CONTRACTOR by changes in Applicable Laws occurring after execution of this Agreement shall be an increase to the GMP in accordance with the Change Order provisions herein.

3.16.2 Additional Tests and Inspections. If CITY, or any other public authority having jurisdiction, determines that portions of the Construction Work require additional testing, inspection or approval beyond that required by subsection 3.16.1, CITY will instruct CONTRACTOR to make arrangements for such additional testing, inspection or approval by an entity acceptable to CITY, and CONTRACTOR shall give timely notice to CITY of when and where tests and inspections are to be made so CITY may observe such procedures. If such additional tests and/or inspections reveal failure of the portions of the Work to comply with the requirements of the Contract Documents, the costs of such tests and required correction shall be paid as a Cost of the Work, subject to the limitations set forth in Section 3.20 hereof. If the additional tests and/or inspections show that the portions of the Work comply with the requirements of the Contract

Documents, the costs thereof shall be an increase to the GMP in accordance with the Change Order provisions of this Agreement.

3.16.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by CONTRACTOR and promptly delivered to CITY.

3.16.4 Structural Inspection, Professional Observation, and Materials Testing. In accordance with the California Building Code, code compliance Quality Assurance inspections, professional observations, and material testing of structural systems shall be performed by the CITY or Engineer and not by the CONTRACTOR. Engineer will perform onsite structural inspections and provide periodic professional observation by a registered design professional. CITY or Engineer will contract with a third-party to perform weld inspections, soil compaction and related testing, collect concrete cylinder samples, and perform laboratory testing. CONTRACTOR shall provide access to the Work and coordinate field testing and sample collection with CITY's representatives. Copies of test results will be shared with the CONTRACTOR when they become available. If inspections or testing reveal failure of portions of the Work to comply with the requirements of the Contract Documents, CONTRACTOR shall take corrective action and shall reimburse the CITY for the cost of all required third-party re-inspection and re-testing.

3.16.5 Timing of Testing. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.17 Execution, Correlation and Intent.

3.17.1 Execution of Agreement. Execution of this Agreement by CONTRACTOR is a representation that CONTRACTOR has visited the site, become familiar with the local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

3.17.2 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by CONTRACTOR. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

3.17.3 Organization of Materials. Organization of the design documents into divisions, sections and articles, and arrangement of drawings does not

necessarily control CONTRACTOR in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

3.17.4 Meaning of Words. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

3.18 Labor and Materials; Liens (Stop Notice Claims); Indemnity. Unless otherwise provided in the Contract Documents, CONTRACTOR shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

CONTRACTOR shall not permit any Subcontractor, materialman, or laborer to place liens on the Project covering any portion of the Work for which CITY has made payment to CONTRACTOR. If any liens (e.g., stop notice claims) are imposed, CITY may withhold payment in the amount of one hundred twenty-five percent (125%) of the claim until such time an unconditional release is provided in a form satisfactory to CITY. CONTRACTOR shall indemnify, defend, and hold harmless CITY and Engineer regarding any claim or lien that proceeds to, or is the subject of litigation. CITY may withhold payment(s) pending compliance with this provision.

3.19 Cutting and Patching.

3.19.1 Cutting and Patching of the Work. CONTRACTOR shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.19.2 Damage to Work of CITY or Separate Contractors. CONTRACTOR shall not damage or endanger a portion of the completed Work, fully or partially completed construction of CITY, or work or construction by Separate Contractor(s) by cutting, patching or otherwise altering such construction or work, or by excavation. CONTRACTOR shall not cut or otherwise alter such construction by CITY or a Separate Contractor except with written consent of CITY and of such Separate Contractor, such consent not to be unreasonably withheld.

3.20 Uncovering of Construction Work.

3.20.1 Uncovering. If a portion of the Construction Work is covered that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Uncovering this Work shall be at CONTRACTOR's expense, and shall not result in a change in the

Schedule or GMP, unless CONTRACTOR has given Engineer timely notice of CONTRACTOR's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

3.20.2 Covering of Work Requested to be Observed. If Engineer considers it necessary or advisable that covered Work other than Work defined in Section 3.20.1 be observed by Engineer or inspected or tested by others, CONTRACTOR, at Engineer's request shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all expenses arising out of or relating to such covering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction with no increase in the Schedule or GMP. If, however, such Work is not found to be defective CONTRACTOR shall be allowed an increase in the Schedule and GMP, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

3.21 Correction of Work.

3.21.1 Work Rejected by CITY. CONTRACTOR shall promptly correct Construction Work that is rejected by CITY or fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, in accordance with the provisions of Section 3.20.2. CONTRACTOR shall bear the costs of correcting such rejected Construction Work including additional testing and inspection and compensation for services and expenses of CITY made necessary thereby. Costs of such correction shall not be considered as part of the "Cost of the Work". These correction costs shall be tracked and recorded for CITY information, but will not be paid by the CITY.

3.21.2 One-Year Warranty. [see Section 3.8].

3.21.3 Removal of Work. CONTRACTOR shall remove from the Site portions of the Construction Work, which are not in accordance with the requirements of the Contract Documents and are neither corrected by CONTRACTOR nor accepted by CITY. The costs incurred in removing such Work shall be a Cost of the Work, subject to the limitation set forth in Section 3.21.1 hereof.

3.21.4 Failure to Correct Nonconforming Work. If CONTRACTOR fails to correct nonconforming Construction Work within a reasonable time, CITY may correct it in accordance with the terms of this Agreement. If CONTRACTOR does not proceed with correction of such nonconforming

Construction Work within a reasonable time fixed by written notice from CITY, CITY may remove it and store the salvageable materials or equipment at CONTRACTOR's expense. If CONTRACTOR does not pay costs of such removal and storage within ten (10) Days after written notice, CITY may, upon ten (10) additional Days written notice, sell such materials and 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 CONTRACTOR, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs which CONTRACTOR should have borne, CONTRACTOR shall pay such excess to CITY. If such proceeds are in excess of the costs which CONTRACTOR should have borne, such excess shall be paid by CITY to CONTRACTOR. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 6.1.

3.21.5 Damaged or Destroyed Work. CONTRACTOR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of CITY or Separate Contractors caused by CONTRACTOR's correction or removal of Construction Work which is not in accordance with the requirements of the Contract Documents. If such costs arise during the performance of the Work, such costs shall be charged against the Cost of the Work. If such costs arise after Substantial Completion, such costs shall be payable as provided in Section 6.1.

3.21.6 No Limitation. Nothing contained in this Section 3.20 shall be construed to establish a period of limitation with respect to other obligations which CONTRACTOR might have under the Contract Documents. Establishment of the time period of one year as described in Section 3.21.2 relates only to the specific obligation of CONTRACTOR to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CONTRACTOR's liability with respect to CONTRACTOR's obligations other than specifically to correct the Work.

3.22 Acceptance of Nonconforming Work. If CITY prefers to accept Work, which is not in accordance with the requirements of the Contract Documents, CITY may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 4

CITY'S RIGHTS AND RESPONSIBILITIES

4.1. Information and Services Required of CITY.

4.1.1 CITY Designation of Authorized Representative. The CITY shall designate, from time to time, one or more representatives authorized to act on behalf with respect to the Project, together with the scope of his/her respective authority. CONTRACTOR shall not be entitled to rely on directions from anyone outside the scope of that person's authority as set forth in written delegations pursuant to this Agreement. Directions and decisions made by Authorized Representative(s) of CITY shall be subject to any further approval(s) required by any provisions of CITY's Charter or the Roseville Municipal Code.

4.1.2 Communication. During the term of this Contract, CITY shall formally communicate with Subcontractors, suppliers and others performing any part of the Work only through CONTRACTOR's authorized representative.

4.1.3 Governmental Approvals. CITY shall be responsible for obtaining the Governmental Approvals. Any delay in obtaining the Governmental Approvals may entitle CONTRACTOR to an equitable adjustment in the Schedule and GMP in accordance with the Change Order provisions of this Agreement, except to the extent such delay is due to the fault or neglect of CONTRACTOR.

4.2 Water, Chemicals, Power. The CITY shall provide all water, chemicals and power for start-up and testing of the new facility.

4.3 Design Responsibilities. CITY shall retain the services of Engineer to provide design services. Approved Construction Documents will be made available to the CONTRACTOR no later than dates presented in the Baseline Schedule found in Exhibit C.

4.4 Activities on the Site by CITY or Separate Contractors.

4.4.1 CITY's Right to Award Separate Contracts. CITY reserves the right to perform work or operations related to the Project, with CITY's own forces, and to award separate contracts to Separate Contractors in connection with other work or operations related to the Project.

4.4.2 Integration of the Work with Separate Contractors. Following the request of CITY, CONTRACTOR shall prepare a plan in order to integrate the work performed by Separate Contractors with the performance of the Work, and shall submit such plan to CITY for approval. The plan shall be

fair and reasonable for CONTRACTOR and the Separate Contractors, and CONTRACTOR shall work with the Separate Contractors to reach agreement on such plan. CONTRACTOR shall arrange the performance of the Work so that the Work and the work of the Separate Contractors are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors is avoided.

4.4.3 Coordination. CONTRACTOR shall provide for the coordination of the activities of CONTRACTOR and its Subcontractors with the activities of the Separate Contractors. CONTRACTOR shall participate with all Separate Contractors and CITY in reviewing and coordinating the schedules of the Separate Contractors with the Schedule. CONTRACTOR shall make any revisions to the Schedule deemed necessary to properly incorporate the work of the Separate Contractors with the Work. To the extent (a) the date of Substantial Completion is extended by such Schedule revision; (b) CONTRACTOR is required to perform its Work materially out of sequence, and in a manner which is not as efficient or cost effective as originally planned; or (c) the Scope of Work is increased, an equitable adjustment in the GMP and the Schedule shall be made in accordance with the Change Order provisions of this Agreement.

4.4.4 Use of Site. CONTRACTOR shall afford CITY and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. CONTRACTOR shall also connect and coordinate its Work and operations with CITY and all Separate Contractors operations as required by the Contract Documents. CITY shall direct the Separate Contractors to cooperate with CONTRACTOR and to avoid actions or omissions, which could interfere with or delay the activities of CONTRACTOR.

4.4.5 Deficiency in Work of CONTRACTOR. If part of CONTRACTOR's Work depends for proper execution or results upon construction or operations by CITY or a Separate Contractor, CONTRACTOR shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and CITY apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by CONTRACTOR. CONTRACTOR and the Separate Contractor shall use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of CONTRACTOR to report shall constitute acceptance by CONTRACTOR of the work of Separate Contractors as fit and proper to receive CONTRACTOR's Work (except as to those defects or discrepancies that are not apparent).

4.4.6 Claims Involving Separate Contractors. In the event that CONTRACTOR unnecessarily and unreasonably delays the work of

Separate Contractors by not cooperating with them as required hereby, or by not affording them reasonable opportunity to perform their work as stated herein, CONTRACTOR shall, in such event, pay all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays. If any Separate Contractor shall assert a claim or bring an action against CITY alleging damage due to the fault or neglect of CONTRACTOR, CITY shall immediately notify CONTRACTOR, who shall defend such claim. If it is determined that CONTRACTOR was at fault, CONTRACTOR shall pay all costs of defense, including attorney's fees, as well as any resulting judgment or settlement, all of which will not be considered as part of the "Cost of the Work". The CITY will not reimburse the CONTRACTOR for any of these costs.

4.5 Assignment of Separate Contracts. If CITY determines that it wishes to assign to CONTRACTOR one or more contracts between CITY and a Separate Contractor, it shall give CONTRACTOR written notice of such desire, including in such notice a copy of such contract for CONTRACTOR's review and approval. The Separate Contractor shall be fully qualified to perform the work under the to-be-assigned contract, shall possess the financial capability to perform its obligations under such to-be-assigned contract, and shall provide one hundred percent (100%) payment and performance bonds covering such work from sureties. Such contract shall contain provisions similar to those contained in CONTRACTOR's agreements with its Subcontractors with respect to liability, indemnification, retention, payment, labor and other material items. Upon CONTRACTOR's approval of the assignment of such contract, which approval shall not be unreasonably withheld, delayed or conditioned, such Separate Contractor shall cease to be a Separate Contractor and shall thereafter be deemed to be a Subcontractor of CONTRACTOR, and the GMP shall be increased by Change Order in the amount of (a) such assigned contract, and (b) additional Fee pursuant to the provisions of Section 7.5.1.

4.6 CITY's Right to Stop the Work. If CONTRACTOR persistently fails to correct Work which is not in accordance with the requirements of the Contract Documents and this Agreement or persistently fails to carry out the Work in accordance with the Contract Documents, CITY, by written order signed by CITY, may deliver a notice to CONTRACTOR setting forth that such a persistent and material failure is occurring and has occurred, and demanding that CONTRACTOR commence a cure of such persistent and material failure within twenty (20) Days and diligently pursue such cure thereafter. In the event that the cure is not commenced and pursued diligently, CITY may, by written notice to CONTRACTOR, order CONTRACTOR to stop the Work, or any portion thereof, until the use for such order has been eliminated; provided, however, that the right of CITY to stop the Work shall not give rise to a duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other person or entity and shall not give rise to any liability of CITY to CONTRACTOR resulting from any delay (except to the extent that such order is found to be improper).

4.7 CITY's Right to Carry out the Work. If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) Day period after receipt of written notice from CITY to commence and diligently continue correction of such default or neglect with diligence and promptness, CITY may after such seven (7) Day period give CONTRACTOR a second written notice to correct such deficiencies within such second seven (7) Day period. If CONTRACTOR within such second seven (7) Day period after receipt of such second notice fails to commence and diligently continue to correct any deficiencies, CITY, without prejudice to other remedies CITY may have, may correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due to CONTRACTOR the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to CONTRACTOR are insufficient to cover such amounts, CONTRACTOR shall pay the difference to CITY.

ARTICLE 5

TIME

5.1. Progress and Completion. Contract Time limits stated in the Baseline Schedule and milestone table found in Exhibit C are of the essence of this Agreement. By executing this Agreement, CONTRACTOR confirms that the Contract Time limits stated in Exhibit C are reasonable periods of time for achieving designated Milestones, Substantial Completion, and Final Completion of the Work.

5.2 Schedule Obligations.

5.2.1 Contract Schedule and Notice To Proceed. CONTRACTOR shall provide a Baseline Critical Path Method (CPM) Schedule as stated in Section 1.51. CONTRACTOR shall begin work pursuant to this Agreement and in accordance with the Baseline Schedule (as described in Exhibit C) within ten (10) Days of date of issuance of a Notice to Proceed by CITY, unless extended at the request made to and at the sole discretion of CITY. CITY may issue the Notice To Proceed within fifteen (15) Days of full execution of this Agreement.

The CONTRACTOR shall submit to the CITY for acceptance construction schedule updates at monthly intervals during the entire Contract Time . The CONTRACTOR shall produce and provide the CITY with three (3) complete sets of time-scaled logic diagrams and bar charts on 11"x17" sheets along with an electronic copy on a CD.

In addition to the schedule updates as required above, the CONTRACTOR shall provide the CITY on a weekly basis, the CONTRACTOR's Plan of Activities for the next three (3) weeks. The

Plan of Activities shall describe the activity and location of activity and include the activity number as provided in the CPM Schedule.

5.2.2 Prosecution of the Work. CONTRACTOR shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Project accomplished by CONTRACTOR within any time period required by the Schedule is less than the amount therein specified, CONTRACTOR shall so notify CITY. If the delay is an Unexcused Delay, CONTRACTOR shall prepare a recovery schedule for CITY's review and approval, showing how CONTRACTOR will compensate for the delays and achieve Final Completion by the date shown on the Schedule. If CONTRACTOR is unable to demonstrate how it will overcome Unexcused Delays, CONTRACTOR shall employ such extraordinary measures as are necessary to bring the Work into conformity with the Final Completion Date set forth therein, the costs of which shall be an allowable Cost of the Work. However, the total Cost of the Work shall not exceed the GMP. If the delay is an Excusable Delay, CITY shall either (a) authorize an equitable extension in the Schedule to account for such delay, and equitably adjust the GMP on account of such delay, to the extent permitted by Article 7; or (b) request that CONTRACTOR prepare a recovery schedule showing how (if possible) CONTRACTOR can achieve Final Completion by the date shown on the Schedule, (as modified) and equitably adjust the GMP in accordance with the Change Order provisions of this Agreement on account of any extraordinary activities required of CONTRACTOR on account of such recovery schedule.

Float shall be defined as the difference between the early finish and late finish dates for an activity. On the CPM Schedule delineate the specified Contract duration and identify the planned completion of the Work as the final finish milestone. The time period between these two dates, if any, shall be considered Contract float. Float in any activity, milestone completion of date or Contract completion date shall be considered a resource available to both the CITY and the CONTRACTOR. Neither the CITY nor the CONTRACTOR has ownership of the float.

Contract float is for the mutual benefit of both CITY and CONTRACTOR. Changes to the project that can be accomplished within this available period of float may be made by CITY without extending the Contract time, by utilizing float. No time extensions shall be granted nor delay damages owed until Work extends beyond the currently accepted Contract completion date. Likewise, CONTRACTOR may utilize float to offset delays other than delays caused by CITY. Either party wanting to utilize available float must obtain the written permission of the other party to do so. Mutual use of float shall continue until all available float shown by

Schedule has been utilized by either CITY or CONTRACTOR, or both. At that time, extensions of the Contract time will be granted by CITY for valid CITY-caused or third party-caused delays which affect the planned completion date and which have been properly documented and demonstrated by CONTRACTOR.

5.3 Pre-construction Activities. Within fifteen (15) Days after execution of this Agreement, CONTRACTOR shall submit to CITY for review a detailed fragment schedule of pre-construction activities, by expanding the pre-construction activities set forth on the Baseline Schedule found in Exhibit C. This pre construction schedule shall be prepared using the CPM, and shall show in sufficient detail the starting and completion times sequences of Subcontract award activities of CONTRACTOR, and identify all interface activities of other members of the Project team. This fragment schedule is produced to help the Project team members prioritize their early-on tasks, but in no event shall this fragment schedule compress activity durations found in the Baseline Schedule unless all team members agree with such schedule compression. Any agreed upon schedule changes shall then be incorporated in the first monthly Baseline Schedule update.

5.4 Extensions of Time.

5.4.1 General. An extension in the scheduled date of Final Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path schedule.

5.4.2 Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path schedule as shown on the most current and accepted CPM Project Schedule Update, such shall constitute an "**Excusable Delay**" (to the extent not set forth below, a delay will be considered an "**Inexcusable Delay**").

5.4.2.1 Failure or inability of the CITY and their Engineer to complete required drawings and specifications (referred herein as "Construction Documents") which are approved by the CITY for construction in accordance with the Approve Design Submittal Activities included in the Baseline Schedule found in Exhibit C.

5.4.2.2 Failure or inability of CITY to make available any or all of the Site in accordance with the requirements of the Schedule.

5.4.2.3 Failure or inability of CITY or CONTRACTOR to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of CONTRACTOR.

5.4.2.4 Delays resulting solely from the acts or omissions of Separate Contractors; provided however, only to the extent Separate Contractors perform their work improperly and not in accordance with any applicable critical path schedule.

5.4.2.5 Delays resulting from Force Majeure.

5.4.2.6 Delays resulting from inclement weather conditions or the conditions resulting from weather prevent the CONTRACTOR from proceeding with seventy-five percent (75%) of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward the completion of such operation or operations, and the crew is dismissed as a result thereof.

5.4.2.7 Differing, unusual or concealed site conditions that could not reasonably have been anticipated by CONTRACTOR in preparing the Schedule, including, without limitation, archaeological finds, and excluding soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions.

5.4.2.8 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by CONTRACTOR or any Subcontractor.

5.4.2.9 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

5.4.2.10 Delays occurring solely due to the acts or omissions of CITY and those within the control of CITY, including, but not limited to, Separate Contractors.

5.4.3 Requirements for Schedule Amendment Due to Excusable Delays. In order to obtain an extension of time due to an Excusable Delay, CONTRACTOR shall comply with the following requirements:

5.4.3.1 CONTRACTOR shall notify CITY of the Excusable Delay as soon as practicable, but in no event more than four (4) Business Days after CONTRACTOR becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days CONTRACTOR expects to be delayed. After the cessation of the Excusable Delay, CONTRACTOR shall notify CITY of the number of Days CONTRACTOR believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by CITY, the request for an extension of

time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

5.4.3.2 CONTRACTOR shall demonstrate to the satisfaction of CITY that the Excusable Delay in fact delayed the critical path for performance of the Work (by use of CPM Time Impact Analysis). Any delay that impacts the CPM will be presented to the Project Manager at the monthly meeting, and prior to completion of each activity.

5.4.4 Decision by CITY. Within thirty (30) Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the parties as to the then current status of Excusable Delays and Inexcusable Delays, CITY will provide CONTRACTOR with written notice of CITY's determination of the respective number of Days of Excusable Delay and/or Unexcusable Delay within ten (10) Days after receipt by CITY of CONTRACTOR's written request for such determination. The issuance by CITY of such a determination shall not, however, be deemed a concurrence by CONTRACTOR of the matters set forth therein, and CONTRACTOR may invoke the dispute resolution procedures with respect to such determination. Pending completion of dispute resolution procedures, CONTRACTOR may take such acceleration or other measures required on account of CITY's determination of Inexcusable Delay, and if completion of the dispute resolution procedures results in CITY's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by CITY as an increase to the GMP in accordance with the Change Order provisions of this Agreement.

5.5 Adjustment in GMP on Account of Extensions of Time.

5.5.1 Certain Excusable Delays. Section 5.5 governs the extent to which CONTRACTOR is entitled to an extension of time due to Excusable Delays. Provisions governing the payment of additional compensation on account of such Excusable Delays, (if any) are set forth in Article 7.

5.5.2 Concurrent Delays. To the extent CONTRACTOR is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of CONTRACTOR, any subcontractor and/or by an Inexcusable Delay, CONTRACTOR shall not be entitled to any additional costs for the period of such concurrency.

5.6 Liquidated Damages.

5.6.1 General. CONTRACTOR and CITY acknowledge that in the event that CONTRACTOR fails to achieve Final Completion of the Project by the date established, CITY will incur substantial damages that shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that CITY would incur as a result of late Completion of the Project. Such liquidated damages shall be in-lieu of actual damages resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

5.6.2 Amount of Liquidated Damages. If CONTRACTOR fails to achieve Final Completion of the Work on or before the Notice of Completion date, or fails to meet any other specified Project Milestone, as adjusted for Excusable Delays, CONTRACTOR shall pay to CITY liquidated damages in the amount of \$500.00 (Five Hundred Dollars) per Day for each unexcusably delayed calendar day beyond the Contract Times shown in RFP. Payment of liquidated damages shall be made contemporaneously with CITY's required payment to CONTRACTOR, and such payments may be offset against each other.

ARTICLE 6

PAYMENT AND COMPLETION

6.1 Guaranteed Maximum Price (GMP). CITY shall pay for CONTRACTOR's performance under this Agreement the Cost of the Work and Fee (as defined in Exhibit A hereto), provided, however, that the sum of the Cost of the Work and Fee shall not exceed the GMP, as adjusted by Change Order/directive in accordance with the Contract Documents except as delineated in Sections 7.6 and 7.7.

In the event the Cost of the Work, plus the Contractor's Markup, shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be shared by the CITY and the CONTRACTOR as follows: _____ percent (____%) to the CITY and _____ percent (____%) to the CONTRACTOR. Should there be savings shared, the CITY will pay the CONTRACTOR its share of the savings at the same time as the final Retention payment.

6.2 Schedule of Values. Not applicable.

6.3 Applications for Payment. Within five (5) Days following execution of this Agreement, the CITY and CONTRACTOR shall meet to discuss the format, cost breakdown and level of detail required in each CONTRACTOR Payment Application.

The cost breakdown shall be generally in the same format as a typical CSI Document Divisions and Subdivisions, with major items of work listed individually. The cost breakdown shall be by structure, civil, landscaping, or other logical divisions of work. The cost breakdown for architectural, structural, mechanical, and electrical work shall include separate items for identifiable portions of the structures. The cost breakdown shall include separate items for all testing and startup work required. The cost breakdown shall also have separate items for all mobilization costs, direct job overhead costs, bonds, builder's risk insurance, supervision, subcontractors, special services and major suppliers.

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

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

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

6.4 Amount of Progress Payments. CITY shall pay CONTRACTOR the actual Cost of the Work and Fee, if any, through the period covered by the Application for Payment, less Retention as set forth in Section 6.5 below, provided that the aggregate payment amount before retention will not exceed the percentage of completion of the Work, as estimated by the CITY, multiplied by the GMP (excluding items of the GMP not subject to retention). CITY may additionally withhold from progress payments such amounts pursuant to stop notice claims as required by law and CITY administrative regulation 4.01.

6.5 Retention; Escrow Agreement; Final Payment. Ten percent (10%) Retention shall be withheld from each progress payment until the expiration of thirty-five (35) Days following the recordation of the Notice of Completion; provided however, City shall continue to retain such amount as required by law and/or CITY administrative regulation 4.01. CONTRACTOR may elect to establish an escrow account for securities in-lieu of the ten percent (10%) Retention in a form of escrow agreement compliant with law and subject to approval by the CITY Attorney (form of escrow agreement is attached as Exhibit D). Release of Retention monies shall constitute the Final Payment.

6.6 Early Release of Subcontractor Retention. [reserved]

6.7 Payment for On-Site and Off-Site Stored Materials. [reserved]

6.8 Title to Construction Work. CONTRACTOR warrants that title to all Construction Work covered by an Application for Payment shall pass to CITY no later

than the time of payment. CONTRACTOR further warrants that upon submittal of an Application for Payment, all Construction Work for which Applications for Payment have been previously issued and payments received from CITY shall, to the best of CONTRACTOR's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of CONTRACTOR, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Construction Work.

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

- 6.9.1** defective Work not remedied;
- 6.9.2** third party claims filed or reasonable evidence indicating probable filing of such claims;
- 6.9.3** failure of CONTRACTOR to make payments of undisputed amounts to Subcontractors for labor, materials or equipment;
- 6.9.4** damage to CITY or a Separate Contractor caused by the fault or neglect of CONTRACTOR to the extent not reimbursed by insurance; or
- 6.9.5** reasonable evidence that the Work will not be Substantially Completed within the Contract Time due to Inexcusable Delay, and that the unpaid balance of the GMP would not be adequate to cover liquidated damages for the anticipated Inexcusable Delay.

6.10 Failure of Payment; Interest. In accordance with Public Contract Code §20104.50, CITY shall pay CONTRACTOR interest on any progress payment, which is made by CITY more than thirty (30) Days after CITY receives an undisputed and properly submitted written payment request. Said interest shall be equal to the rate set forth in Code of Civil Procedure §685.010(a), and shall begin to accrue upon the expiration of said thirty (30) Day period. Any written request for a progress payment which CITY determines to be disputed, improper or not suitable for payment for any reason shall be returned to CONTRACTOR within seven (7) Days after receipt by CITY, along with a written statement of the reason or reasons why such request is disputed, improper or not suitable for payment.

6.11 Occupancy by CITY Prior to Acceptance. CITY reserves the right to Beneficial Occupancy and without charge by CONTRACTOR. In those areas of the Work, which are completed CITY may store materials, equipment, and supplies, and may perform partial operation.

6.12 Substantial Completion. When CONTRACTOR considers the entire Work or portion thereof is complete and ready for its intended use, CONTRACTOR shall certify

in writing to CITY that the entire Work is substantially complete and provide CITY with a Certificate of Substantial Completion. Within a reasonable time thereafter, CITY and CONTRACTOR shall make an inspection of the Work to determine the status of completion. If CITY does not consider the Work substantially complete, CITY will notify CONTRACTOR in writing giving reasons therefore. If CITY considers the Work substantially complete, CITY will accept a corresponding partial Certificate of Substantial Completion. There shall be attached to the Certificate a punch list of items to be completed or corrected before Final Acceptance and Final Payment.

Until Substantial Completion of the Work is acknowledged by CITY, CONTRACTOR shall have the responsible charge and care of the Work and of materials to be used herein, including materials for which CONTRACTOR has received partial payment or materials which have been furnished by CITY, and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of the Work.

6.13 Final Completion. When the Work is fully completed, CONTRACTOR shall provide CITY with a Certificate of Final Completion and shall request final inspection in writing. Additionally, CONTRACTOR shall provide legally effective releases or waivers satisfactory to CITY of all lien rights arising out of or liens filed in connection with the Work. Within ten (10) Days of receipt of such completed request form, CITY shall make final inspection. If following final inspection CITY determines that the Work (including all punch list items) has been fully completed and performs in accordance with the performance standards (as described in Exhibit G), CITY will accept and approve the Certificate of Final Completion. If CITY determines that the Work is not complete after receipt of certification by CITY, CONTRACTOR shall be notified in writing of deficiencies. After the deficiencies have been corrected, the procedure for final inspection as set forth above shall again be initiated by CONTRACTOR. In the event CITY determines the Work is fully completed, CITY shall initiate the process of attaining a Notice of Completion. Within thirty-five (35) Days of CITY's acceptance and approval of the Certificate of Final Completion, CITY shall return the original Labor and Material and Performance Bonds, provided all Stop Notice claims, if any, are resolved, to CONTRACTOR and execute any necessary paperwork to terminate the Labor and Material and Performance Bonds and release any funds associated with said bonds to CONTRACTOR.

6.13.1 Waiver of Claims at Final Payment. Acceptance of final payment by CONTRACTOR shall constitute a waiver of all claims by CONTRACTOR, except those previously made in writing and identified as unsettled at the time of final payment.

6.14 Construction Allowance Items. [reserved]

6.15 Superintendent. CONTRACTOR shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Construction Work. The superintendent shall represent CONTRACTOR, and

communications given to the superintendent shall be as binding as if given to CONTRACTOR.

6.16 Intentionally Left Blank.

6.17 Contingency. [reserved]

ARTICLE 7

CHANGES IN THE WORK; CLAIMS

7.1 Changes. Changes in the Work shall be performed under applicable provisions of the Contract Documents. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to CITY or CONTRACTOR, the applicable unit prices for such Change Order/directive shall be equitably adjusted. No GMP adjustment on account of a Change Order shall include CONTRACTOR's or Subcontractor's profit, Fee, home office overhead or a formula allocation of indirect costs unless otherwise specifically allowed hereunder.

7.2 Change Directives. The following procedures shall apply with respect to Change Directives:

7.2.1 Upon receipt of a Change Directive signed by CITY, CONTRACTOR shall promptly proceed with the change in the Work involved and advise CITY of CONTRACTOR's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the GMP or the Schedule. If CONTRACTOR receives a written communication signed by CITY which CONTRACTOR believes is a Change Directive but is not so identified, it shall not proceed with the change in the Work until it receives from CITY a written confirmation that such communication is in fact a Change Directive.

7.2.2 A Change Directive signed by CONTRACTOR indicates the agreement of CONTRACTOR with the contents thereof, and shall convert the Change Directive to a Change Order.

7.2.3 If CONTRACTOR does not respond promptly or disagrees with the method for adjustment in the GMP or Schedule, the method and adjustment shall be determined as provided in Sections 6.5 or 6.10, as applicable. In such case, CONTRACTOR shall keep and present, in such form as CITY may request, an itemized accounting, together with appropriate supporting data.

7.2.4 Pending final determination of cost to CITY, amounts not in dispute shall be included in Applications for Payment. The amount of credit to be allowed by CONTRACTOR to CITY for a deletion or change, which results in a net decrease in the GMP, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Fee shall be figured on the basis of net increase, if any, with respect to that change.

7.2.5 If CITY and CONTRACTOR do not agree with the adjustment in the Schedule or the GMP, such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Contract.

7.3 Change Proposals. If CITY requests CONTRACTOR to submit a Change Proposal which would entitle CONTRACTOR to an increase in the GMP for costs of preparation of such Change Proposal pursuant to the provisions of this Section 7.3, CONTRACTOR shall first estimate the costs of preparing such Change Proposal and inform CITY in writing of such costs. CITY shall then direct CONTRACTOR either to proceed with the Change Proposal or cancel the Change Proposal. If CITY directs CONTRACTOR to proceed with the Change Proposal and then elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse CONTRACTOR for costs reasonably incurred by CONTRACTOR on account of such Change Proposal, but only to the extent the Change Order contemplated by such Change Proposal involves a material change to the scope of the Work requiring modification to one or more systems which have been designed and approved in accordance with the standards set forth in the technical specifications. To the extent the preparation of such Change Proposal impacts the Schedule (e.g., other Work is suspended pending a decision on such Change Proposal or the Design Work is delayed due to the preparation of the Change Proposal), an equitable adjustment in the Schedule shall be made.

7.4 Intentionally left blank.

7.5 Claims. CONTRACTOR shall submit any claims for additional compensation to CITY in writing. The claim shall set forth the reason(s) that CONTRACTOR believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The notice must be given to the Project Manager prior to the time that CONTRACTOR shall have performed the work giving rise to the potential work for additional compensation, if based on an act or failure to act by CITY, or in all other cases within fifteen (15) Days after happening of the event, thing or occurrence giving rise to the potential claim. Any and all Claims not presented as required herein shall be waived.

7.6 Change Orders Increasing or Decreasing Scope (Scope Change Costs).

7.6.1 Increased Scope. With respect to Change Orders which increase the Scope of Work described on Exhibit B (and are not due to the errors or

omissions of CONTRACTOR and are not attributable to Excusable Delays or the contingencies set forth in Section 7.6 below), the GMP shall be increased by the Cost of the Work attributable to the Change Order and CONTRACTOR mark up's to the actual cost to CONTRACTOR resulting from the change in scope of work shall follow the mark-up's found in Exhibit A. The GMP shall be revised accordingly.

7.6.2 Decreased Scope. With respect to Change Orders, which decrease the Scope of Work described on Exhibit B, the GMP shall be decreased by the Cost of Work attributable to such Change Order and/or Work Directive. Furthermore, if the Change Order deletes a part of the Scope of Work, CONTRACTOR shall be entitled to retain a value of five percent (5%) of the full value of the reduction in Cost of Work attributable only to the portion of the Scope of Work deleted from the Scope of Work. The GMP shall be revised accordingly.

7.7 Change Orders on Account of Contingencies. With respect to Change Orders which are attributable to the following contingencies, the GMP shall be adjusted (increased or decreased) by the following "**Contingency Costs**," consisting of the following:

7.7.1 With respect to new or increased taxes arising after the date of this Agreement (other than taxes assessed based on the income of CONTRACTOR), the Change Order shall consist of the incremental amount of such new or increased taxes only. With respect to reductions in taxes arising after the date of this Agreement (other than taxes assessed based on the income of CONTRACTOR), the Change Order shall consist of the incremental amount of such reduced taxes only.

7.7.2 With respect to increases or decreases in fees for permits or other governmental certificates or instruments arising after the date of this Agreement, the Change Order shall consist of the incremental amount of such increases or decreases. To the extent this Agreement states that a permit or certificate is not required and CONTRACTOR is later required to procure such permit or certificate, all out-of-pocket costs reasonably associated therewith shall be included in the Change Order. The fees for permits and related costs associated with permits that was included in the original GMP is listed in Exhibit A.

7.8 Change Orders on Account of Excusable Delay. With respect to Change Orders, which are attributable to Excusable Delays, and subject to the exceptions set forth in Section 7.7.3 below, the GMP shall be increased by the following "Delay Costs":

7.8.1 Construction Work.

7.8.1.1 Increased allowable labor costs resulting from wage increases paid due to the delay;

7.8.1.2 Premiums for overtime and extra shifts incurred in accelerating the Work, but only if acceleration is required in advance by CITY;

7.8.1.3 Proven increased material costs;

7.8.1.4 Additional general conditions costs which would not have been incurred but for the delay (itemized, and not based on a formula allocation);

7.8.1.5 Demobilization and remobilization costs; and

7.8.1.6 Additional items of Cost of the Work attributable to the Excusable Delay and which would not have been incurred but for the Excusable Delay.

7.8.2 Intentionally left blank.

7.8.3 Exceptions. The following exceptions to the provisions of Section 7.7.1 above shall apply:

7.8.3.1 With respect to the Excusable Delay described in Section 5.4.2.2, the cost described in Section 7.7.1 shall not be compensable Delay Costs if such Excusable Delay occurs prior to the commencement of the Construction Work.

7.8.3.2 With respect to the Excusable Delay described in Section 5.4.2.3, the cost described in Section 7.7.1 shall not be compensable Delay Costs if such Excusable Delay occurs prior to the commencement of the Construction Work.

7.8.3.3 With respect to the Excusable Delay described in Section 5.4.2.7, costs incurred in connection with such delay are chargeable against the Cost of the Work but shall not increase the GMP.

7.8.3.4 With respect to the Excusable Delay described in Section 5.4.2.8, in addition to the compensation provided in Section 7.7.1, CONTRACTOR shall be entitled to the additional costs set forth in Section 7.10.

7.8.3.5 With respect to the Excusable Delay described in Section 5.4.2.9, additional compensation shall only be paid if the change in Applicable Law

is not a change in law of general application (e.g., OSHA), but is a change in law specifically affecting the Project.

7.9 Force Majeure. There shall be no additional compensation to CONTRACTOR on account of Force Majeure.

7.10 Intentionally left blank.

7.11 Change Orders on Account of Differing Site Conditions. If CONTRACTOR encounters conditions described in Section 5.4.2.7 which constitute Excusable Delay, in addition to the increase in the GMP on account of Delay Costs incurred by CONTRACTOR (as described in Section 7.7.1), the GMP shall also be increased by the additional Cost of the Work attributable to such conditions which would not have been incurred but for such conditions.

7.12 Time Extensions on Account of Change Orders. CONTRACTOR shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order. CONTRACTOR shall present to CITY a CPM analysis showing how the Change Order affects the critical path schedule of the Work.

ARTICLE 8

CORRECTION OF WORK

8.1 Correction of Work Prior to Completion. Prior to the date of Final Completion, CONTRACTOR shall correct Work which (a) CITY reasonably rejects as being defective or nonconforming to the requirements of the Contract Documents in a written notice delivered to CONTRACTOR or (b) CONTRACTOR recognizes is defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such defective Work, CONTRACTOR shall also correct, repair or replace such affected or damaged Work, as well as any other property of CITY or others damaged by such defective or nonconforming Work. Prior to the date of Final Completion, the cost of correcting any damaged or defective work shall be paid for by the CONTRACTOR. Costs of such correction shall not be considered as part of the "Cost of the Work". These correction costs shall be tracked and recorded for CITY information, but will not be paid by the CITY.

8.2 Correction of Work After Completion. For Defects identified by CITY and for which CITY has notified CONTRACTOR within a period of twelve (12) months after the date of Final Completion or approval of Notice of Completion (see Section 3.8), or within such longer period as may be provided by special warranties contained in the Contract Documents, CONTRACTOR shall re-execute, correct, repair or replace all Work found to be defective or nonconforming to the Contract Documents (whether arising from a construction defect, error, omission or deficiency). If other portions of the Work are

adversely affected by or damaged by such defective Work, CONTRACTOR shall also correct, repair or replace such affected or damaged Work, as well as any other property of CITY or others damaged by such defective or nonconforming Work.

8.3 Acceptance of Nonconforming Work. If CITY prefers to accept Work, which is not in accordance with the requirements of the Contract Documents, CITY may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8.4 No Effect on Limitations. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations, which CONTRACTOR may have under the Contract Documents.

ARTICLE 9

SUBCONTRACTORS

9.1 Subcontracts.

9.1.1 Incorporation of Contract Documents. CONTRACTOR may enter into Subcontracts with various Subcontractors for portions of the Work. The Subcontracts shall require each Subcontractor, to the extent of the Work to be performed by such Subcontractor, to assume towards CONTRACTOR all the obligations and responsibilities which CONTRACTOR assumes towards CITY. All Subcontracts shall incorporate the terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor.

9.1.2 Approval of Subcontracts. Those portions of the Construction Work that the CONTRACTOR does not intend to perform with CONTRACTOR's own personnel shall be performed under Subcontracts. Proposed Subcontractors will be deemed accepted unless CITY objects in writing within ten (10) Days after submission by CONTRACTOR

9.1.3 Subcontractors Bids. CONTRACTOR shall use its best effort to choose the highest quality of materials, equipment, component systems and types of construction for the most reasonable prices for inclusion in the Construction Documents, and make reasonable adjustments in the scope of the project so that the total cost bid by the bidding Subcontractors will not exceed the estimate.

ARTICLE 10

INSURANCE AND BONDS; INDEMNIFICATION

10.1 Insurance to be provided by CONTRACTOR:

10.1.1 Evidence of Coverage. The CONTRACTOR shall, at all times, maintain in full force and effect the insurance required by this section; and the CONTRACTOR shall not allow any Subcontractor to commence Work until similar insurance required of the Subcontractor has been obtained and filed. A Certificate of Insurance, and copies of all required endorsements, all in a form approved by the City Attorney, evidencing all required coverage or policies shall be filed after the award of the bid and prior to approval of the Contract by the City Council. The Certificate shall provide that at least thirty (30) Days prior written notice of any reduction of coverage limits or cancellation of the coverage or policies shall be given to the CITY as Certificate holder.

10.1.2 Qualifying Insurers. With the exception of the State Compensation Insurance Fund, all required insurance policies shall be issued by companies licensed to do business in the State of California and who hold a current policy holders alphabetic and financial size category rating of not less than AVII according to the most recent issue of Best's Insurance Reports.

10.1.3 Insurance Required. Commercial General Liability, automobile liability, and workers' compensation insurance shall be maintained as follows:

1. Commercial General Liability

Bodily Injury:
\$1,000,000 each occurrence
\$2,000,000 aggregate
Property Damage:
\$1,000,000 each occurrence
Personal Injury:
\$1,000,000 each occurrence
\$2,000,000 aggregate

2. The Commercial General Liability policy shall include coverage or endorsements for:
 - a. Completed operations.
 - b. Losses related to independent contractors, products and equipment.
 - c. Explosion, collapse and underground hazards.

3. The Commercial General Liability insurance shall include the following endorsements, copies of which shall be provided:
 - a. Inclusion of the City of Roseville, and its officers, agents, volunteers, employees and Engineer, as additional insured as respects services or operations under the Contract.
 - b. Cross liability and severability of interest clauses providing that the insurance applies separately to each insured except with respect to the limits of liability.
 - c. Stipulation that the insurance is primary insurance and that neither the CITY, its Engineer, nor their insurers will be called upon to contribute to a loss.
 - d. Such insurance shall specifically cover the contractual liability of the CONTRACTOR.
 - e. The CONTRACTOR shall furnish a certificate for the period covered.

10.2 Special Notice - Claims Made Coverage:

10.2.1 Liability insurance coverage may not be written on a "claims made" basis. The Certificate of Insurance must clearly provide that the coverage is on an "occurrence" basis.

10.2.2 Comprehensive Automobile Liability for bodily injury (including death) and property damage which provides total limits of not less than One Million Dollars (\$1,000,000) combined single limits per accident, applicable to all owned, non-owned, and hired vehicles.

10.2.3 Statutory Workers' Compensation and Employer's Liability Insurance, including a Broad Form "All-States" Endorsement; for all employees engaged in services or operations under the Contract. The employer's liability insurance shall provide limits of not less than One Million Dollars (\$1,000,000) per occurrence. Both the workers' compensation and employer's liability policies shall contain the Insurer's waiver of subrogation in favor of the CITY, its officers, agents, and employees.

10.2.4 Builder's Risk/Course of Construction Insurance: The CONTRACTOR shall be responsible for all loss, damage or destruction whatsoever to the Work called for by this Contract until the approval of a Notice of Completion. The CONTRACTOR shall secure "All Risk" type of builder's Risk Insurance of the type covering one hundred percent (100%) of the value of the Work performed under this Contract including and all materials, equipment, or other items to be incorporated therein while the same are located at the construction site, a bonded warehouse, or its place of manufacture but not including bond and insurance costs. At any time, the policy shall cover the value of the Work completed. The policy shall cover hazards including the losses due to fire, explosion, hail, rain,

lightning, flood (separate insurance as needed), vandalism, malicious mischief, wind, collapse, aircraft, and smoke.

The policies providing such insurance shall name the CITY and its Engineer as loss payees as their respective interests may appear, and certified copies of such policies shall be filed with the CITY. The maximum deductible allowable under the Builder's All Risk policy shall be five percent (5%) of the Contract amount.

10.3 Other Insurance Provisions:

10.3.1 The requirements of the Contract Conditions as to types and limits of insurance coverage to be maintained by the CONTRACTOR, and any approval of insurance by the CITY, are not intended to, and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to the Contract, including, but not limited to, the provisions concerning indemnification, nor preclude the CITY from taking any other action available to it under any other provision of the Contract or law.

10.3.2 The CITY acknowledges that some insurance requirements contained in the Contract Conditions may be fulfilled by self-insurance on the part of the CONTRACTOR. However, this shall not in any way limit liabilities assumed by CONTRACTOR under the Contract. Any self-insurance must be approved in writing by the CITY, in its sole discretion.

10.3.3 Should any of the Work under the Contract be sublet, the CONTRACTOR shall require each of its Subcontractors of any tier to provide the aforementioned coverage, or the CONTRACTOR may insure Subcontractor(s) under its own policy.

10.3.4 The CITY, its Engineer, officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR; and with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under California Insurance Code Section 11580.04.

10.3.5 It is understood by the CITY that the CONTRACTOR is not preparing the Construction Documents. The CONTRACTOR's role is only to assist in the design process as described in this Agreement. All design suggestions, comments, opinions, and technical information provided by CONTRACTOR as a member of the team are to be reviewed and

approved by the Engineer and other CITY design professionals before they are incorporated into final plans and specifications used in constructing the Project. As such, the CONTRACTOR shall not be required to provide professional liability insurance to cover design-related errors and/or omissions and the requirements for CONTRACTOR to name Engineer as an additional insured on their Commercial General Liability, Comprehensive Automobile Liability and Builder's Risk/Course of Construction insurance policies shall not be construed to require otherwise. This review by the Engineer and other independent design professionals and engineers is to ascertain feasibility, satisfaction of the design concept, compatibility and compliance with Applicable Laws, statutes, ordinances, building codes, rules, regulations and professional standards of care prior to incorporating into the plans and specifications used for construction. Final Design responsibility remains solely with the CITY.

10.3.6 The CONTRACTOR shall maintain in full force and effect the insurance policies required by this Section until such time as the CITY has accepted and approved the CONTRACTOR's Certificate of Final Completion in accordance with Section 6.13.

10.4 THE CITY RESERVES THE RIGHT TO WITHHOLD ANY PROGRESS PAYMENTS TO THE CONTRACTOR IN THE EVENT OF NONCOMPLIANCE WITH ANY INSURANCE REQUIREMENTS.

10.5 Insurance to be provided by CITY. [not applicable]

10.6 Performance, Labor and Material and Warranty Bonds. CONTRACTOR shall furnish and deliver to CITY Performance, Labor and Material and Warranty Bonds issued by a surety prior to, and as a condition precedent to, commencement of the Construction Work on the Site. The Labor and Material and Performance Bonds shall be in a penal sum equal to one hundred percent (100%) of the GMP, the Warranty Bond shall at a minimum be in a penal sum equal to ten percent (10%) of the GMP and shall be in the form as set forth in Exhibit E hereto. All premiums for the Labor and Material, Performance, and Warranty Bonds shall be a Cost of the Work. CITY shall have the right to withhold any payments under this Agreement until CONTRACTOR has complied with this sub-section.

10.7 Indemnification. CONTRACTOR shall defend, indemnify, and hold harmless, Engineer, CITY, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, claims, losses, expenses or other liabilities of every type and description, including reasonable attorney fees, to which they may be subjected or put, by reason of, or resulting from, the performance of the Work, whether upon or off the Work, including the loss of use thereof, that is caused in whole or in part by willful or reckless misconduct and/or any negligent or wrongful act or omission of CONTRACTOR, any Subcontractor, and anyone directly or indirectly employed by any

of them or anyone for whose acts any of them may be liable, whether or not it is caused in part by a party indemnified hereunder, except for such claims arising from the sole active negligence of CITY.

ARTICLE 11

PROTECTION OF PERSONS AND PROPERTY

11.1 Safety Precautions and Programs.

11.1.1 Site Safety. CONTRACTOR shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work, and shall also comply with any and all insurance carrier-mandated safety requirements and programs. Additionally, the CONTRACTOR shall comply with any and all CITY safety requirements pertaining to the Work.

11.1.2 Safety Notices. In connection with the performance of the Work, CONTRACTOR shall provide notices and comply with all Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

11.2 Safety of Persons and Property.

It is the intent of the parties that CITY is not an exposing, creating, controlling, or correcting employer under California Labor Code section 6400. In accordance with generally accepted fabrication and construction practices and all Applicable Laws and Standards and Codes, CONTRACTOR shall have the authority and be solely and completely responsible for the safety of all property utilized and all persons performing under this Agreement. Moreover, the CONTRACTOR shall be the controlling employer and has the authority and responsibility to enforce safety for all fabrication, Construction Work, and Work performed under this Agreement. The services of CITY's contract administrator, if any, in conducting a review of CONTRACTOR's performance under this Agreement is not intended to include a review of the adequacy of CONTRACTOR's work methods, equipment or safety measures. If CITY and/or its contract administrator observe a safety violation related to the CONTRACTOR's performance under this Agreement, then CITY and/or its contract administrator will report the violation to the CONTRACTOR who is then responsible for assuring the violation is abated.

CONTRACTOR is hereby informed that work on this Project could be hazardous. CONTRACTOR shall carefully instruct all personnel performing under this Agreement in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property.

All Equipment, Work and materials provided under this Agreement shall be in strict accordance with all Applicable Laws and Standards and Codes, and attention is drawn to the requirements of CAL/OSHA.

CONTRACTOR shall perform under this Agreement so as not to expose personnel to, or to discharge into the atmosphere from any materials brought to the Site by CONTRACTOR, smoke, dust, asbestos, toxic chemicals or other air contaminants in violation of Applicable Laws and Standards and Codes.

11.2.1 Reasonable Precautions. CONTRACTOR shall take all precautions and implement all safety measures and requirements imposed by any Applicable Law. Without limiting the generality of the foregoing, CONTRACTOR shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to:

11.2.1.1 Employees on the Work and other persons who may be affected thereby;

11.2.1.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of CONTRACTOR; and

11.2.1.3 Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Construction Work.

11.2.2 Safeguards. CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying CITY and users of adjacent sites and utilities, and shall comply fully with the requirements of CAL/OSHA.

11.2.3 Use of Explosives. Use of explosives is prohibited, unless approved in advance in writing by CITY. CITY may impose reasonable conditions on the use of explosives.

11.2.4 Remedy of Damage. CONTRACTOR shall promptly remedy damage and loss to property referred to in Sections 11.2.1.2 and 11.2.1.3 caused in whole or in part by CONTRACTOR, or anyone employed by or in control of CONTRACTOR, or any Subcontractor. All costs incurred by CONTRACTOR in connection with its obligations under this Section shall be Cost of the Work, but shall not increase the GMP.

11.2.5 Designation of Safety Coordinator. [reserved]

11.2.6 Loads. CONTRACTOR shall not load or permit any part of the Construction Work or the Site to be loaded so as to endanger its safety.

11.3 Security. CONTRACTOR shall take any and all precautions that may be reasonably necessary to render all portions of the Work, the Site and any adjacent areas affected by the Work secure in all material respects, to decrease the likelihood of accidents, and to avoid vandalism and other contingencies which are liable to delay the Work or give rise to claims or liabilities. CONTRACTOR shall furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed. CONTRACTOR shall take all precautions and measures as may be reasonably necessary to secure the Project at all hours, including evenings, holidays and non-work hours. Such precautions may include provision of security guards.

11.4 Damage to Property at the Site. CONTRACTOR shall be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of CITY or its representatives, agents or employees. Costs of such correction shall not be considered as part of the "Cost of the Work." These correction costs shall be tracked and recorded for CITY information, but will not be paid by the CITY.

11.5 Damage to Property of Others. CONTRACTOR shall avoid damage, as a result of CONTRACTOR's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of CITY. CONTRACTOR shall repair any such damage caused by the operations of CONTRACTOR, which costs shall be paid as a Cost of the Work to the extent that such costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible.

11.6 Failure of CONTRACTOR to Repair Damage. If CONTRACTOR fails to commence the repair of damage to property as set forth in this Article, and/or diligently pursue such repair, then CITY, after ten (10) Days prior written notice to CONTRACTOR (provided CONTRACTOR has not commenced such repair during such ten (10) Day period), may elect to repair such damages with its own forces and to deduct from payments due or to become due to CONTRACTOR such amounts paid or incurred by CITY in correcting such damage.

11.7 Emergencies. In an emergency affecting the safety of persons or property, CONTRACTOR shall act, at CONTRACTOR's discretion, to prevent threatened damage, injury or loss. Additional costs or extensions of time caused by CONTRACTOR on account of an emergency not caused by the fault or neglect of CONTRACTOR shall be determined as provided in Section 7.2 hereof.

ARTICLE 12

DISPUTES

12.1 Disputes between CITY and CONTRACTOR. In the event of any dispute arising between CITY and CONTRACTOR regarding any part of the Contract or the Contract Documents, or the Parties' obligations or performance thereunder, and subject to any claims presentation requirements set forth in the Contract Documents, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligation hereunder notwithstanding the existence of a dispute.

12.2 Dispute Resolution Procedures.

12.2.1 Initial Meeting to Resolve Disputes. Claims (demands for monetary compensation or damages or time extensions) arising from or relating to the Contract Documents shall be decided by the parties in accordance with this section. Initially, and promptly after identification of a claim, the CONTRACTOR's Work manager and the CITY's on-site representative shall meet face-to-face to review and consider the claim. This meeting shall occur at the earliest practicable date and shall be for the express purposes of: (1) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each party's position, and (3) reaching agreement upon a reasonable, compromise resolution of the claim.

12.2.2 Meeting of Senior Management. If the Parties are unable to resolve the claim, a senior representative from the CONTRACTOR and the Environmental Utilities Director (or designee) on behalf of the CITY each shall review the claim in detail and then meet face-to-face to discuss and resolve the matter. This meeting of senior management representatives shall occur no later than fifteen (15) Days after the meeting of the Parties representatives, unless the Parties both agree upon a longer period of time. The CONTRACTOR shall promptly designate a senior representative for purposes of this section. Either Party may, if necessary, designate a different senior representative at any time during the course of the Work.

12.2.3 Non-Binding Mediation. If any claim remains unresolved after the meeting of the authorized representatives, the CONTRACTOR and the CITY agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator. Unless the parties both agree upon a longer period of time, the mediation shall be held no later than ninety (90) Days after the meeting of the authorized representatives. No later than thirty (30) Days prior to the mediation date, the parties shall exchange in a cooperative and forthright manner all documents, data and information

relating to the claim, excepting only those items protected by the attorney/client or other applicable privilege. The parties shall share equally the mediator's fee for the mediation.

ARTICLE 13

EVENTS OF DEFAULT AND REMEDIES; SUSPENSION AND TERMINATION

13.1 CONTRACTOR Events of Default. The following shall be considered "CONTRACTOR Events of Default":

13.1.1 If CONTRACTOR fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after seven (7) Days notice from CITY, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

13.1.2 If CONTRACTOR materially breaches this Agreement and fails, after seven (7) Days notice from CITY, to commence a cure to correct such breach and thereafter diligently pursue such cure to completion (such breach to include, but not be limited to, failure to make payment to Subcontractors for materials or labor in accordance with the respective agreements between CONTRACTOR and the Subcontractors or violation of Applicable Laws);

13.1.3 If a custodian, trustee or receiver is appointed for CONTRACTOR, or if CONTRACTOR becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or CONTRACTOR causes or suffers an order for relief to be entered with respect to it under applicable bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for CONTRACTOR, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against CONTRACTOR, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

13.2 Remedies of CITY upon a CONTRACTOR Event of Default.

13.2.1 Termination of Contract. Upon the occurrence of a CONTRACTOR Event of Default, CITY shall have the right to terminate this Contract upon an additional seven (7) Days written notice to CONTRACTOR, provided that CONTRACTOR has not commenced a cure within such seven (7) Day period. Without prejudice to any other rights or remedies of CITY, CITY may:

13.2.1.1 Take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by CONTRACTOR;

13.2.1.2 Accept assignment of Subcontracts; and

13.2.1.3 Finish the Work by whatever reasonable method CITY may deem expedient.

13.2.1.4 When CITY terminates the Contract as aforesaid, CONTRACTOR shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the GMP exceeds costs incurred in finishing the Work, such excess shall be paid to CONTRACTOR, up to the amount due CONTRACTOR for work performed prior to termination. If such costs exceed the unpaid balance of the GMP, CONTRACTOR shall pay the difference to CITY.

13.2.2 Recourse to Labor and Material and Performance Bonds. Upon the occurrence of a CONTRACTOR Event of Default and termination of this Contract by CITY, CITY may call upon the Surety to perform its/their obligations under the Labor and Material and Performance Bonds, if applicable.

13.3 Remedies not Exclusive. Except as otherwise provided in this Agreement, no remedy hereunder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other available legal or equitable remedy, existing now or hereafter. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

13.4 Termination or Suspension for Convenience.

13.4.1 Termination for Convenience. CITY may, without cause, terminate this Contract, or any portion of Work to be performed hereunder at any time by a notice in writing from CITY to CONTRACTOR for CITY's convenience. In such case, CITY shall pay to CONTRACTOR all funds due CONTRACTOR for work performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any amounts payable to Subcontractors for early termination, plus reasonable overhead and profit on Work performed. All funds due hereunder, including unpaid Retention, shall be released within thirty (30) Days of termination of the Contract for convenience, subject to any withholding required or authorized by any Applicable Law. In no event shall such amounts owed to CONTRACTOR exceed the GMP.

13.4.2 Suspension for Convenience. CITY may, without cause, order CONTRACTOR in writing to suspend, delay or interrupt the Work in whole or in part for a period not more than ninety (90) Days. An adjustment shall be made to the Cost of the Work, including allowable mark-ups, caused by the suspension, delay or interruption, in accordance with the Change Order provisions of this Contract. No adjustment shall be made to the extent (a) the performance is, was or would have been so suspended, delayed or interrupted by another cause for which CONTRACTOR is responsible or (b) that an equitable adjustment to the GMP and/or Schedule is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage Fee.

13.4.3 Termination by the Contractor. Upon seven (7) Days written notice to the CITY, the CONTRACTOR may terminate this Agreement for any of the following reasons:

13.4.3.1 if the Work has been stopped for a ninety (90) consecutive day period due to:

13.4.3.1.1 a court order or order of other governmental authorities having jurisdiction; or

13.4.3.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the CONTRACTOR, materials are not available; or

13.4.3.1.3 because of the CITY's failure to pay the CONTRACTOR undisputed amounts in accordance with this Agreement; or

13.4.3.2 Upon termination by the CONTRACTOR in accordance with Subparagraph 13.4.2, the CONTRACTOR shall be entitled to recover from the CITY payment for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. The CONTRACTOR will also be paid a mark-up of ten percent (10%) added to these costs for general overhead and profit.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Governing Law. This Contract shall be construed with and governed by the laws of the State of California.

14.2 Successors and Assigns. CITY and CONTRACTOR respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign the Contract without the prior written consent of the other.

14.3 Notice. Any notices to Parties required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

If to CITY:

Derrick Whitehead
City of Roseville
Environmental Utilities Department
2005 Hilltop Circle
Roseville, CA 95647

If to CONTRACTOR:

Address for Notice may be changed by Notice to the other Party.

14.4 Prevailing Wages. For purposes of this Agreement, CONTRACTOR and its Subcontractors shall comply with all applicable prevailing wage laws, e.g., but limited to, California Labor Code Sections 1770 et seq. In accordance with said Section 1775, CONTRACTOR shall forfeit as a penalty to the CITY Fifty Dollars (\$50) for each Calendar Day or portion thereof for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any work done on-Site under the Agreement by CONTRACTOR or by any subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, 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 shall be paid to each worker by CONTRACTOR or the applicable subcontractor.

Pursuant to the provisions of California Labor Code Sections 1773, the Department has identified the source, stated below, of the General Prevailing Rate of Wages applicable to the work to be done, for straight time, overtime, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. These wage rates may be obtained from the California State Department of Industrial Relations and/or the following website address:

http://www.dir.ca.gov/dlsr/statistics_research.html, which is a part of this Agreement.

Pursuant to Labor Code Section 1773.2, General Prevailing Wage Rates set forth above, which forms a part of this Agreement, shall be posted by CONTRACTOR at a prominent place at the Site. Prevailing wage rates to be posted at the Site will be furnished by the Department. The possibility of wage increases is one of the elements

to be considered by CONTRACTOR in determining its Proposal, and will not under any circumstances be considered as the basis of a claim against CITY or the Agreement.

14.5 Modifications. No Modifications or Change Orders shall be valid unless in writing and signed by CITY and CONTRACTOR.

14.6 Interpretation. Any and all headings of this Agreement are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement. Where reference is made in this Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents. In the event of any conflict between or among the Contract Documents, the provisions of this Agreement shall govern.

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

14.8 Whole Agreement. This Agreement, the Exhibits hereto and the Contract Documents, Specifications, Drawings, and Standard Details shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein

14.9 Accounting Records. CONTRACTOR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be reasonably satisfactory to CITY. CITY and CITY's accountants shall be afforded access to CONTRACTOR's records, books, correspondence, instructions, drawings, receipts, Subcontracts, vouchers, memoranda and other data relating to this Agreement, and CONTRACTOR shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

14.10 Intentionally left blank.

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

14.12 CONTRACTOR Shall Assume Risks. Until the Final Completion or acceptance by CITY of all Work under this Contract, the Work shall be under CONTRACTOR's responsible care and charge. CONTRACTOR shall rebuild, repair, restore and make good all injuries, damages, corrections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work, except as otherwise stipulated.

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

14.14 Attorney's Fees and Venue. If either Party commences any legal action against the other Party arising out of this Agreement or the performance thereof, the prevailing Party shall be entitled to recover its reasonable litigation expenses, including but not limited to, court costs, expert witness fees, discovery expenses, and attorney's fees. Any action arising out of this Agreement shall be brought in Placer County, California, regardless of where else venue may lie. To the extent permitted by applicable law, each Party waives any defense that it may have based on lack of *in personam* jurisdiction or *forum nonconveniens*.

14.15 Third Party Beneficiaries. There are no third party beneficiaries, intended or otherwise, to this Agreement.

14.16 CONTRACTOR's tax and construction license identification numbers.

Under penalty of perjury, by my signature below I certify that the following contractor's license number and all other information provided herein are correct:

Contractor's License No.: _____

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Resolution No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 2010, and CONTRACTOR has caused this Agreement to be executed.

CITY OF ROSEVILLE, a
municipal corporation:

NAME OF CONTRACTOR., a
California corporation:

BY: _____
MICHAEL T. SHELLITO
Interim City Manager

BY: _____
its: _____

ATTEST:

and

BY: _____
SONIA OROZCO
City Clerk

BY: _____
its: _____

APPROVED AS TO FORM:

BY: _____
BRITA J. BAYLESS
City Attorney

Valid California Contractor's License
Number: _____
Expiration Date: _____

APPROVED AS TO SUBSTANCE

By: _____
DERRICK WHITEHEAD, P.E.
Environmental Utilities Director

LIST OF EXHIBITS:

- Exhibit A Guaranteed Maximum Price, Cost of Work, and Fee**
- Exhibit B Scope of Work and Facility Performance Requirements**
- Exhibit C CONTRACTOR's Baseline Schedule**
- Exhibit D In Lieu of Securities Escrow Agreement**
- Exhibit E Performance, Labor and Material, and Warranty Bond Forms**
- Exhibit F Hazardous Materials**
- Exhibit G Certificates (Insurance, Non-Collusion Affidavit, & Drug-Free Workplace)**
- Exhibit H Technical Specifications (Volumes 1 and 2 – bound separately)**
- Exhibit I Drawings (bound separately)**
- Exhibit J Standard Details (bound separately)**

EXHIBIT A (AGREEMENT)

GUARANTEED MAXIMUM PRICE, COST OF WORK, AND FEE

1. GUARANTEED MAXIMUM PRICE: The **Guaranteed Maximum Price (“GMP”)** as of the date of execution of this Agreement is _____ dollars (\$_____). Subject to the provisions of this Agreement, the costs and expenses which the CONTRACTOR may include in the Cost of Work for purposes of determining that aspect of the CONTRACTOR’s compensation, are as set forth in this Exhibit A. The CONTRACTOR’s total compensation, including allowable mark-ups, shall not exceed the GMP. The GMP may be adjusted by Change Order in accordance with this Agreement.

The above GMP amount is based on the following:

a. the CITY’s Request for Proposals (RFP), Technical Specifications, Drawings, and Standard Details, including all addenda issued;

b. the following allowances and a statement of their basis;

-
-
-

c. the following assumptions and clarifications made by the CONTRACTOR in the preparation of the GMP to supplement the information contained in the CITY’s RFP;

-
-
-

d. schedule of applicable alternate prices;

e. schedule of applicable unit prices;

f. statement of Additional Services included, if any; and

g. the time limit for issuance of Notice to Proceed.

NOTE: THE ABOVE ITALICIZED TEXT ARE POSSIBLE EXAMPLES OF WHAT A CONTRACTOR MIGHT LIST AS THEIR BASIS FOR THEIR GMP AND ARE FOR ILLUSTRATION PURPOSES ONLY. BASED ON THE CONTRACTOR’S OWN ANALYSIS OF THE WORK, THEY ARE TO LIST ITEMS THAT ARE THE BASIS OF THEIR GMP.

2. COST OF THE WORK:

2.1 "Cost of the Work." The term "Cost of the Work" shall mean the sum of all costs necessarily incurred and paid by the CONTRACTOR for labor, materials, equipment, subcontractors, special services, bonds, insurance, direct job overhead expenses, taxes and other necessary expenses incurred in the performance of work to complete the Work.

The following are categories of cost and expense to be paid by CITY to CONTRACTOR as Cost of the Work:

2.2 HOURLY FIELD LABOR: The cost of all labor used in performing work by the CONTRACTOR will be the sum of the following:

- a. The actual wages paid plus any employer payments to, or on behalf of workers for fringe benefits including health and welfare, pension, vacation and similar purposes.
- b. All payments imposed by State and Federal Laws including, but not limited to, compensation insurance, and social security payments. The rates used for worker's compensation insurance shall be the actual rates paid by the CONTRACTOR for each specific craft and wage rate if applicable to that craft.
- c. **Actual** liability insurance burden applied to CONTRACTOR's payroll as a percent of labor.

The CONTRACTOR will be paid according to Table A-1 found at the end of Exhibit A for Hourly Field Labor.

NOTE: THE CRAFTS AND CLASSIFICATIONS LISTED ABOVE ARE FOR ILLUSTRATION PURPOSES ONLY. THE CONTRACTOR IS TO LIST THE CRAFTS AND CLASSIFICATIONS, UP TO FOREMAN LEVEL THEY ANTICIPATE USING IN THE PERFORMANCE OF THE WORK IN COMPLETING THE TABLE ABOVE. SHOULD THE CONTRACTOR ULTIMATELY USE A CRAFT CLASSIFICATION NOT LISTED ABOVE, THE CONTRACTOR WILL SUBMIT BACKUP COST INFORMATION FOR THAT CRAFT CLASSIFICATION TO CITY FOR REVIEW AND APPROVAL.

The above rates will remain unchanged for the duration of the project unless changed in accordance with Industry Master Labor Agreements, if Contractor is signatory to any such Agreements, changes established by the State of California Director of Industrial Relations or changes made company wide in the CONTRACTOR's organization for this geographic area. All changes made to the Cost of Labor must be submitted to the CITY for review and approval

prior to billing the CITY for work performed with hourly workers at the new rates. Increase in labor rates is not an allowable increase in GMP.

2.3 MANAGEMENT and ADMINISTRATIVE LABOR: Management and Administrative labor not performed by the Labor defined in the hourly field labor performing the actual construction will include management and their administrative assistants used to directly manage and administer the Work. These positions may include a Work Principal, Work Manager, On-site Work Superintendent, Work Engineer and Administrative Assistant. Management and Administrative labor rates should include wages, fringe benefits, payroll taxes/insurance, bonuses, and mobile phone usage used by management and administrative labor.

The CONTRACTOR will be paid according to the following table for Management and Administrative Labor:

Management or Administrative Position	Hourly Rate including markup
Principal in Charge	
Project Manager	
Superintendent	
Project Engineer	
Administrative Assistant	

NOTE: THE LABOR CLASSIFICATIONS LISTED ABOVE ARE FOR ILLUSTRATION PURPOSES ONLY. THE CONTRACTOR IS TO LIST THE CLASSIFICATIONS THEY ANTICIPATE USING IN THE PERFORMANCE OF THE WORK IN COMPLETING THE TABLE ABOVE.

The above rates for Management and Administrative Employees will remain unchanged for the duration of the project.

2.4 MATERIALS: The cost of all materials, including all factory testing, freight and delivery costs of materials, accepted by the CITY and used in performing the work will be the cost to the purchaser (CONTRACTOR) from the supplier thereof. All discounts for early payment shall accrue to the CONTRACTOR unless the CITY'S payment to CONTRACTOR is paid to CONTRACTOR before discount payment is due in which case discount savings will be fully credited to CITY on next progress billing. All rebates and all returns from the sale of surplus materials shall be credited to the Cost of the Work.

For materials used in construction of the Project which may have additional uses on other projects for the CONTRACTOR's benefit, such as dimensional lumber, beams and plywood to form concrete or temporary diversion pipes, the CONTRACTOR shall submit a material unit cost to cover use of these types of materials for the approval of the CITY prior to delivery to the Work Site. This unit cost shall take into account the use of such materials on other past and future projects.

2.5 EQUIPMENT:

- a. Equipment with a value of \$500.00 or greater: The CONTRACTOR will be paid the following rates for equipment owned by CONTRACTOR:

Equipment Item Manufacturer, Model and Capacity/Size	Hourly Rate	Daily Rate

The rate listed above for equipment owned by the CONTRACTOR will, in all cases, be understood to cover all fuel, supplies, repairs, ownership, and incidental costs and no further allowances will be made for those items, unless specifically approved in writing by the CITY. The above equipment rates will remain unchanged for the duration of the project.

Equipment owned by CONTRACTOR will only be paid for the actual time equipment is used in performing work and will be rounded to the closest full hour if paid by an hourly rate. A company-owned Pickup Truck or passenger vehicle normally assigned to an Hourly Field Labor Employee and Management Labor Employee will be paid the same number of hours as each respective employee submits on their timesheet for labor hours worked on the project, but will not include commute time.

Equipment not owned by CONTRACTOR which is rented by CONTRACTOR and used in performing work will be paid by CITY based on actual invoiced cost to CONTRACTOR, plus actual fuel/lube costs, provided the rental rate is not in excess of rental rates established by distributors or equipment rental companies in the local area. CITY-operated equipment will also be paid by CITY based on actual invoiced cost to CONTRACTOR provided the CITY does not deem any charges excessive. All transportation costs to move equipment on and off the Work will be paid by CITY up to a maximum of four (4) hours total travel time each way.

Owner-operated equipment rates used in performing work shall not exceed the allowable equipment rates plus the applicable labor classification rate found in above table unless approved by the CITY prior to CONTRACTOR mobilizing Owner-operated equipment to the project site.

- b. Equipment with a value less than \$500.00: The CONTRACTOR will be paid an amount of five percent (5%) of total hourly field labor costs as defined in 2.2 above to cover the cost of small tools and safety supplies for work directly performed at the Site.

2.6 SUBCONTRACTORS and SUBTIER SUBCONTRACTORS: The CONTRACTOR will be paid for all work performed by Subcontractor at the actual invoiced amount. Should a Subcontractor be required to perform extra work caused by a Contract Change Order, the Subcontractor will be allowed a mark-up of no more than fifteen percent (15%) on labor, equipment and materials and ten percent (10%) in subtier subcontractors. [In no case shall the cumulative mark-up to the Subcontractor exceed twenty-five percent (25%)].

2.7 SPECIAL SERVICES: Special work or services are defined as that work not included in this agreement and characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry and cannot be performed by forces of the CONTRACTOR or its subcontractors. These special services may include such services as registered land surveyor, licensed geotechnical engineer, licensed structural engineer, special testing or laboratory work.

2.8 BONDS AND INSURANCE: The CONTRACTOR will be paid the actual cost for the one hundred percent (100%) payment bond, the one hundred percent (100%) performance bond, and the ten percent (10%) warranty bond, as well as all insurance costs attributable to the Work, (such costs are deemed a Cost of Work and are therefore contained within the GMP).

2.9 DIRECT JOB OVERHEAD EXPENSES: The CONTRACTOR will be paid for the actual cost of job overhead expenses which may include such expenses as office trailers, storage vans, temporary fencing/security, toilets, dumpsters, waste removal, water, utility power, jobsite landline telephone costs, jobsite internet provider costs, field office equipment and water cooler, including mobilization and demobilization of same. Direct job overhead expenses would also include reasonable room and board subsistence paid to employees who live farther than fifty (50) miles from the Work Site or as required by Master Labor Agreements/Director of the California Department of Industrial Relations.

2.10 TAXES: The CONTRACTOR acknowledges it will be liable for all sales, use, gross receipts or other taxes, tariffs or duties related to the Work and that these taxes and tariffs are included in the GMP. All invoices to CITY will include the applicable taxes and tariffs that are the CONTRACTOR's responsibility and will not be shown as a separate line item on the CONTRACTOR's invoice.

2.11 PRECONSTRUCTION (DESIGN ASSIST) SERVICES: The Cost of Work will include all preplanning and preconstruction service costs incurred by CONTRACTOR prior to beginning of construction.

3. ITEMS NOT INCLUDED IN THE COST OF WORK.

3.1 Salaries and other compensation of CONTRACTOR's personnel stationed at CONTRACTOR's principal office or offices other than the Site, except as specifically provided in Section 2 above.

3.2 Expenses of CONTRACTOR's principal office and offices, other than the Site office, if one is used by CONTRACTOR.

3.3 Overhead and general expenses, except as may be included in Section 2 above.

3.4 The capital expenses of CONTRACTOR, including interest on capital employed for the Work and charges to CONTRACTOR for delinquent payments.

3.5 Costs due to negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective Work, disposal of materials or equipment wrongfully supplied, and making good any damage to property.

3.6 Costs that would cause the GMP to be exceeded.

4. FEE:

The CONTRACTOR's Mark-up percentage for general overhead and profit will be paid in accordance with the following percentage mark-ups:

Item 2.2	Hourly Field Labor	___%
Item 2.3	Management and Administrative Labor	Included in hourly rates
Item 2.4	Materials	___%
Item 2.5	Construction Equipment	___%
Item 2.6	Subcontractors	___%
Item 2.7	Special Services	___%
Item 2.8	Bonds	___%
Item 2.9	Direct Job Overhead Expenses	___%
Item 2.10	Taxes	___%

- 5.** In the event the Cost of the Work, plus the CONTRACTOR's Mark-up, shall be less than the GMP, as adjusted by the Change Orders, the savings will be shared as identified in Section 6.1 of the Agreement.

Table A-1

Craft	Classification	Base	Vacation	All Fringes	P/R Tax & Insurance	Straight Time Hourly Rate	Overtime Rates	
							Daily/Saturday Rate (1-1/2 X)	Sunday Holiday Rate (2X)
CARPENTER	Foreman Journeyman - Leadman Journeyman							
MILLWRIGHT	Foreman Journeyman - Leadman Journeyman							
PIPEFITTER	Foreman Journeyman - Leadman Journeyman							
LABORER <i>Group 3-B</i>	Foreman Journeyman - Leadman Journeyman							
OPERATOR <i>Group 3-1</i>	Foreman Journeyman - Leadman Journeyman							
CEMENT MASON	Foreman Journeyman							

EXHIBIT B (AGREEMENT)

SCOPE OF WORK AND FACILITY PERFORMANCE REQUIREMENTS

The work included in this project shall be performed to a measurable and quantifiable standard. Table 1 presents a summary of the work required and associated Performance Standard.

Table 1. Description of Required Improvements and Deliverables

Improvement/Deliverable	Description	Performance Standard
Shop Drawing Submittals	Technical submittals covering all materials and equipment required for the Project.	Submitted and returned "Approved" or Approved as Noted."
Pond Return Pump Station	Construct duplex pump station including DR and PR piping.	Initially, pump station complete with one pump operational on temporary power. Both pumps fully operational on permanent power, with control from SCADA.
Raw Sewage Pump Station	Construct dual-bay wet well with five submersible pumps, piping, and valves located in the adjacent dry well; including space, piping connections, and spare conduits to add a 6th pump in the future.	Pump station fully operational in automatic mode with all pumps available for use. Certified pump curves provided and all field functional testing complete. Facility placed into continuous service and accepted by Owner.
Electrical Building	Construct building and install all electrical equipment. New utility service connected. PLC and area workstation installed.	All electrical equipment tested and operational. Pump VFDs field tested and operational. Building air conditioning equipment tested and operational.
Standby Engine Generator	Construct equipment pad, access walkways, and install engine-generator unit and load bank.	Standby engine generator unit and load bank field tested and operational. Standby generator and associated equipment tested to confirm proper operation during a utility power failure. Generator tested and functions properly when connected to load bank.
Foul Air Fan Stations and Ductwork	Construct foul air fan stations, and associated suction and discharge FRP ductwork.	Fans tested and fully operational.
Odor Control Biofilter Units	Construct odor control biofilter units and install media.	Foul air humidifier system tested and operational. Inspect biofilter unit for proper operation. Spray irrigation system operational.

Table 1. Description of Required Improvements and Deliverables (Continued)

Improvement/Deliverable	Description	Performance Standard
Site Yard Piping	Construct buried and exposed yard piping. Demolish and abandon piping, as shown, and construct pipe tie-ins.	All yard piping installed, tested, and placed in service.
Site Improvements	Relocate fire hydrant and light poles. Demolish small structures, storm drain inlets, and asphalt paving, as shown. Construct new storm drain inlets and manholes. Pave roadways and install crushed rock surfacing.	All work completed and accepted by Engineer and Owner.
Electric Utility Service	New electric utility service to Electrical Building provided by Roseville Electric.	New electric utility service from Roseville Electric is operational and accepted by City and Roseville Electric.
	Remove electric utility service to Pump Station Annex.	Electric utility service and transformer removed from Pump Station Annex.
PLC/HMI Improvements	Install Modicon PLC in Electrical Building and new Remote I/O rack in the Screenings Facility. Relocate area workstation from Pump Station Annex to PLC Room in the Electrical Building. Install fiber optic and network cables, and network devices.	All new PLC hardware and communications links installed and tested. Area workstation relocated and fully operational. PLC and HMI Programming will be completed by CH2M HILL.
Demolish Old Influent Pump Station	Demolition of pump station structure, including backfill and surface restoration.	Demolition of equipment, piping, HVAC, electrical system, and overall structure performed and completed as specified. Surface restoration complete.
Demolish Pump Station Annex (Optional Work)	Demolition of pump station structure, including backfill and surface restoration.	Demolition of equipment, piping, HVAC, electrical system, and overall structure performed and completed as specified. Surface restoration complete.
Operation and Maintenance Manuals	Preparation of Operation and Maintenance (O&M) Manuals.	O&M manuals shall at a minimum provide operating instructions, maintenance instructions, corrective procedures for the most probable failures, spare parts lists, catalog cuts, and original copies of all guarantees and warranties.
Record Drawings	Record Drawings.	Record drawings accurately depict all new work including site layout and location of new work in relation to existing facilities or features such as yard piping, fences, etc. Record drawings shall also include CITY standard drawings referenced in the Request For Proposals and engineering drawings necessary to implement the standard drawings.

EXHIBIT C (AGREEMENT)
CONTRACTOR's BASELINE SCHEDULE

(Insert agreed upon baseline schedule prepared by CONTRACTOR)

EXHIBIT D (AGREEMENT)
IN LIEU OF SECURITIES ESCROW AGREEMENT
(form of agreement follows this page)

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

(Project: _____)

THIS ESCROW AGREEMENT is made and entered into on this _____ day of _____, 20__ by and between the:

City of Roseville, whose address is:

311 Vernon Street
Roseville, CA 95678

(hereinafter called "CITY"); and

_____, whose address is:

(hereinafter called "CONTRACTOR"); and

_____, whose address is:

(hereinafter called "ESCROW AGENT").

For the consideration hereinafter set forth, CITY, CONTRACTOR, and ESCROW AGENT agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities, subject to prior approval of CITY, with ESCROW AGENT, as a substitute for retention earnings required to be withheld by CITY pursuant to the Contract entered into between the CITY and CONTRACTOR for the Project in the amount of

_____ dollars (\$_____) dated _____, (hereinafter referred to as the "Contract"). CITY shall have the right to impose reasonable requirements on Letters of Credit and other forms of securities. ESCROW AGENT shall not accept any form of security which may expire before the Contract is final and complete. Alternatively, on written request of CONTRACTOR, CITY shall make payments of the retention earnings directly to the ESCROW AGENT. When CONTRACTOR deposits the securities as a substitute for retention earnings, the ESCROW AGENT shall notify the CITY within ten (10) Days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between CITY and CONTRACTOR. Securities shall be held in the name of City of Roseville, and shall designate CONTRACTOR as the beneficial owner, and shall be limited to those types of acceptable securities as described in Public Contract Code Section 22300.

2. CITY shall make progress payments to the CONTRACTOR for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that ESCROW AGENT holds securities in the form and amount specified above.

3. When CITY makes payment of retentions earned directly to ESCROW AGENT, ESCROW AGENT shall hold them for the benefit of the CONTRACTOR until the time that the escrow created under this Agreement is terminated. CONTRACTOR may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when CITY pays ESCROW AGENT directly.

4. CONTRACTOR shall be responsible for paying all fees for the expenses incurred by ESCROW AGENT in administering the Escrow Account and all expenses of CITY. These expenses and payment terms shall be determined by CITY, CONTRACTOR, and ESCROW AGENT.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earning on that interest shall be for the sole account of CONTRACTOR and shall be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to CITY.

6. CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to ESCROW AGENT accompanied by written authorization from CITY to ESCROW AGENT that CITY consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

7. CITY shall have a right to draw upon the securities in the event of default by CONTRACTOR. Upon seven (7) Days' written notice to ESCROW AGENT from CITY of the default, ESCROW AGENT shall immediately convert the securities to cash and shall distribute the cash as instructed by CITY.

8. Only upon receipt of written notification from CITY certifying that the Contract is final and complete, and that CONTRACTOR has complied with all requirements and procedures applicable to the Contract, ESCROW AGENT shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon

disbursement of all moneys and securities on deposit and payments of fees and charges.

9. ESCROW AGENT shall rely on the written notifications from CITY and CONTRACTOR pursuant to Sections 5 to 8, inclusive, of this Escrow Agreement and CONTRACTOR shall hold ESCROW AGENT harmless from ESCROW AGENT's release and disbursement of the securities and interest as set forth above.

10. The parties hereto mutually agree that this agreement is substantially similar to the form under Public Contracts Code Section 22300.

11. The names of the persons who are authorized to give written notice or to receive written notice on behalf of CITY and on behalf of CONTRACTOR in connection with the foregoing are as follows:

On behalf of CITY:

On behalf of CONTRACTOR:

On behalf of ESCROW AGENT:

12. At the time the Escrow Account is opened, CITY and CONTRACTOR shall deliver to ESCROW AGENT a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement by its City Manager and attestation by its City Clerk under the authority of Resolution No. 87-141, adopted by the Council of the City of Roseville on the 5th day of August, 1987, and CONTRACTOR and ESCROW AGENT have authorized the execution of this Agreement.

CITY OF ROSEVILLE, a
municipal corporation:

BY: _____
MICHAEL T. SHELLITO
Interim City Manager

ATTEST:

BY: _____
SONIA OROZCO
City Clerk

APPROVED AS TO FORM:

BY: _____
BRITA J. BAYLESS
City Attorney

APPROVED AS TO SUBSTANCE:

BY: _____
RUSSELL C. BRANSON
Finance Director

ACKNOWLEDGED BY ADMINISTERING DEPARTMENT:

BY : _____

Director of _____

NAME OF CONTRACTOR, a
California corporation:

BY: _____
its: _____

and

BY: _____
its: _____

ESCROW AGENT:

BY: _____
its: _____

and

BY: _____
its: _____

EXHIBIT E (AGREEMENT)

PERFORMANCE, LABOR AND MATERIAL, AND WARRANTY BOND FORMS

Attached:

Performance Bond	(To be provided prior to City Council approval of Agreement)
Labor & Material Bond	(To be provided prior to City Council approval of Agreement)
Warranty Bond	(To be provided prior to City Council approval of Agreement)

PERFORMANCE BOND

This Performance Bond ("Performance Bond"), dated _____, 20__, is in the penal sum of

_____ Dollars (\$ _____),
which is an amount not less than one hundred percent (100%) of the Total Contract Price, and is entered into by and between the undersigned

_____ ("Principal" or
"CONTRACTOR") and the undersigned

_____ ("Surety") to ensure the Principal's faithful performance of the Design Assist Contract. This Performance Bond consists of this page and the following Performance Bond Terms and Conditions, Paragraphs 1 through 12. Any singular reference to the Principal, the Surety, the City of Roseville, California ("CITY") or other party shall be considered plural where applicable.

BOND TERMS AND CONDITIONS

1. The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the CITY for the complete and proper performance of the Design Assist Contract, which is incorporated herein by reference.
2. If the Principal completely and properly performs all of its obligations under the Design Assist Contract, the Surety and the Principal shall have no further obligation under this Performance Bond, except to participate in conferences as provided in Paragraph 3.1 below.
3. If there is no CITY Default, the Surety's obligation under this Performance Bond shall arise after:
 - 3.1 The CITY has notified the CONTRACTOR and the Surety at their respective addresses described in Paragraph 10 below, that the CITY is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen (15) Days after receipt of such notice to discuss methods of performing the Design Assist Contract. If the CITY, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Design Assist Agreement, but such a mutual agreement shall not waive the CITY's right, if any, subsequently to declare a CONTRACTOR Default; and
 - 3.2 The CITY has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Design Assist Contract. Such CONTRACTOR Default shall not be declared earlier than twenty (20) Days after the CONTRACTOR and the Surety have received notice as provided in Paragraph 3.1 above.

- 3.3 The CITY has agreed to pay the Balance of the Total Contract Price to:
- 3.3.1 The Surety in accordance with the terms of this Performance Bond and the Design Assist Contract; or
- 3.3.2 To a CONTRACTOR selected to perform the Design Assist Contract in accordance with the terms of this Performance Bond and the Design Assist Contract.
4. When the CITY has satisfied the conditions of Paragraph 3 above, the Surety shall promptly (within thirty (30) Days) and at the Surety's expense elect to take one of the following actions:
- 4.1 Arrange for the CONTRACTOR, with the CITY's consent, such consent to be in the CITY's sole discretion, to perform and complete the Design Assist Contract. If the CITY withholds its consent, the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4, below; or
- 4.2 Undertake to perform and complete the Design Assist Contract itself, through its agents or through independent CONTRACTORS; or
- 4.3 Obtain proposals from qualified CONTRACTORS acceptable to the CITY for a Contract for performance and completion of the Design Assist Contract, and, upon determination by the CITY of the best value for the CITY, arrange for a Contract to be prepared for execution by the CITY and the CONTRACTOR selected, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Design Assist Contract; and, if the Surety's obligations defined in Paragraph 6 below exceed the Balance of the Total Contract Price, then the Surety shall pay to the CITY the amount of such excess; or
- 4.4 Waive its right to perform and complete the Design Assist Contract, arrange for completion, or obtain a new CONTRACTOR and with reasonable promptness under the circumstances, and, after investigation and consultation with the CITY, determine in good faith the amount for which it may then be liable to the CITY under Paragraph 6, below, for the performance and completion of the Design Assist Contract and, as soon as practicable after the amount is determined, tender payment therefor to the CITY with full explanation of the payment's calculation. If the CITY accepts the Surety's tender under this Paragraph 4.4, the CITY may still hold Surety liable for future damages then unknown or unliquidated resulting from the Seller Default. If the CITY disputes the amount of Surety's tender under this Paragraph 4.4, the CITY may exercise all remedies available to it at law to enforce the Surety's liability under Paragraph 6, below.
5. If the Surety does not proceed as provided in Paragraph 4, above, then the Surety shall be deemed to be in default on this Performance Bond ten (10) Days after receipt of an additional written notice from CITY to the Surety demanding

- that the Surety perform its obligations under this Performance Bond. At all times the CITY shall be entitled to enforce any remedy available to the CITY at law or under the Design Assist Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or CONTRACTORS.
6. The Surety's monetary obligation under this Performance Bond is limited by the amount of this Performance Bond. Subject to these limits, the Surety's obligations under this Bond are commensurate with the obligations of the Seller under the Design Assist Contract. The Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of the Seller under the Design Assist Contract for completion of the Design Assist Contract and correction of defective work;
 - 6.2 The responsibilities of the Seller under the Design Assist Contract to pay liquidated damages, and damages for which no liquidated damages are specified in the Design Assist Contract, including but not limited to, all valid and proper back charges, offsets, payments, indemnities, defense costs or other damages; and
 - 6.3 Additional legal, design professional and Delay Costs resulting from the Seller Default or resulting from the actions or failure to act of the Surety under Paragraph 4, above.
 7. The Surety shall not be liable to the CITY or others for the obligations of the CONTRACTOR that are unrelated to the Design Assist Contract, and the Balance of the Total Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Performance Bond to any person or entity other than the CITY or its heirs, executors, administrators, or successors.
 8. The Surety hereby waives notice of any change, alteration or addition to the Design Assist Contract or to related subcontracts, purchase orders and other obligations, including but not limited to changes of time. The Surety consents to all terms of the Design Assist Contract, including provisions on changes to the Contract Documents. No extension of time, Change Order, alteration, Modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Performance Bond or in any way affect the obligations of Surety on this Performance Bond.
 9. Any proceeding, legal or equitable, under this Performance Bond shall be instituted in any court of competent jurisdiction in Placer County, California within two (2) years after the CONTRACTOR Default or within two (2) years after the CONTRACTOR ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under this Performance Bond, whichever occurs first. If the provisions of this Paragraph 9 are void or prohibited by law, the minimum period of limitation available to sureties as a defense in Placer County shall be applicable.

10. Notice to the Surety, the CITY or the Principal shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Performance Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Performance Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Total Contract Price: The total amount payable by the CITY to the CONTRACTOR pursuant to the terms of the Design Assist Contract after all proper adjustments have been made under the Design Assist Contract, including, for example, deductions for progress payments made, deductions for liquidated damages owed, and increases/decreases for approved modifications to the Design Assist Contract.
 - 12.2 Design Assist Contract: The documents between the CITY and the Principal identified as the Contract Documents in that certain Design Assist Construction Contract for the Waste Water Lift Stations and Storm Water Pump Station Improvements Project, including all changes, Addenda and modifications thereto.
 - 12.3 CONTRACTOR Default: Material failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Design Assist Contract.
 - 12.4 CITY Default: Material failure of the CITY, which has neither been remedied nor waived, to pay the CONTRACTOR progress payments due under the Design Assist Contract or to perform other material terms of the Design Assist Contract, provided such failure is the cause of the asserted CONTRACTOR Default and is sufficient to justify CONTRACTOR termination of the Design Assist Contract.

IN WITNESS WHEREOF, the undersigned obligated parties have executed this instrument.

(Corp. Seal)

Principal: _____

Signature: _____

Name & Title: _____

Address: _____

(Corp. Seal)

Surety: _____

Signature: _____

Name & Title: _____

Address: _____

Attorney in Fact: _____

Surety shall submit the following documents along with this Performance Bond:

1. Verification that Surety is admitted to transact surety business in the State of California; and
2. Copy of Surety's Certificate of Authority, issued by the Insurance Commissioner of the State of California, along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

Approved: _____, City Attorney

END OF DOCUMENT

LABOR AND MATERIAL BOND

This Labor and Material Bond ("Labor and Material Bond") dated _____, 20____, is in the penal sum of

_____ Dollars (\$ _____), which is an amount not less than one hundred percent (100%) of the Total Contract Price, and is entered into by and between the undersigned

_____ ("Principal" or "CONTRACTOR") and the undersigned

_____ ("Surety") to ensure the Principal's payment of claimants pursuant to the Design Assist Contract. This Labor and Material Bond consists of this page and the following Labor and Material Bond Terms and Conditions, Paragraphs 1 through 15. Any singular reference to the Principal, the Surety, the City of Roseville, California ("CITY") or other party shall be considered plural where applicable.

BOND TERMS AND CONDITIONS

1. The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the CITY and to Claimants, to pay for labor, materials, Equipment furnished and Services provided in the performance of the Design Assist Contract, which is incorporated herein by reference.
2. With respect to the CITY, this obligation shall become null and void if and when the Principal:
 - 2.1 Promptly and fully makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Fully defends, indemnifies and holds harmless the CITY from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Design Assist Contract, provided the CITY has promptly notified the Principal and the Surety (at the address described in Paragraph 10 below) of any claims, demands, liens or suits and has tendered defense of such claims, demands, liens or suits to the Principal and the Surety, and provided there is no CITY Default.

Otherwise, this Labor and Material Bond shall be, and remain, in full force and effect.
3. With respect to Claimants, this obligation shall become null and void if and when the Principal promptly and fully makes payment, directly or indirectly through its Subcontractors, for all sums due Claimants; otherwise, this Labor and Material Bond shall be, and remain, in full force and effect.

4. The Surety shall have no obligation to Claimants under this Labor and Material Bond until:
 - 4.1 Claimants who are employed by or have a direct Contract with the CONTRACTOR have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the CITY, stating that a claim is being made under this Labor and Material Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct Contract with the CONTRACTOR:
 - 4.2.1 Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the CITY, within ninety (90) Days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - 4.2.2 Have either received a rejection in whole or in part from the CONTRACTOR, or have not received within thirty (30) Days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR has indicated the claim will be paid directly or indirectly; and
 - 4.2.3 Not having been paid within the above thirty (30) Days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the CITY, stating that a claim is being made under this Labor and Material Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.
5. If a notice required by Paragraph 4 above is given by the CITY to the CONTRACTOR or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the CITY, within forty-five (45) Days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Labor and Material Bond, and the amount of this Labor and Material Bond shall be credited for any payments made in good faith by the Surety under this Labor and Material Bond.
8. Amounts due the CONTRACTOR under the Design Assist Contract shall be applied to satisfy claims, if any, under this Labor and Material Bond.

9. The Surety shall not be liable to the CITY, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Design Assist Contract. The CITY shall not be liable for payment of any costs, expenses, or attorney's fees of any Claimant under this Labor and Material Bond, and shall have no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Labor and Material Bond.
10. The Surety hereby waives notice of any change, alteration or addition to the Design Assist Contract or to related subcontracts, purchase orders and other obligations, including but not limited to changes of time. The Surety consents to all terms of the Design Assist Contract, including provisions on changes to the Contract Documents. No extension of time, Change Order, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Labor and Material Bond or in any way affect the obligations of Surety on this Labor and Material Bond.
11. Any proceeding, legal or equitable, under this Labor and Material Bond shall be instituted in any court of competent jurisdiction in Placer County, California within one (1) year from the date on which (i) the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.3.3, or (ii) the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Design Assist Contract, whichever of (i) or (ii) first occurs. If the provisions of this Paragraph 11 are void or prohibited by law, the minimum period of limitation available to sureties as a defense in Placer County shall be applicable.
12. Notice to the Surety, the CITY or the Principal shall be mailed or delivered to the address shown on the signature page below. Actual receipt of notice by the Surety, the CITY or the Principal, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page below.
13. Any provision in this Labor and Material Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Labor and Material Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Labor and Material Bond, the Principal shall promptly furnish a copy of this Labor and Material Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1 CLAIMANT: An individual or entity having a direct Contract with the CONTRACTOR or with a subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Design Assist Contract. The intent of this Labor and Material Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Design Assist Contract, architectural and

engineering services used or reasonably required for performance of the work of the CONTRACTOR and the CONTRACTOR's subcontractors, and all other items for which a mechanic's lien or stop notice might be asserted.

- 15.2 DESIGN ASSIST CONTRACT: The documents between the CITY and the CONTRACTOR identified as the Contract Documents in that certain Design Assist Construction Contract for the Dry Creek Wastewater Treatment Plant – Influent Pump Station Replacement Project, including all changes, Addenda and modifications thereto.
- 15.3 CITY DEFAULT: Material failure of the CITY, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Design Assist Contract, provided such failure is the cause of the failure of Principal to pay the Claimants and is sufficient to justify CONTRACTOR termination of the Design Assist Contract.

IN WITNESS WHEREOF, the undersigned obligated parties have executed this security instrument.

(Corp. Seal)

Principal: _____

Signature: _____

Name & Title: _____

Address: _____

(Corp. Seal)

Surety: _____

Signature: _____

Name & Title: _____

Address: _____

Attorney in Fact: _____

Surety shall submit the following documents along with this Labor and Material Bond:

1. Verification that Surety is admitted to transact surety business in the State of California; and
2. Copy of Surety's Certificate of Authority, issued by the Insurance Commissioner of the State of California, along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

Approved: _____, City Attorney

END OF DOCUMENT

WARRANTY BOND

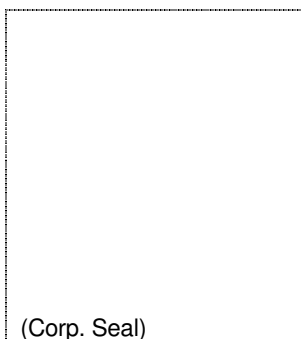
This Warranty Bond ("Warranty Bond"), dated _____, 20____, is in the penal sum of not less than ten percent (10%) of the Guaranteed Maximum Price (total Contract price) under the Design Assist Construction Agreement for the Waste Water Lift Stations and Storm Water Pump Station Improvements Project, and is entered into by and between the undersigned _____ ("Principal" or "CONTRACTOR") and the undersigned _____ ("Surety") to guaranty that all Equipment and Services provided by Seller under the above-mentioned Design Assist Contract will fulfill the requirements of Principal's warranties and guarantees included in the Contract Documents. This Warranty Bond consists of this page and the following Warranty Bond Terms and Conditions, Paragraphs 1 through 7. Any singular reference to the Principal, the Surety, the City of Roseville, California ("CITY") or other party shall be considered plural where applicable.

BOND TERMS AND CONDITIONS

1. The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the CITY for a period of one (1) year following the date of Final Acceptance, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the work including, without limitation, all equipment and work provided by CONTRACTOR and its subcontractors and subvendors of all tiers in connection with the Design Assist Contract.
2. Neither final payment nor use or occupancy of the Equipment or Services performed by the CONTRACTOR shall constitute an acceptance of such Equipment or Services not done in accordance with this Warranty Bond or relieve CONTRACTOR of liability in respect to any express guarantees, warranties or responsibilities for faulty materials or workmanship, ordinary wear and tear excepted. If within one (1) year after the date of recording of the Notice of Completion, or such longer period of time as may be prescribed the terms of the Contract Documents, any Equipment or Services is found to be defective, CONTRACTOR and Surety shall promptly, without cost to CITY and in accordance with CITY's written instructions, correct such defective Equipment or Services. CONTRACTOR and Surety shall remove any defective Equipment rejected by CITY and replace it with Equipment that is not defective. If CONTRACTOR or Surety fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective Equipment or Services corrected or removed and replaced. CONTRACTOR and Surety shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where CONTRACTOR and Surety fail to correct defective Equipment or Services, or defects are discovered outside the correction period, CITY shall have all rights and remedies granted by law.
3. As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY.

4. The Surety hereby waives notice of any change, alteration or addition to the Design Assist Contract or to related subcontracts, purchase orders and other obligations, including but not limited to changes of time. The Surety consents to all terms of the Design Assist Contract, including provisions on changes to the Contract Documents. No extension of time, Change Order, alteration, Modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Warranty Bond or in any way affect the obligations of Surety on this Warranty Bond.
5. If the Surety does not proceed as provided in Paragraph 2 above, then the Surety shall be deemed to be in default on this Warranty Bond ten (10) Days after receipt of an additional written notice from CITY to the Surety demanding that the Surety perform its obligations under this Warranty Bond. At all times the CITY shall be entitled to enforce any remedy available to the CITY at law or under the Design Assist Contract including, without limitation, and by way of example only, rights to perform work as Surety's expense, protect work, mitigate damages, or coordinate work with other consultants or CONTRACTORS.
6. All abbreviations and definitions of terms used in this Warranty Bond shall have the meanings set forth in the Contract Documents, including, without means of limitation, the Design Assist Contract.
7. The foregoing Warranty Bond is in addition to any other guarantees and warranties of CONTRACTOR contained in the Contract Documents, and not in lieu of, any and all other liability imposed on CONTRACTOR under the Contract Documents and at law with respect to CONTRACTOR's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Warranty Bond and any guaranty, warranty or obligation of the Seller under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the CONTRACTOR and Surety.

IN WITNESS WHEREOF, the undersigned obligated parties have executed this instrument.

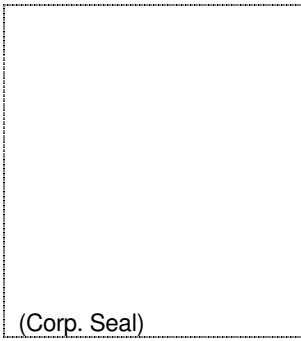


Principal: _____

Signature: _____

Name & Title:

Address:



Surety:

Signature:

Name & Title:

Address:

Attorney in Fact: _____

Surety shall submit the following documents along with this Performance Bond:

1. Verification that Surety is admitted to transact surety business in the State of California; and
2. Copy of Surety's Certificate of Authority, issued by the Insurance Commissioner of the State of California, along with a statement that said Certificate has not been surrendered, revoked, cancelled, annulled or suspended.

Approved: _____, City Attorney

END OF DOCUMENT

EXHIBIT F (AGREEMENT)

HAZARDOUS MATERIALS

Environmental investigations at the Site have identified the presence of Hazardous Materials in the pump station facilities to be demolished as part of this Agreement. Hazardous Materials discovered or thought to be present include, lead-based paint, asbestos, diesel fuel, engine oil, engine coolant, motor bearing lube oil, grease, electrical components containing mercury, lead-acid batteries, fluorescent lamp tubes, and lamp ballasts and electrical transformers potentially containing PCBs. Investigations performed, findings, and recommendations are documented in a report entitled Assessment of Potential Environmental Hazards, prepared by CH2M HILL, dated December 2009. CONTRACTOR shall subcontract with experienced, qualified, and licensed or certified Remediation Contractors to safely and properly remove and dispose of all Hazardous Materials encountered during demolition work. The cost of these Safety Plans and Remedial Actions shall be included in the GMP. The definition of the terms used in this paragraph shall be as provided in this Exhibit. The provisions set forth below shall apply to any other previously unknown Hazardous Materials discovered at the Site by the CITY, Engineer, or CONTRACTOR during construction of the Project.

1. Certain Definitions.

1.1 "Hazardous Materials" means any substance,

1.1.1 the presence of which requires investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law;

1.1.2 which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 USC §§6901 et seq. ("RCRA");

1.1.3 which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons;

1.1.4 which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and

is or becomes regulated by any governmental authority or instrumentality;

1.1.5 the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; or

1.1.6 the presence of which on adjacent properties could constitute a trespass by CONTRACTOR or CITY.

1.2 "Underground Storage Tank" shall have the definition assigned to that term by RCRA §9001, 42 USC §6991, and also shall include:

1.2.1 any tank of 1,100 gallons or less capacity used for storing motor fuel;

1.2.2 any tank used for storing heating oil for consumption on the premises where stored;

1.2.3 any septic tank; and

1.2.4 any pipes connected to items 1.2.1-1.2.3 of this Exhibit C.

1.3 "Environmental Requirements" means all Applicable Laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all federal, state or local governmental agencies or other instrumentalities and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1.3.1 all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials; and

1.3.2 all requirements pertaining to the protection of the health and safety of employees or the public.

1.4 "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney's fees, which are incurred at any time as a result of the

existence of Hazardous Materials upon, about or beneath the Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

1.4.1 damages for personal injury, or injury to property or to natural resources occurring upon or off the Site;

1.4.2 fees incurred for the services of attorneys, consultants, CONTRACTOR, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements; and

1.4.3 liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in subparagraph 1.4.2 of this Exhibit F.

1.5 "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks existing on the site and not brought there by CONTRACTOR or any Subcontractor.

2. Investigation of Site.

2.1 Upon written notice from CITY, CONTRACTOR shall prepare for approval and execution by CITY, one or more Contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation approved by CITY, and may provide for conducting the investigation and testing in phases acceptable to CITY. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as CITY is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that CONTRACTOR, acting as agent of CITY, shall coordinate the activities of the Environmental Engineers.

2.2 The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental

Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (a) which are required by Environmental Requirements, or (b) which are reasonably necessary to mitigate Environmental Damages.

2.3 The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide CITY and CONTRACTOR with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts.

CONTRACTOR shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to CITY a written report setting forth CONTRACTOR's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Schedule and the progress of the Work.

2.4 The Environmental Contracts shall provide that it shall be the responsibility of the Environmental Engineers to give any necessary notice to the appropriate regulatory agency or agencies of the presence of any Environmental Conditions; to pursue all necessary negotiations with such agencies concerning preparation and approval of a plan for clean-up to the extent required; and to obtain all necessary permits to perform any Remedial Actions.

3. Remedial Actions.

3.1 If so instructed by CITY, based upon the results of the Environmental Assessments, CONTRACTOR shall, as agent for CITY, obtain bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by CITY, to perform the Remedial Actions selected by CITY and shall submit such bids to CITY, together with CONTRACTOR's recommendation of the Remediation Contractor(s) to be retained. If CITY elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, CITY will so advise CONTRACTOR in a written notice on or before the date which is sixty (60) Days after receipt of the foregoing matters from CONTRACTOR. Promptly after receipt of such notice, CONTRACTOR shall prepare for CITY's execution remediation Contracts ("Remediation Contracts") with the Remediation Contractors identified in such notice.

3.2 CONTRACTOR, as agent for CITY, shall be responsible for coordinating the work and services performed by the Remediation Contractors, and coordinating such remediation work with the Work.

3.3 If in the course of performance of the Work, CONTRACTOR encounters on the Site any Hazardous Materials not previously disclosed and remediated by the Environmental Engineers or the Remediation

Contractors, CONTRACTOR shall immediately suspend the Work in the area affected and promptly thereafter report the condition to CITY.

4. Payments: Liability of CONTRACTOR.

4.1 All payments due under the Environmental Contracts and the Remediation Contracts shall be made by CITY directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by CONTRACTOR prior to submission to CITY.

4.2 All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the GMP, and shall be the sole responsibility of CITY, except as expressly provided otherwise in Section 5 of Exhibit F.

4.3 It is understood and agreed that with respect to any Environmental Conditions existing on the Site, CONTRACTOR is not, and shall not be deemed to be, a generator, arranger, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that CONTRACTOR shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

4.4 CITY shall indemnify, defend and hold harmless CONTRACTOR, from and against any Environmental Damages asserted against or sustained by CONTRACTOR as a result of CONTRACTOR being deemed or determined to be a generator, arranger, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

5. Environmental Responsibilities of CONTRACTOR.

5.1 CITY acknowledges and agrees that CONTRACTOR shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation CONTRACTOR and any required approval of any applicable government agency. CONTRACTOR agrees to use good faith diligent efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

5.2 CONTRACTOR shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. CONTRACTOR shall comply, and shall cause all Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

5.3 CONTRACTOR shall indemnify, defend and hold harmless the Indemnified Parties from and against any Environmental Damages asserted against or sustained by such parties as a result of any Environmental Conditions caused or created by CONTRACTOR or any Subcontractor, or of any violation by CONTRACTOR or the Subcontractors, of any Environmental Requirement arising out of the performance of the Work.

EXHIBIT G (AGREEMENT)

CERTIFICATES

**Insurance
Non-Collusion Affidavit
Drug-Free Workplace**

(Insert Certificates provided by CONTRACTOR)

(immediately follows this page)

EXHIBIT H (AGREEMENT)
TECHNICAL SPECIFICATIONS

(bound separately)

EXHIBIT I (AGREEMENT)

DRAWINGS

(bound separately)

EXHIBIT J (AGREEMENT)

STANDARD DETAILS

(bound separately)

APPENDIX B (RFP)
KEY PROJECT MILESTONES

JANUARY 2010

odin/proj/RosevilleCityof/363312/RFP/Dry_Creek_WWTP_Influent_PS_Replacement_Design_Build_RFP.doc

363312.PS

Project Milestone**Completion**

Contractor Notice to Proceed (NTP)	Start of Contract Time
Pond Return Pump Station Operational	September 1, 2010
Overall Project Substantial Completion (SC)	365 days after NTP
Begin Demolition of Remaining Portion of Old IPS	90 days after SC
Complete Demolition of Old IPS	180 days after SC
Complete Final Site Grading and Paving	210 days after SC
Final Completion of Work	600 days after NTP

Optional Work

Begin Demolition of Pump Station Annex	150 days after SC
Complete Demolition of Pump Station Annex	240 days after SC
Complete Final Site Grading and Paving	270 days after SC
Final Completion of Work	675 days after NTP

Note: See Specification Section 01 31 13, Project Coordination, for additional information on Project Milestones.

APPENDIX C (RFP)
NON-COLLUSION AFFIDAVIT

JANUARY 2010

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APPENDIX C
NON-COLLUSION AFFIDAVIT

The undersigned states that this Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the CONTRACTOR has not directly or indirectly induced or solicited any other CONTRACTOR to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any CONTRACTOR or anyone else to put in a sham proposal, or that anyone shall refrain from proposing; that the CONTRACTOR has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Guarantee Maximum Price (GMP) of the CONTRACTOR or any other CONTRACTOR, or to fix any overhead, profit, or cost element of the GMP, or of that of any other CONTRACTOR, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Proposal are true; and, further, that the CONTRACTOR has not, directly or indirectly, submitted his or her GMP or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

CONTRACTOR

(Signature)

(Date)

State of _____)

ss.

County of _____)

JANUARY 2010

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On _____ before me,

Notary Public,

personally appeared

personally known to me OR (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.

WITNESS my hand and official seal.

(Signature of Notary Public)

(seal)

END OF DOCUMENT

APPENDIX D (RFP)

CERTIFICATION OF DRUG-FREE WORKPLACE REQUIREMENTS

JANUARY 2010

odin/proj/RosevilleCityof/363312/RFP/Dry_Creek_WWTP_Influent_PS_Replacement_Design_Build_RFP.doc

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APPENDIX D

CERTIFICATION OF DRUG-FREE WORKPLACE REQUIREMENTS

- I. The CONTRACTOR certifies that it will or will continue to provide a drug-free work place by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CONTRACTOR's work place and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the work place;
 2. The CONTRACTOR's policy of maintaining a drug-free work place;
 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the work place;
 - C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Paragraph A;
 - D. Notifying the employee in the statement required by Paragraph A that, as a condition of employment under the Contract, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the work place no later than five (5) calendar days after such conviction;
 3. Notify the employee that in the event of a major accident/incident resulting in loss of life, injury or damage to the facility, or equipment, all personnel involved shall be required to submit to substance testing as soon as possible after the incident, but not more than four (4) hours after the incident.
 - E. Notifying the CITY in writing within ten (10) calendar days after receiving notice under subparagraph D.2. from an employee or otherwise receiving actual notice of such conviction.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph D.2., with respect to any employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of Federal and State law; or
2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purpose by a Federal, State or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free work place through implementation of Paragraphs A, B, C, D, E, and F.

II. The CONTRACTOR may insert in the space provided below the site(s) for the performance of work done in connection with this Contract:

Place(s) of Performance: (Street address, city, county, state, zip code).

CONTRACTOR

(Signature)

(Date)

END OF DOCUMENT

APPENDIX E (RFP)

REFERENCE DOCUMENTS

- Geotechnical Exploration Report
- Technical Memorandum – Assessment of Potential Environmental Hazards
- Typical PLC Control Panel Drawings