



Town of Paradise

Town Council Meeting Agenda

6:00 PM – February 13, 2024

Town of Paradise Council Chamber – 5555 Skyway, Paradise, CA

Mayor, Ron Lassonde
Vice Mayor, Greg Bolin
Council Member, Steve Crowder
Council Member, Steve “Woody” Culleton
Council Member, Rose Tryon

Town Manager, Jim Goodwin
Town Attorney, Scott E. Huber
Town Clerk/Elections Official, Dina Volenski
CDD, Planning & Onsite, Susan Hartman
CDD, Building & Code Enforcement, Tony Lindsey
Finance Director/Town Treasurer, Aimee Beleu
Public Works Director/Town Engineer, Marc Mattox
Division Chief, CAL FIRE/Paradise Fire, Garrett Needles
Chief of Police, Eric Reinbold
Recovery & Economic Development Director, Colette Curtis
Human Resources & Risk Management Director, Crystal Peters
Information Systems Director, Luis Marquez

Meeting Procedures

- I. The Mayor is the Presiding Chair and is responsible for maintaining an orderly meeting. The Mayor calls the meeting to order and introduces each item on the agenda.
- II. The Town staff then provides a report to Council and answers questions from the Council.
- III. Citizens are encouraged to participate in the meeting process and are provided several opportunities to address Council. Any speaker addressing the Council is limited to three minutes per speaker - fifteen minutes per agenda item
 - A. If you wish to address the Council regarding a specific agenda item, please complete a “Request to Address Council” card and give it to the Town Clerk prior to the beginning of the meeting. This process is voluntary and allows for citizens to be called to the speaker podium in alphabetical order. Comments and questions from the public must be directed to the Presiding Chair and Town Council Members (please do not address staff.) Town staff are available to address citizen concerns Monday through Thursday at Town Hall between the hours of 8am and 5pm.
 - B. If you wish to address Council regarding an item not on the agenda, you may do so under Item 4, “Public Communication.” Again, please fill out a card and give it to the Town Clerk before the meeting. State Law prohibits Council action on items not listed on a public agenda.

In compliance with the Americans with Disabilities Act (ADA) Compliance, persons who need special accommodations to participate in the Town Council meeting may contact the Town Clerk at least three business days prior to the date of the meeting to provide time for any such accommodation.

1. OPENING

- 1a. Call to Order
- 1b. Pledge of Allegiance to the Flag of the United States of America
- 1c. Invocation
- 1d. Roll Call
- 1e. Town Council recognition of Employee Service to the Town of Paradise for 2023 presented by Mayor Lassonde.

15 Years

Shawn Jordan - Police Department
Dina Volenski - Town Clerk Department
John Wilkey - Police Department

10 Years

Colette Curtis - Recovery and Economic Development Department
Marc Mattox - Public Works and Engineering Departments

5 Years

Andrew Anaya - Animal Control
LeAnn Rice - Fire Department
Mollie St John - Animal Control
Dominic Vannucci - Police Department
Tanya Yelenskaya - Community Development Department

- 1f. Special recognition is awarded to sworn and non-sworn police personnel and volunteers for their exemplary contributions to the department.

Officer of the Year:

Officer Andrew Cooper

Dispatcher of the Year:

Support Services Supervisor Jeannette Huggins

Civilian Employee of the Year:

Property & Evidence Technician Shawn Jordan

VIP of the Year:

Lisa Robinson

PASH Volunteer of the Year:

Charlotte Amoroso

- [1g.](#) p6 Presentation of VIPS 2023 Annual Report presented by Lisa Robinson.
- 1h. Presentation on Paradise Ridge Chamber of Commerce social media platforms by Executive Director, Monica Nolan.
- 1i. Presentation on the Rebuild Paradise Foundation and handprint mural by Executive Director, Jen Goodlin.
- 1j. Camp Fire Recovery Updates - Written reports are included in the agenda packet.

p12 Colette Curtis, Recovery and Economic Development Director - Recovery Projects, Advocacy, Economic Recovery and Development, Communications and Emergency Operations.

p15 Marc Mattox, Public Works Director/Town Engineer - Infrastructure and Sewer Update.

p17 Tony Lindsey, CDD-Building and Code Enforcement-Code Enforcement Update.

P22 Kate Anderson, Business and Housing Manager-Business and Housing Update.

2. **CONSENT CALENDAR**

One roll call vote is taken for all items. Consent items are considered to be routine business that does not call for discussion.

- [2a.](#) p23 Approve the Regular minutes of the January 9, 2024, Town Council meeting.
- [2b.](#) p30 Approve January 2024 Cash Disbursements in the amount of \$3,572,262.23.
- [2c.](#) p38 1. Waive the second reading of Town Ordinance No. 633 and read by title only; and, 2. Adopt Town Ordinance No. 633 “An Ordinance Amending Paradise Municipal Code Chapter 15.09 Relating to The Fire Code And Burn Permits.”
- [2d.](#) p47 Consider adopting Resolution No. 2024-03, “A Resolution of the Town Council of Town of Paradise accepting the work performed under the 2023 On-System Roadway Rehabilitation – Pearson (Project 2)/ HSIP Systemic Intersection Safety Improvement Project Contract 7303.2 CON performed by Baldwin Contracting Company, Inc. dba Knife River Construction.”
- [2e.](#) p53 1. Adopt Resolution No. 2024-04, “A Resolution of The Town Council of the Town of Paradise Authorizing Disposal of Certain Town Records Maintained in the Town Clerk Department Pursuant to Government Code Section 34090”; and, 2. Adopt Resolution No. 2024-05, “A Resolution of The Town Council of the Town of Paradise Authorizing Disposal of Certain Town Records Maintained in the Human Resources Department Pursuant to Government Code Section 34090.”; or, 3. Make the determination that certain records listed for destruction have value to the agency, and direct that all or some of the records listed in Exhibit B continue to be maintained.
- [2f.](#) p60 Consider adopting Resolution No. 2024-06 to finalize and obligate the CalFire California Climate Investment Grant Agreement in order to receive up to \$2,469,159.00 in match funding for Phase 2 Tree Removal.
- [2g.](#) p62 Review and approve Town of Paradise Investment Policy – Administrative Policy No. 140.
- [2h.](#) p73 Consider adopting Resolution No. 2024-07, “A Resolution of the Town Council of the Town of Paradise to Assign Council Member Participation to the Legislative Committee.”
- [2i.](#) p75 1. Declare the attached Police Department equipment as surplus property; and, 2. Adopt Resolution No. 2024-08, A Resolution of the Town Council of the Town of Paradise declaring certain Town Equipment to be surplus and obsolete and authorizing disposal by the Town Manager or his designee.

- [2j.](#) p81 Review and file the 2nd Quarter Investment Report for the Fiscal Year ending June 30, 2024.
- [2k.](#) p108 Adopt Resolution No. 2024-09 “A Resolution of the Town Council of the Town of Paradise Repealing Resolution No. 15-45, and Amending and Restating Procedures Relating to the Conduct of Town Council Meetings.”
- [2l.](#) p123 Consider accepting a donation of \$5,000 from the Rotary Club of Paradise to support the E-Citation program.
- [2m.](#) p124 Authorize the attached not to exceed (NTE) increase amendment for \$10,000 with the Butte Fire Safe Council and authorize the Town Manager to execute the amendment in order to continue with FEMA/CalOES approved Pre-Phase 2 award work.

3. ITEMS REMOVED FROM CONSENT CALENDAR

4. PUBLIC COMMUNICATION

For matters that are not on the Council business agenda, speakers are allowed three (3) minutes to address the Council. The Town Council is prohibited from taking action on matters that are not listed on the public agenda. The Council may briefly respond for clarification and may refer the matter to the Town staff.

5. PUBLIC HEARINGS - None

6. COUNCIL CONSIDERATION

Action items are presented by staff and the vote of each Council Member must be announced. A roll call vote is taken for each item on the action calendar. Citizens are allowed three (3) minutes to comment on agenda items.

- [6a.](#) p127 Consider authorizing the Mayor and Town Manager to enter into an agreement for banking services with Tri Counties Bank for five years with an optional extension of two years, contingent upon final review and approval by the Town Attorney. (ROLL CALL VOTE)
- [6b.](#) p275 1. Consider concurring with staff’s recommendation for awarding the contract for Progressive Design Build Services for the Paradise Sewer Project to the Mountain Cascade-Carollo team; and, 2. Authorize the Town Manager to enter into a Progressive Design Build Contract (2023-005) with the recommended firm, contingent upon approval by the Town Attorney; and, 3. Adopt Resolution No. 2024-__, “A Resolution Designating Authority to the Paradise Town Manager to Execute Individual Contract Amendments Under the Resultant Progressive Design Build Contract for RFQ 2023-005 Progressive Design Build Services with Mountain Cascade/Carollo Engineers for the Paradise Sewer Project up to the maximum contract aggregate amount of \$17,000,000 to complete the initial design and progressive design build process for the Paradise Sewer Project” (ROLL CALL VOTE)

6c. p605 1. Consider approving a Letter of Intent to the California Transportation Commission relating to the Town's \$33,000,000 Roe Rd Extension Phase 2 Local Transportation Climate Adaptation Program grant award and funding needs for project construction; and, 2. Approve a Letter of Support for the Town's \$25,000,000 federal Rebuilding American Infrastructure with Sustainability and Equity (RAISE) funding opportunity; and, 3. Allocate \$3,800,000 of the Town's Paradise Recovery & Operations Reserve to leverage the Roe Road Extension Phase 2 Project. (ROLL CALL VOTE)

6d. p613 1. Hear information on the opportunity to invest in the Chico Regional Airport from the Chico Airport Manager; and, 2. Give Staff direction on starting negotiations regarding an investment agreement.

7. COUNCIL INITIATED ITEMS AND REPORTS

7a. Council initiated agenda items:

7a 1. Discussion of lay down yards/citations and utility work on private roads (CULLETON)

7b. Council reports on committee representation

7c. Future Agenda Items

8. STAFF COMMUNICATION

8a. Town Manager Report

- Community Development Director

9. CLOSED SESSION - None

10. ADJOURNMENT

STATE OF CALIFORNIA) COUNTY OF BUTTE)	SS.
I declare under penalty of perjury that I am employed by the Town of Paradise in the Town Clerk's Department and that I posted this Agenda on the bulletin Board both inside and outside of Town Hall on the following date:	

TOWN/ASSISTANT TOWN CLERK SIGNATURE	

ANNUAL REPORT – 2023

VIPS



**Volunteers in Police Service
Paradise Police Department**



VIPS (Volunteers in Police Service) have assisted the Police Department with Patrol, Communications, and Special Events since 1998.

ANNUAL REPORT SUMMARY

VIPS donated a total of 3,603.5 hours in 2023

These hours reflect a dollar benefit to the town of \$73,115.02. The dollar value of a volunteer is calculated at the rate of \$20.29 per hour (Office Assistant).



The VIPS would like to thank the Town, Measure V and VIPS Frank Dodini for a new car.

PATROL

Patrol volunteers logged 1,645.5 hours during 2023. Presently there are 6 shifts working Monday-Friday

Some of their duties include - Vacation House Checks, patrol Neighborhood Watch and Mobile Home areas as well as Recreation areas, School Zones, and Commercial Parking lots, and transporting mail between the Police Department, Town Hall, and Animal Control.

TRAFFIC and DISASTER

VIPS are available during and after patrol shifts to be called out to assist the Department and the Town during accidents and emergency situations, such as road closures, fires, trees down, etc. Since the Camp Fire, the number of incidents requiring VIPS Traffic and Disaster callouts has significantly decreased and in 2023 72.5 hours were donated to these responsibilities.

COMMUNICATIONS UNIT

The Police Department Front Counter was manned by VIPS 696 hours during 2023, with Live Scan service, both Electronic and rolled prints, adding an additional 213 hours.

Communication VIPS handle front counter duties from 10-2 Monday through Friday.

Duties include:

- Respond to questions and requests from the public.
- Handle paperwork for Live Scans, Vacation House Checks, Special Events, etc.
- Take phone requests for Live Scan appointments.
- Accept payments and make receipts for various Department services.
- Assist the Acting Records Clerk and Support Services Supervisor in various clerical duties.

Live Scan

In 2023, VIPS spent 213 hours administering both Live Scan and rolled fingerprints. With Police Dispatch returning, Police personnel have limited availability to perform Live Scans. VIPS assistance with Live Scans not only frees up Police personnel, they also add significant availability of this critical service to the community. This was a personnel savings of \$4,321.77.

Special Events

VIPS participated in the following special events totaling 394 hours:

Parade of Flags – May, July, and Nov.

High School Graduation

PHS Football

Party in the Park – June-July

Gold Nugget Days

Chocolate Fest

Paradise Strong Phoenix 5K Run

Johnny Appleseed Days

Department Tours

Wildflower Bike Ride

Career Expo at PHS

Motorcycle Toy Run

Back to School Night

Finance

Monthly VIPS financial reports are received from Town Hall and receipts and donations are verified. The VIPS program is run primarily by donations.

Recruitment

While recruitment is ongoing all year, active recruitment began in the Fall with signs and media releases. The Academy began at the end of November, with Graduation taking place Jan 10, 2024. Four new recruits completed the Academy and joined the VIPS. They are now training to fill roles in Patrol and Communications.

Reflective Signs

VIPS have long offered the service of making low-cost Reflective Signs for the community. Signs are encouraged because finding addresses in Paradise continues to be difficult. Green or Blue signs are available in either one or two sided.

Cell Phones for Life

Cell phones are available to citizens for 911 calls. Community members turn in phones which are refurbished and can connect to 911 without cell phone service as long as the phone is kept charged.

Neighborhood Watch

Although the Camp Fire destroyed or affected all the past Neighborhood Watch areas, Patrol VIPS still drive through neighborhoods to observe suspicious activities and provide a police presence. Plans are being set up to again offer neighborhood meetings to add additional watch areas.

Current VIPS ROSTER

Jim Bozzer Susan Cave Frank Dodini Patricia Gobin-Cuella
Tom Hagler Karen Horne Gail Larsen Cindy Lassonde
James Myers Dee Riley Lisa Robinson Doug Runkle
Mike Shore Robert Simmons Ann Vanderlinden
Wayne Ward Steve Winchester



*New Academy graduates began Jan 1, 2024

Bert Clement Pati Diridoni Rochelle Prest Carol James



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 1(j)

ORIGINATED BY: Colette Curtis, Recovery and Economic Development Director
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Monthly Recovery Update
LONG TERM RECOVERY PLAN: Yes

COUNCIL ACTION REQUESTED:

- 1. None

Background:

This report continues the Monthly Updates provided to keep the Town Council apprised of important developments related to the recovery of the Town of Paradise from the Camp Fire. Included in this update are items related to recovery projects, advocacy economic recovery and development, communications and emergency operations.

Analysis:

ECONOMIC DEVELOPMENT

CDBG-DR Economic Development

- The Butte County allocation for CDBG DR Economic Development has been announced at \$18.7 million.
- The Town is working with our regional workforce partners on an application for a workforce training center, located on the Paradise High School campus, that would focus on resilient building techniques.
- Our partners include Paradise Unified School District, Butte College, Valley Contractor’s Exchange, Oroville Adult School, Alliance for Workforce Development, and 3Core.
- The application will be submitted by the end of February 2024.

Paradise Ridge Brand Campaign

- Rebranding effort led by the Paradise Ridge Chamber of Commerce
- Goal is to create a cohesive brand strategy to market the ridge to businesses and residents.
- A website was identified as a next step in this process, and that website is now live here: www.welcometotheridge.com

RECOVERY

Category 4 Tree Removal Program

- Program opened to applicants in July of 2022 and received 577 applicants. This represents 1,014 acres of private property across the Town.
- Phase 2 Federal Environmental Review actions are now complete. CalOES is now completing final reviews and obligation processes. We anticipate full approval by the end of March 2024.
- Town staff are working day with BCFSC on the implementation plan in order to be able to move quickly upon approval by FEMA. Before full approval we anticipate full RFP processes for tree contractors, and all required monitors will be completed.
- In March, we will begin property owner outreach and authorization paperwork for Phase two tree removal.

Early Warning Sirens

- 20 of the 21 Towers are standing and fully operational.
- 20 of the 20 standing Towers have all aesthetic branches installed.
- 7 of the 8 traffic cameras have been installed.
- 10 of the 21 have completed trenching and are connected to permanent power or in process of connecting.
- The final tower foundation (Rocky Lane) is ready to begin construction as soon as weather allows.
- Power connection plans have been finalized after a number of delays and changes in coordinating final plans with PG&E.
- We anticipate full system completion, training and handover of the operation will occur in June 2024 in coordination with the future 24 hour dispatch center.

Residential Ignition Resistant Retrofit Program

- This project was opened to residents to apply in May 2023 and closed July 31, 2023.
- 118 property owners have submitted applications.
- Assessments were completed in October 2023 and all Phase 1 closeout documents transferred to CalOES/FEMA for final environmental review.
- Phase 2 retrofits will occur upon full approval of the environmental process in early 2024.

Hazardous Fuels Reduction Program

- We are working with the Public Works team and expect an implementation plan to come before Council in May 2024 in order to be prepared for full FEMA approval.

Defensible Space Code Enforcement

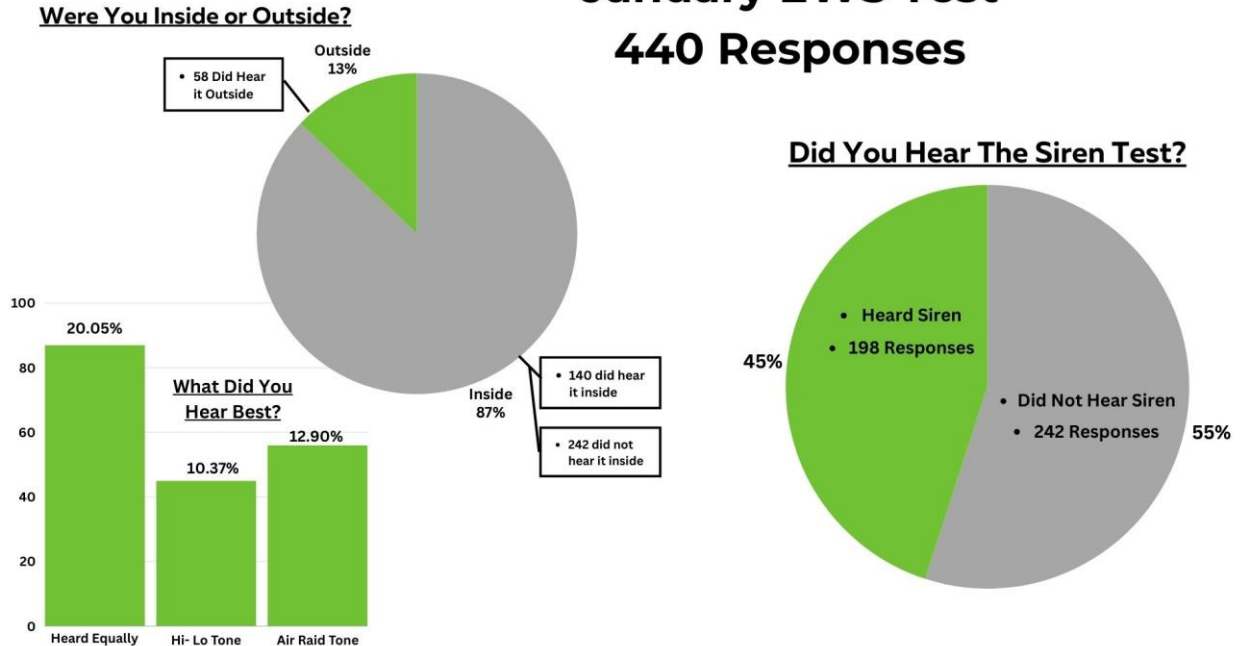
- The Defensible Space Code Enforcement Project was fully approved in November 2023 by FEMA and Cal OES.
- Town Staff are coordinating the process to implement this project in order to have the program operating for the Spring 2024 inspection season.
- Town Council approved an implementation plan in January 2024. Human Resources has posted approved limited term project positions and is in the review process.

COMMUNICATIONS

Early Warning Siren “Can you Hear Me” Survey January Update.

- The January test was held on Saturday Jan. 6th.

January EWS Test 440 Responses



Legislative Tour

- The legislative tour on January 11th was successful with State Assembly and Senate Members, their staff, and committee staff in attendance.
- This tour was held in coordination with Butte County, the Camp Fire Collaborative, and North Valley Community Foundation.

EMERGENCY MANAGEMENT

- The Town is working on an agreement with Butte County for a virtual EOC platform to streamline EOC processes.
- The Town is working with Butte County to update the Local Hazard Mitigation Plan (LHMP) in advance of the 2024 deadline.

Financial Impact:

None.



**TOWN OF PARADISE
Council Agenda Summary
Date: February 13, 2024**

Agenda No. 1(j)

ORIGINATED BY: Marc Mattox, Public Works Director / Town Engineer

REVIEWED BY: Jim Goodwin, Town Manager

SUBJECT: Camp Fire Recovery Updates - Infrastructure

COUNCIL ACTION REQUESTED:

- 1. None, written monthly update only.

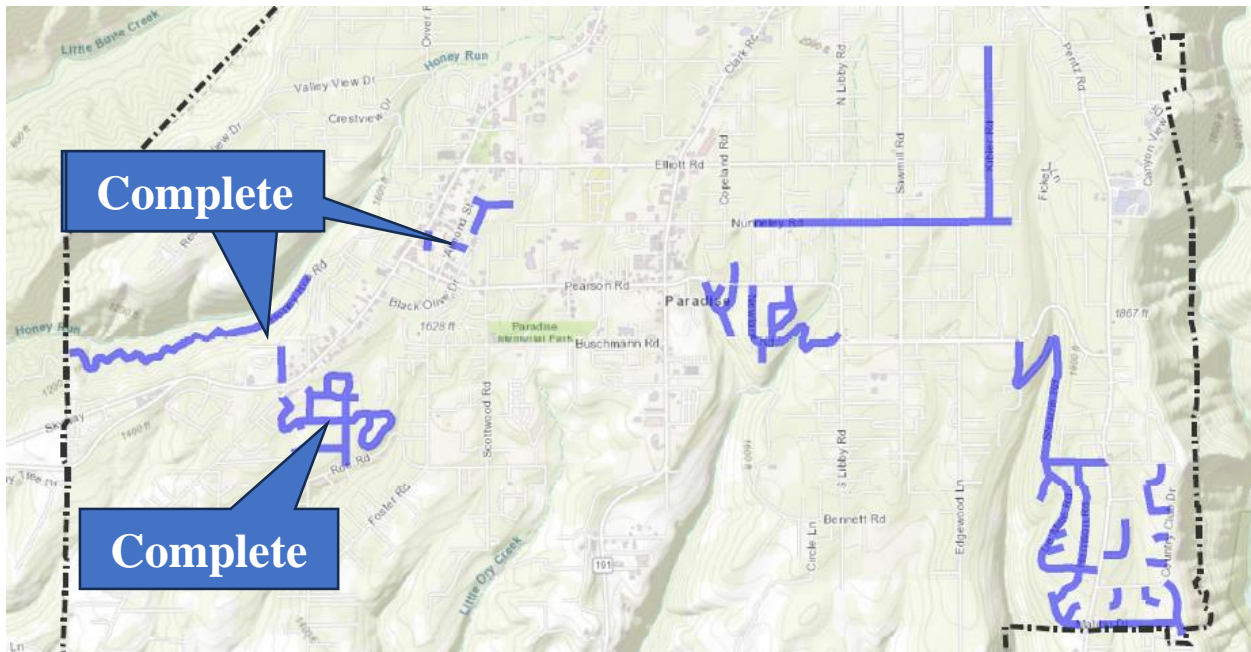
Background:

This report continues the Monthly Disaster Recovery Updates provided to keep the Town Council apprised of important developments related to the recovery of the Town of Paradise from the Camp Fire.

Analysis:

Road Rehabilitation

In August, Town Council awarded a contract to Hat Creek Construction for road rehabilitation work in areas such as lower Honey Run Road, Circlewood Drive, Glen Drive, Stearns Road, DeMille Road, Malibu Drive, Nunneley Road, Kibler Road and others. The project's first phase is complete, paving the Circlewood neighborhood, Honey Run Road and downtown streets. Remaining work will be completed in spring of 2024. A map of the project areas is provided below:



Project approvals for 2024 paving projects (20 miles) are complete. Staff has advertised the On-System Road Rehabilitation project for 2024 with award expected in March – if awarded, work will begin in June 2024.

Paradise Sewer Project

Accomplishments in Past Month

Progressed contract negotiations with the Mountain Cascade – Carollo team.

Engaged with State Legislators during their December 11 Paradise bus tour.

Aligned with the DFA team in monthly recurring coordination meeting, including providing a PDB overview.

Engaged with PG&E and Butte County to gather available design support data.

Progressed preparations for permit submittals via initial and follow-up consultation meetings.

Key Activities in the Next Month

Complete contract negotiations with the Mountain Cascade – Carollo team, provide them with a Notice to Proceed and kick-off the Project.

Align with the DFA team in monthly recurring coordination meeting, including providing an introduction to the HCD leadership team.

Complete initial informal consultations with remaining permitting entities.



Town of Paradise

Council Agenda Summary

Agenda Item: 1(j)

Date: February 13, 2024

ORIGINATED BY: Tony Lindsey, Community Development
 Director, Building & Code Enforcement

REVIEWED BY: Jim Goodwin, Town Manager

SUBJECT: Camp Fire Recovery Updates – Code Enforcement

LONG-TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

None

Background:

The Code Enforcement Division is committed to fostering a safe and appealing living and working environment. Our mission is to uphold and enhance our community's overall quality through the fair and impartial implementation of an enforcement program to rectify violations of municipal codes and land use regulations. In collaboration with residents, neighborhood associations, public service agencies, and other Town departments, we strive to:

- Promote voluntary compliance with Town codes.
- Identify and address violations promptly and fairly.
- Foster collaboration efforts to address community concerns.
- Actively engage with the community in navigating the code enforcement process.

Analysis:

Temporary Use Permits (TUPs) are issued under the Urgency Ordinance (Exhibit A).

	January 24'	December 23'
Parcels with RV Storage only	51	65
Parcels permitted to occupy an RV	83	141
Accessory structures	13	13

All permit holders were notified about extensions, revocations, and upcoming 90-day expiration dates.

RV Code Enforcement activity. (Exhibit B):

	January 24'	December 23'
Occupied sites without TUPs	26	22
Occupied sites with TUP Violations	4	5
Compliance gained/RV cases closed	4	8

The Community Enhancement Outreach Team, comprised of Disaster Case Managers, Fire

Prevention, Housing, Police Department, and Code Enforcement personnel, visited permitted and unpermitted RV sites. Throughout these visits, the team engaged with community members to address unmet needs and provided information about available assistance programs.

	January 24'	December 23'
Sites Visited	38	24
Community members contacted	21	14
Tenants	7	4
Owner-occupied	14	10
Supplied contact information	15	11
Do not qualify	2	2

Fire Prevention is crucial to our community's safety and supports our continued economic growth, focusing on three primary goals: Education, Engineering, and Enforcement. Our defensible space and hazardous fuel management ordinance requires property owners to uphold fire-safe conditions, regardless of residency. The dedicated Fire Prevention team conducts weed abatement inspections on 11,100 parcels throughout our community to ensure compliance and reduce fire hazards.

	January 24'	December 23'
Escrow defensible space inspections		
• Clearance requests received	68	68
• Certificates issued	65	63
• Land Surveyor's Certifications	18	25
• First inspection compliance rate	94%	91%
Weed abatement inspections		
• Compliant parcels	8,690 – 78%	8,606 – 77%
• Active Code cases	225	245
• Commercial parcels	17	17
• Residential parcels	208	228

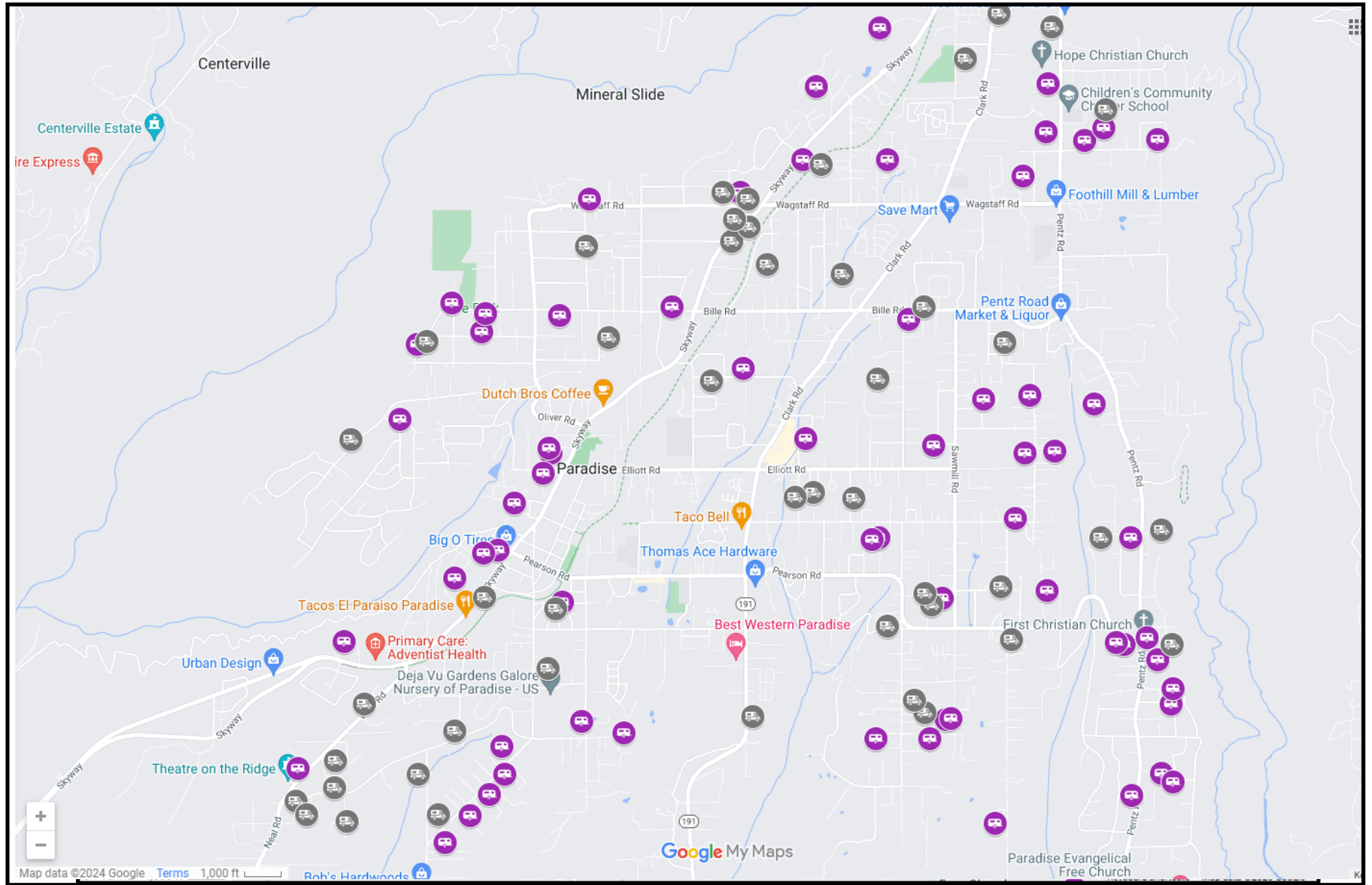
Other Code Enforcement Items:

	January 24'	December 23'
Abandoned Vehicle Authority		
• Abatements	1	4

	January 24'	December 23'
Commercial Sign		
• Violations	3	10

Only 3 out of the original 98 violations are outstanding. The Recovery and Economic Department will make one final push to these property owners before reallocating the grant funds.

Additionally, Code Enforcement received complaints covering various issues, including waste and refuse problems, zoning violations related to signs, construction without the required permits, fire hazards, concerns about vehicles, unauthorized dwellings, absence of garbage service, grading issues, and unpermitted laydown yards.

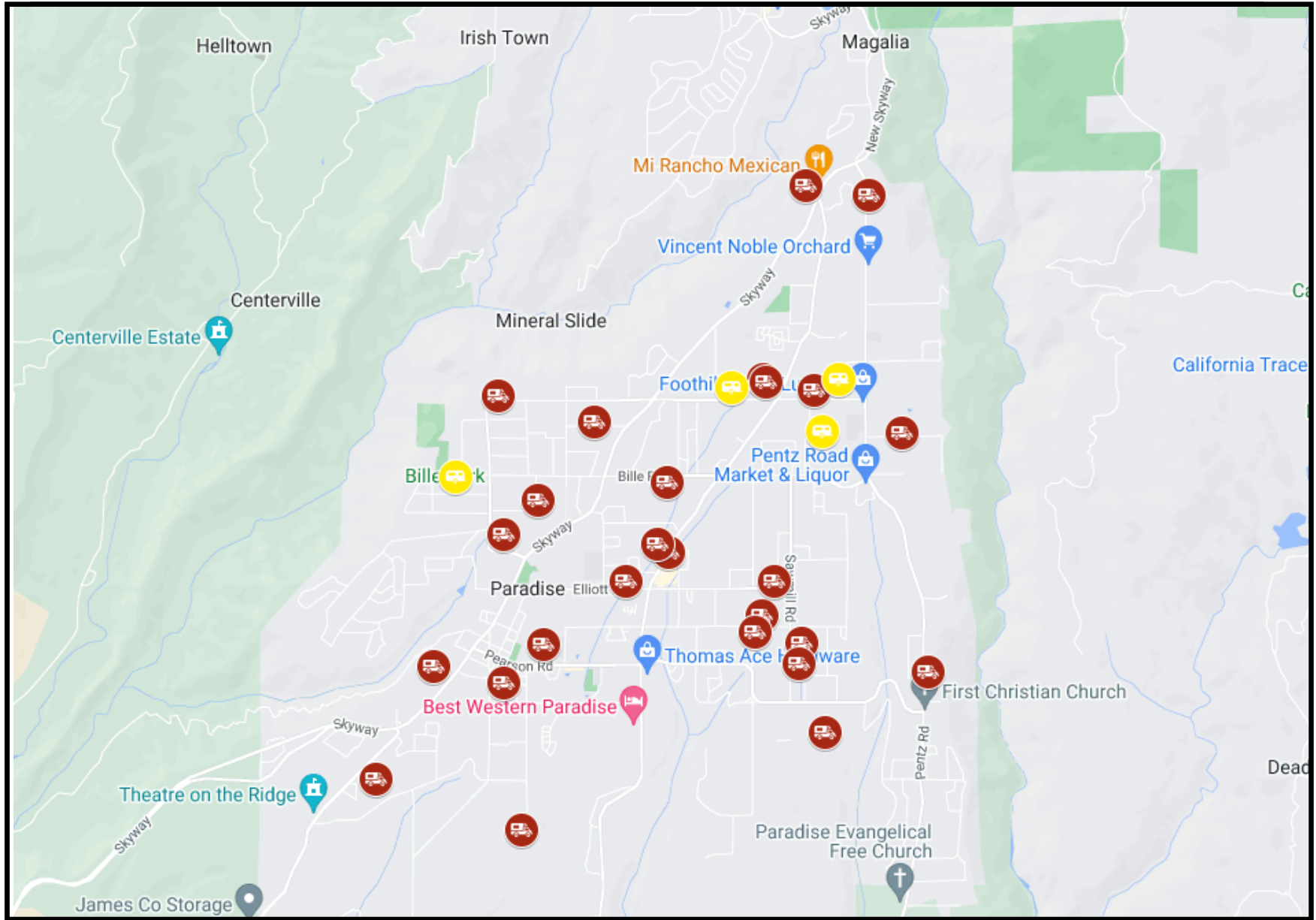


RV TUP STORAGE ONLY 51



RV TUP OCCUPIED 83

TUP Violations 1/31/2024



Violations w/ TUP 4



RV no TUP 26



Working together to rebuild a thriving community



2023 PARADISE CODE ENFORCEMENT YEAR END REPORT

CODE ENFORCEMENT CASES

CASES OPENED: 933 CASES CLOSED: 927*

CITATIONS ISSUED: 1,413

(353 Code Violations/1060 Defensible Space)

(* Closed cases may include 2021, 2022, & 2023 cases closed during the 2023 calendar year)

2023 CASE TYPE

- 133 RV'S without Temporary Use Permits
- 54 Abandoned Vehicles
- 39 Municipal Code Violations- Vending, Noise, etc.
- 14 Temporary Use Permit Violations
- 39 Health and Safety- Camping, Hazards, Substandard Housing, etc.
- 318 Defensible Space
- 27 Building without Permits
- 98 Commercial Signs
- 89 No Solid Waste Service
- 30 Debris in Public
- 91 Zoning-Laydown Yard, Setbacks, Animals, etc.

ABANDONED VEHICLE ABATEMENT

- 54 New Cases
- 24 Towed
- 27 Resolved



Towed Vehicles

• Van 1	• RV 3
• Trailer 3	• Motorcycle 1
• Pick Up 3	• SUV 3
• Sedan 10	



DEFENSIBLE SPACE ESCROW INSPECTIONS

- 1,022 Opened
- 939 Issued
- 83 Failed
- 92% Compliant
- 8% Non Compliant
- 73% Pass 1st Inspection
- 9% Corrected



COMMUNITY OUTREACH

452 Site Visits	261 Community Members Contacted
201 Owner Occupied	97 Tenants
236 Provided Assistance Info.	41 Refused or Not Eligible



DEFENSIBLE SPACE

- 318 Opened
- 298* Closed
- 1060 Citations
- 93% Residential
- 7% Commercial
- 77% End of Year Compliance



DEFENSIBLE SPACE NUISANCE ABATEMENT

- 66 Submitted
- 19 Closed



NUISANCE ABATEMENT (CODE ENFORCEMENT)

- 14 Submitted
- 4 Active
- 24 Closed
- 8 Total Active (2022-2024)
- 15 Self Abated
- 5 Town Abated
- 2 Building Permit Issued
- 1 Occupied Temporary Use Permit
- 1 Storage Temporary Use Permit





Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 1(j)

ORIGINATED BY: Kate Anderson, Housing Program Manager
REVIEWED BY: James Goodwin, Town Manager
SUBJECT: Housing Recovery Update
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:
None

Background:
This report provide the Town Council with an update of Housing activities.

Analysis:
We have 34.3% of our pre-disaster housing stock to-date (1,377 surviving units + 2,742 new CofOs to-date [an increase of 95 from last month] = 4,119 habitable dwellings / 12,015 housing units before the Camp Fire). An additional 800 permits have been issued but have not received their CofO yet.

Town of Paradise Owner-Occupied Rehabilitation/Reconstruction Program (\$16 million) -- This program helps homeowners rehabilitate or reconstruct their home. We have completed 50 homes, 12 under construction, and 13 applications in process.

Town of Paradise First-Time Homebuyer Program (\$7 million) -- Helping to make home ownership more affordable. We have assisted 26 households to-date and have 11 applications in process.

CDBG-DR Multifamily Rental Housing Program (\$55 million) -- Affordable rental housing. Seven (7) projects are eligible for funding; a total of 290 units. One project (4 units) has leased up, and two projects (55 units) are under construction and anticipated to be completed by next fall. Two more projects (91 units) have received tax credits and are working toward construction, and the last 2 projects (140 units) will apply for tax credits this month.

CDBG (2023 Annual Allocation=\$100,691; unspent funds=\$109,305) -- Continuing to fund public services and lot acquisition for affordable homeownership. CV funds (\$208,244 not included above) can assist households living in RVs with emergency rental assistance, available now but no applicants at this time.

HOME Infill New Construction (\$700,000) -- Create affordable housing for first-time homebuyers. Grant has been awarded but still waiting for Standard Agreement from HCD. Not expected now until March.

Permanent Local Housing Allocation (PLHA) (\$399,166) – Allocates matching funds to North Valley Housing Trust to administer short-term, pre-development loans for affordable multifamily projects. First predevelopment loan of \$400,000 has been made.

Financial Impact:
None.



TOWN COUNCIL Meeting Minutes

6:00 PM – January 09, 2024

1. OPENING

The Regular meeting of the Paradise Town Council was called to order by Mayor Lassonde at 6:03 p.m. in the Town Council Chamber located at 5555 Skyway, Paradise, California who led the Pledge of Allegiance to the Flag of the United States of America. An invocation was offered by Vice Mayor Bolin.

COUNCIL MEMBERS PRESENT: Greg Bolin, Steve “Woody” Culleton, Rose Tryon and Ron Lassonde, Mayor

COUNCIL MEMBERS ABSENT: Steve Crowder

STAFF PRESENT: Town Manager Jim Goodwin, Town Attorney Scott E. Huber, Town Clerk/Elections Official Dina Volenski, Community Development Director Susan Hartman, Community Development Director Tony Lindsey, Public Works Director/Town Engineer Marc Mattox, Finance Director/Town Treasurer Aimee Beleu, Recovery and Economic Development Director Colette Curtis, Business and Housing Manager Kate Anderson, Project Manager Brian Solecki, Police Chief Eric Reinbold, Fire Chief Garrett Needles, and Information Systems Director Luis Marquez.

- 1a. Jim McCourt from Meeder Investments provided a financial update. (360-30-006)
- 1b. Recovery and Economic Development Director Colette Curtis and Project Manager Brian Solecki provided an update on the Early Warning Sirens (EWS). (420-30-009)
 1. Rich Gowins spoke in favor of the EWS system as well as suggested taking measures to work with and look out for your neighbors.
- 1c. Camp Fire Recovery Updates - Written reports are included in the agenda packet. (110-60-061)

Colette Curtis, Recovery and Economic Development Director - Recovery Projects, Advocacy, Economic Recovery and Development, Communications and Emergency Operations.

Marc Mattox, Public Works Director/Town Engineer - Infrastructure and Sewer Update.

Tony Lindsey, CDD-Building and Code Enforcement-Code Enforcement Update.

Kate Anderson, Business and Housing Manager-Business and Housing Update.

2. CONSENT CALENDAR

MOTION by Bolin, seconded by Culleton, approved consent calendar items 2a, 2b and 2d. Item 2c was removed from the consent calendar by Council Member Culleton. Roll call vote was unanimous with Council Member Crowder absent and not voting.

- 2a. Approved minutes of the December 12, 2023 Special and Regular Town Council meetings and the December 22, 2023 Special meeting.
- 2b. Approved December 2023 Cash Disbursements in the amount of \$4,312,957.13. (310-10-035)
- 2c. Item was removed from the consent calendar.
- 2d. 1. Waived the second reading of Town Ordinance No. 631 and read by title only; and, 2. Adopted Town Ordinance No. 631 “An Ordinance Rezoning Certain Real Property From “C-C” (Community-Commercial) to a “C-S” (Community-Services) Zone Pursuant to Paradise Municipal Code Sections 17.45.500 Et. Seq. (Ridge Lifeline Church: PL23-00175)”. (540-16-200)

3. ITEMS REMOVED FROM CONSENT CALENDAR

- 2c. Council Member Culleton requested that item 2c be removed from the consent calendar for clarification on the financial impact.
 - 1. Ward Habriel spoke on the difficulties and expense of clearing lots.

MOTION by Culleton, seconded by Bolin, approved and authorized Town staff to implement the Defensible Space Code Enforcement Project. Project would include the hiring of three (3) full-time, limited term staff members to facilitate the 30-month program that will increase capacity for defensible space compliance work during the 2024, 2025, and 2026 inspection seasons. Roll call vote was unanimous with Council Member Crowder absent and not voting. (440-91-002, 610-10-020)

4. PUBLIC COMMUNICATION

- 1. Ward Habriel spoke on the accomplishments of the Butte County Fire Safe Council.

2. Rich Gowins spoke in favor of item 2c and encouraged the Town to better communicate the responsibilities of those who are purchasing properties on Private Roads.

5. PUBLIC HEARINGS

- 5a. Business and Housing Manager Kate Anderson presented the proposed 2024-2025 Annual Plan funding priorities.

Mayor Lassonde opened the public hearing at 7:36 p.m.

There were no public comments.

Mayor Lassonde closed the public hearing at 7:36 p.m.

MOTION by Culleton, seconded by Bolin, approved the formation of a public services sub-committee to consider input and requests for public services funding; and, appointed Council Members Culleton and Crowder to serve on the public services sub-committee, contingent on Council Member Crowder's willingness to serve. All Council concurred with Council Member Crowder absent and not voting. (710-10-105)

6. COUNCIL CONSIDERATION

- 6a. Community Development Director Tony Lindsey provided an overview of proposed Urgency Ordinance No. 632 relating to interim housing, accessory building(s) and unoccupied recreational vehicles inside the Camp Fire area.

MOTION by Culleton, seconded by Bolin, Adopted Town of Paradise Ordinance No. 632, "An Urgency Ordinance of the Town Council of the Town of Paradise Repealing Urgency Ordinance No. 624 and Adopting New Ordinance Relating to Interim Housing, Accessory Building(s) and Unoccupied Recreational Vehicle Inside the Camp Fire Area" with the striking of the word "or" in Section 2: "To demonstrate continued eligibility pursuant to Section 8.61.070, permit holders must present to the Town upon request, and at least annually, a current water, solid waste and/or electric company invoice demonstrating that those utility services are currently existing and in place on the property that is the subject of the temporary use permit." Roll call vote was unanimous with Council Member Crowder absent and not voting. The urgency ordinance is effective immediately. (540-16-201)

- 6b. Town Attorney Scott Huber provided an overview of proposed Ordinance No. 633 relating to the Fire Code and Burn Permits.

MOTION by Bolin, seconded by Culleton 1. Waived the first reading of Town Ordinance No. 633 and read by title only; and, 2. Introduced Town Ordinance No. 633. "An Ordinance Amending Paradise Municipal Code Chapter 15.09 Relating to The Fire Code And Burn Permits." Roll call vote was unanimous with Council Member Crowder absent and not voting. (540-16-201)

- 6c. Public Works Director/Town Engineer Marc Mattox provided an overview of the completed Almond Street Multimodal Improvements Project & Gap Closure Complex Project.

MOTION by Bolin, seconded by Culleton Adopted Resolution No. 2024-01, "A Resolution of the Town Council of Town of Paradise Accepting the Work Performed Under the Almond Street Multimodal Improvements Project & Gap Closure Complex Project Contract 16-01.CON and 17-04.CON Performed by Baldwin Contracting Company, Inc. dba Knife River Construction." Roll call vote was unanimous with Council Member Crowder absent and not voting. (950-40-033, 510-20-291)

- 6d. Public Works Director/Town Engineer Marc Mattox provided an overview of the Town of Paradise Wildland Fire Evacuation Traffic Control Plan.

1. Rich Gowins spoke on this item and on the frustrations of those who do not prepare or participate in evacuation planning.

MOTION by Bolin, seconded by Tryon, adopted Resolution No. 2024-02, "A Resolution of the Town Council of the Town of Paradise Approving the Town of Paradise Wildland Fire Evacuation Traffic Control Plan." Roll call vote was unanimous with Council Member Crowder absent and not voting. (440-05-023, 110-10-020)

- 6e. Council Member Culleton recused himself from the dais at 8:13 p.m. due to a potential conflict of interest.

Public Works Director/Town Engineer Marc Mattox provided an overview of the proposed Community Development Block Grant Disaster Recovery – Infrastructure Action Plan Amendment.

MOTION by Bolin, seconded by Lassonde, Approved the Community Development Block Grant Disaster Recovery – Infrastructure Action Plan Amendment Option 2, as presented:

- (1) Reduce Oliver Curve Pathway Project CDBG-DR Funding by \$10M.
- (2) Add \$4.2M to Roe Rd Extension Phase 2 Project to keep LTCAP funding moving.
- (3) Add \$3.8M to Roe Rd Extension Phase 1 Project to account for budget increases.
- (4) Add \$1.0M to Foster/Black Olive Intersection Project to account for budget increases.
- (5) Add \$1.0M to Forest Service Road Extension to account for budget increases.

Roll call vote was unanimous with Council Members Crowder and Culleton absent and not voting. (710-10-099)

Council Member Culleton returned to the dais.

- 6f. Recovery and Economic Development Director Colette Curtis provided an overview of the State Legislative Advocacy Platform and Legislative Committee function and process.

MOTION by Tryon, seconded by Culleton, 1. Reviewed and approved the State Legislative Advocacy Platform; and, 2. Concurred with staff recommendation for Legislative Committee function and process. Roll call vote was unanimous with Council Member Crowder absent and not voting. (550-40-053)

- 6g. Council appointed Council representatives to two vacant committee positions due to a resignation.

After discussion, Council Member Tryon was reappointed to the Legislative Committee as Vice Mayor Bolin's designee and Mayor Lassonde was appointed to the Paradise Sewer Regionalization Committee. All Council concurred with Council Member Crowder absent and not voting. (See committee assignments attached.) (120-10-010)

Council directed staff to bring back a resolution at the next Council meeting designating the Mayor and Vice Mayor as the established representatives for the Legislative Committee, or another Council Member appointed as their designee.

7. COUNCIL INITIATED ITEMS AND REPORTS

- 7a. Council initiated agenda items – None

- 7b. Council reports on committee representation:

Council Member Tryon attended the Butte County Fire Safe Council board meeting.

Mayor Lassonde attended the PID/TOP Liaison meeting; met with a representative from PG&E to discuss the challenges and concerns around undergrounding utility lines; participated in media interviews with KPAY and KRRCR; attended the rededication ceremony for the Sierra College Hill monument; and participated in a call with the Mayor of Maui.

- 7c. Future Agenda Items:

1. Adding art to traffic control boxes (Lassonde)
2. Update on drones used by Paradise PD (Tryon)
3. Discuss putting cameras on traffic signals to capture red light violators. (Culleton)

8. STAFF COMMUNICATION

- 8a. Town Manager Jim Goodwin shared that he met with the Mayor of Maui and presented a framed picture of Paradise with reclaimed wood from the fire.

9. CLOSED SESSION - None

10. ADJOURNMENT

Mayor Lassonde adjourned the meeting at 9:07 p.m.

Date approved:

By:

Attest:

Ronald Lassonde, Mayor

Dina Volenski, CMC, Town Clerk



**2024 TOWN COUNCIL
REPRESENTATION**

**BUTTE COUNTY
COMMITTEES/COMMISSIONS**

BUTTE COUNTY		Bolin	Crowder	Culleton	Lassonde	Tryon
1.	Air Quality Management District				A	R
2.	Association of Governments				A	R
3.	City Selection Committee (Mayor)				R	
4.	Disaster Council (Mayor)				R	
5.	Local Area Formation Commission (LAFCo) (Bolin was appointed through 5/2027 – Appointed by City Selection Committee)	R				
6.	Mosquito and Vector Control Board (Schuster was appointed through 1/2027 – Rep to serve a 4-year term)			Melissa	Schuster	
7.	Waste Mgt Local Task Force	R		R		
8.	City/County Ad Hoc Committee			R		
9.	Tourism Business Improvement District (TBID)		Colette	Curtis	R	
10.	Continuum of Care			R	A	
11.	Butte County Fire Safe Council					R

LOCAL COMMITTEES/COMMISSIONS

PARADISE		Bolin	Crowder	Culleton	Lassonde	Tryon
1.	Paradise Community Village	R		A		
2.	Paradise Irrigation District Liaison	R			R	
3.	Paradise Rec. & Park District Liaison		R	R		
4.	Paradise Solid Waste Committee	R		R		
5.	Onsite Ad Hoc Committee	R	R			
6.	Finance Committee (Mayor & Vice Mayor)	R			R	
7.	Butte County Oversight Board				R	
8.	Paradise Sewer Regionalization Project Advisory Committee		R		R	
9.	Legislative Ad Hoc Committee (Mayor & Vice Mayor or Designee)		R			R
10.	Healthcare Ad Hoc Committee		R		R	

TOWN OF PARADISE

CASH DISBURSEMENTS REPORT

FOR THE PERIOD OF
January 1, 2024 - January 31, 2024



CASH DISBURSEMENTS REPORT
January 1, 2024 - January 31, 2024

Check Date	Pay Period End	Description	Amount	Total
1/5/2024	12/31/2023	Net Payroll - Direct Deposits and Checks	\$ 212,578.49	
1/19/2024	1/14/2024	Net Payroll - Direct Deposits and Checks	<u>\$ 219,400.95</u>	
				\$ 431,979.44
Accounts Payable				
		Payroll Vendors: Taxes, PERS, Dues, Insurance, Etc.	412,071.44	
		Operations Vendors: Supplies, Contracts, Utilities, Etc.	<u>2,728,211.35</u>	
		TOTAL CASH DISBURSEMENTS ACCOUNTS PAYABLE		<u>3,140,282.79</u>
		GRAND TOTAL CASH DISBURSEMENTS		<u><u>\$ 3,572,262.23</u></u>

APPROVED BY: _____
 Aimee Belev - Finance Director/Town Treasurer

APPROVED BY: _____
 Jim Goodwin - Town Manager

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
AP - US Bank TOP AP Checking									
<u>Check</u>									
85129	01/05/2024	Open			Accounts Payable	ICMA 457 - MissionSquare	\$1,310.28		
85130	01/05/2024	Open			Accounts Payable	STATE DISBURSEMENT UNIT	\$848.29		
85131	01/11/2024	Open			Accounts Payable	4LEAF, Inc	\$6,806.00		
85132	01/11/2024	Open			Accounts Payable	ACCESS INFORMATION PROTECTED	\$250.24		
85133	01/11/2024	Open			Accounts Payable	ADVANCED DOCUMENT CONCEPTS	\$16.18		
85134	01/11/2024	Open			Accounts Payable	Amazon Capital Services	\$206.73		
85135	01/11/2024	Open			Accounts Payable	AT&T MOBILITY	\$192.60		
85136	01/11/2024	Open			Accounts Payable	AT&T MOBILITY	\$85.60		
85137	01/11/2024	Open			Accounts Payable	AT&T/CALNET3 - Summary	\$2,226.04		
85138	01/11/2024	Open			Accounts Payable	Bear Electrical Systems, Inc	\$1,520.00		
85139	01/11/2024	Open			Accounts Payable	BIDWELL TITLE & ESCROW	\$100,000.00		
85140	01/11/2024	Open			Accounts Payable	Bidwell Truck & Auto	\$3,382.58		
85141	01/11/2024	Open			Accounts Payable	Big O Tires	\$260.00		
85142	01/11/2024	Open			Accounts Payable	Blue Flamingo Marketing Advocates	\$3,743.55		
85143	01/11/2024	Open			Accounts Payable	BOYS AND GIRLS CLUB	\$7,000.00		
85144	01/11/2024	Open			Accounts Payable	BUTTE CO DISTRICT ATTORNEY	\$5,000.00		
85145	01/11/2024	Open			Accounts Payable	BUTTE CO RECORDER	\$269.50		
85146	01/11/2024	Open			Accounts Payable	BUTTE CO SHERIFF'S OFFICE	\$127,336.32		
85147	01/11/2024	Open			Accounts Payable	BUTTE REGIONAL TRANSIT	\$149.10		
85148	01/11/2024	Open			Accounts Payable	CALIFORNIA BUILDING STANDARDS COMMISSION	\$806.40		
85149	01/11/2024	Open			Accounts Payable	Chico Meals on Wheels	\$1,854.90		
85150	01/11/2024	Open			Accounts Payable	Cole Huber LLP	\$25,752.50		
85151	01/11/2024	Open			Accounts Payable	COMCAST CABLE	\$13.23		
85152	01/11/2024	Open			Accounts Payable	COMCAST CABLE	\$166.63		
85153	01/11/2024	Open			Accounts Payable	Creative Composition Inc	\$25.85		
85154	01/11/2024	Open			Accounts Payable	DATCO SERVICES CORPORATION	\$315.00		
85155	01/11/2024	Open			Accounts Payable	DEPARTMENT OF FORESTRY & FIRE PROTECTION	\$3,860.36		
85156	01/11/2024	Open			Accounts Payable	Dokken Engineering, Inc.	\$8,858.05		
85157	01/11/2024	Open			Accounts Payable	Dokken Engineering, Inc.	\$2,040.60		
85158	01/11/2024	Open			Accounts Payable	Ernie's Towing and Automotive	\$412.50		
85159	01/11/2024	Open			Accounts Payable	FIDELITY NATIONAL TITLE COMPANY - CHICO	\$100,000.00		
85160	01/11/2024	Open			Accounts Payable	FOOTHILL MILL & LUMBER	\$301.05		
85161	01/11/2024	Open			Accounts Payable	GOVERNOR'S OFFICE OF EMERGENCY SERVICES	\$1,337.00		
85162	01/11/2024	Open			Accounts Payable	GREAT AMERICA LEASING CORP.	\$145.47		
85163	01/11/2024	Open			Accounts Payable	GREEN RIDGE LANDSCAPING	\$4,846.00		
85164	01/11/2024	Open			Accounts Payable	Hawkins Delafield & Wood LLP	\$146,253.00		
85165	01/11/2024	Open			Accounts Payable	HDR Engineering, Inc	\$133,410.68		
85166	01/11/2024	Open			Accounts Payable	HINDERLITER, DE LLAMAS & ASSOCIATES INC.	\$2,652.05		
85167	01/11/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$15,000.00		
85168	01/11/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$12,427.00		
85169	01/11/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$8,000.00		
85170	01/11/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$30,000.00		

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
85171	01/11/2024	Open			Accounts Payable	I.M.P.A.C. PAYMENTS IMPAC GOV SVCS/US BANCORP	\$24,089.98		
85172	01/11/2024	Open			Accounts Payable	J.J.R. Enterprises Inc	\$1,124.36		
85173	01/11/2024	Open			Accounts Payable	James or Lavenia Riotto	\$250.00		
85174	01/11/2024	Open			Accounts Payable	KEN'S PARADISE HITCH & WELDING	\$157.06		
85175	01/11/2024	Open			Accounts Payable	KNIFE RIVER CONSTRUCTION	\$71,472.30		
85176	01/11/2024	Open			Accounts Payable	KNIFE RIVER CONSTRUCTION	\$137,615.91		
85177	01/11/2024	Open			Accounts Payable	L.N. CURTIS & SONS	\$313.93		
85178	01/11/2024	Open			Accounts Payable	LACO Associates	\$6,250.00		
85179	01/11/2024	Open			Accounts Payable	LEHR AUTO ELECTRIC STOMMEL, INC.	\$410.31		
85180	01/11/2024	Open			Accounts Payable	LIFE ASSIST INC	\$339.35		
85181	01/11/2024	Open			Accounts Payable	LOCATE PLUS CORPORATION	\$50.00		
85182	01/11/2024	Open			Accounts Payable	Luiz Trenton	\$36.83		
85183	01/11/2024	Open			Accounts Payable	Meyers Police K-9 Training, LLC	\$1,400.00		
85184	01/11/2024	Open			Accounts Payable	NCCSIF TREASURER	\$54,584.75		
85185	01/11/2024	Open			Accounts Payable	North State Tire Co. Inc.	\$1,108.57		
85186	01/11/2024	Open			Accounts Payable	NORTHERN RECYCLING & WASTE SERVICES, INC.	\$2,413.19		
85187	01/11/2024	Open			Accounts Payable	NORTHGATE PETROLEUM CO	\$9,457.93		
85188	01/11/2024	Open			Accounts Payable	NORTHSTAR	\$98.00		
85189	01/11/2024	Open			Accounts Payable	NORTHSTAR	\$98.00		
85190	01/11/2024	Open			Accounts Payable	NORTHSTAR	\$392.00		
85191	01/11/2024	Open			Accounts Payable	NORTHSTAR	\$120.00		
85192	01/11/2024	Open			Accounts Payable	NorthWestern Construction	\$31,010.00		
85193	01/11/2024	Open			Accounts Payable	OFFICE DEPOT ACCT#36233169	\$838.58		
85194	01/11/2024	Open			Accounts Payable	Oroville Hospital	\$2,591.16		
85195	01/11/2024	Open			Accounts Payable	PACIFIC GAS & ELECTRIC	\$3,176.16		
85196	01/11/2024	Open			Accounts Payable	PARADISE POST	\$430.88		
85197	01/11/2024	Open			Accounts Payable	Paradise Stronger, Inc.	\$567.62		
85198	01/11/2024	Open			Accounts Payable	PETTY CASH, CHRISTINA SHOEMAKER	\$110.04		
85199	01/11/2024	Open			Accounts Payable	Rebuild Paradise Foundation, Inc.	\$15,981.37		
85200	01/11/2024	Open			Accounts Payable	SBA Monarch Towers III LLC	\$173.16		
85201	01/11/2024	Open			Accounts Payable	Specialized Pavement Marking, LLC	\$182,856.76		
85202	01/11/2024	Open			Accounts Payable	Spherion Staffing	\$2,929.50		
85203	01/11/2024	Open			Accounts Payable	STERICYCLE, INC.	\$492.17		
85204	01/11/2024	Open			Accounts Payable	Stiles Truck Body & Equipment, Inc.	\$6,119.69		
85205	01/11/2024	Open			Accounts Payable	SUTTER BUTTES COMMUNICATIONS, INC.	\$12,178.20		
85206	01/11/2024	Open			Accounts Payable	T MOBILE USA, INC.	\$1,671.55		
85207	01/11/2024	Open			Accounts Payable	Tahoe Pure Water Co.	\$65.50		
85208	01/11/2024	Open			Accounts Payable	Target Solutions Learning	\$213.00		
85209	01/11/2024	Open			Accounts Payable	The Ferguson Group	\$5,026.20		
85210	01/11/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - ENG. DEPT.	\$136.94		
85211	01/11/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - FIRE DEPT.	\$40.73		
85212	01/11/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - MOTORPOOL	\$41.84		

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
85213	01/11/2024	Open			Accounts Payable	Training Alliance for Public Safety, Inc.	\$340.00		
85214	01/11/2024	Open			Accounts Payable	TRUEPOINT SOLUTIONS, LLC	\$2,325.00		
85215	01/11/2024	Open			Accounts Payable	VOLENSKI, DINA	\$21.64		
85216	01/18/2024	Open			Accounts Payable	ICMA 457 - MissionSquare	\$1,310.28		
85217	01/18/2024	Open			Accounts Payable	STATE DISBURSEMENT UNIT	\$848.29		
85218	01/22/2024	Open			Accounts Payable	Aflac	\$57.98		
85219	01/22/2024	Open			Accounts Payable	Met Life	\$12,532.86		
85220	01/22/2024	Open			Accounts Payable	OPERATING ENGINEERS	\$1,008.00		
85221	01/22/2024	Open			Accounts Payable	PARADISE POLICE OFFICERS ASSOCIATION	\$2,255.01		
85222	01/22/2024	Open			Accounts Payable	SUN LIFE INSURANCE	\$7,461.17		
85223	01/22/2024	Open			Accounts Payable	SUPERIOR VISION SVC INC	\$893.23		
85224	01/22/2024	Open			Accounts Payable	TOP CONFIDENTIAL MID MGMT ASSOCIATION	\$60.00		
85225	01/25/2024	Open			Accounts Payable	Adams Ashby Group, Inc.	\$25,185.00		
85226	01/25/2024	Open			Accounts Payable	ADO Professional Solutions, Inc.	\$9,902.88		
85227	01/25/2024	Open			Accounts Payable	Adobe, Inc.	\$319.06		
85228	01/25/2024	Open			Accounts Payable	ADVANCED DOCUMENT CONCEPTS	\$0.32		
85229	01/25/2024	Open			Accounts Payable	Amazon Capital Services	\$896.76		
85230	01/25/2024	Open			Accounts Payable	AT&T & CALNET3 - CIRCUIT LINES	\$764.08		
85231	01/25/2024	Open			Accounts Payable	AT&T MOBILITY	\$192.60		
85232	01/25/2024	Open			Accounts Payable	AT&T MOBILITY	\$95.59		
85233	01/25/2024	Open			Accounts Payable	AWARDS COMPANY	\$104.78		
85234	01/25/2024	Open			Accounts Payable	Big O Tires	\$225.00		
85235	01/25/2024	Open			Accounts Payable	Blue Flamingo Marketing Advocates	\$5,800.00		
85236	01/25/2024	Open			Accounts Payable	Broad & Gusman	\$4,000.00		
85237	01/25/2024	Open			Accounts Payable	Bug Smart	\$83.00		
85238	01/25/2024	Open			Accounts Payable	BUTTE CO SHERIFF'S OFFICE	\$116,724.96		
85239	01/25/2024	Open			Accounts Payable	CALIFORNIA STATE DEPARTMENT OF JUSTICE	\$478.00		
85240	01/25/2024	Open			Accounts Payable	Cleary, Lillian	\$51.94		
85241	01/25/2024	Open			Accounts Payable	Cole Huber LLP	\$103,839.93		
85242	01/25/2024	Open			Accounts Payable	COMCAST CABLE	\$419.63		
85243	01/25/2024	Open			Accounts Payable	COMCAST CABLE	\$429.63		
85244	01/25/2024	Open			Accounts Payable	Creative Composition Inc	\$86.20		
85245	01/25/2024	Open			Accounts Payable	Crowder, Steven	\$2,322.30		
85246	01/25/2024	Open			Accounts Payable	CSG Consultants, Inc.	\$27,280.00		
85247	01/25/2024	Open			Accounts Payable	DFM ASSOCIATES	\$75.78		
85248	01/25/2024	Open			Accounts Payable	DURHAM PENTZ TRUCK CENTER	\$2,412.36		
85249	01/25/2024	Open			Accounts Payable	Eidhammer, Trenton	\$169.00		
85250	01/25/2024	Open			Accounts Payable	ENLOE MEDICAL CENTER, INC.	\$354.00		
85251	01/25/2024	Open			Accounts Payable	Entersect	\$109.95		
85252	01/25/2024	Open			Accounts Payable	FEATHER RIVER CONSTRUCTION	\$2,500.00		
85253	01/25/2024	Open			Accounts Payable	Golden State Emergency Vehicle Service, Inc.	\$3,026.28		
85254	01/25/2024	Open			Accounts Payable	GREAT AMERICA LEASING CORP.	\$156.25		
85255	01/25/2024	Open			Accounts Payable	GREEN RIDGE LANDSCAPING	\$535.78		
85256	01/25/2024	Open			Accounts Payable	Gregory Cundiff	\$350.00		

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
85257	01/25/2024	Open			Accounts Payable	Guardian Public Safety Background Investigations	\$1,450.00		
85258	01/25/2024	Open			Accounts Payable	Hat Creek Construction & Materials, Inc.	\$247,125.71		
85259	01/25/2024	Open			Accounts Payable	Hawkins Delafield & Wood LLP	\$20,500.00		
85260	01/25/2024	Open			Accounts Payable	HDR Engineering, Inc	\$224,127.97		
85261	01/25/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$13,500.00		
85262	01/25/2024	Open			Accounts Payable	Hope Crisis Response Network, Inc	\$30,000.00		
85263	01/25/2024	Open			Accounts Payable	Houdek, Michael	\$117.51		
85264	01/25/2024	Open			Accounts Payable	Housing Authority of the County of Butte	\$166,026.75		
85265	01/25/2024	Open			Accounts Payable	HUDSON'S APPLIANCE CENTER	\$109.00		
85266	01/25/2024	Open			Accounts Payable	I.M.P.A.C. PAYMENTS IMPAC GOV SVCS/US BANCORP	\$339.83		
85267	01/25/2024	Open			Accounts Payable	INDUSTRIAL EQUIPMENT	\$292.11		
85268	01/25/2024	Open			Accounts Payable	Jennifer Arbuckle	\$3,375.00		
85269	01/25/2024	Open			Accounts Payable	JOHNNY ON THE SPOT PORTABLES	\$566.60		
85270	01/25/2024	Open			Accounts Payable	KAREN HORNE	\$34.42		
85271	01/25/2024	Open			Accounts Payable	Kimball Midwest	\$465.73		
85272	01/25/2024	Open			Accounts Payable	KNIFE RIVER CONSTRUCTION	\$631.12		
85273	01/25/2024	Open			Accounts Payable	KOEFAN INDUSTRIES	\$1,200.00		
85274	01/25/2024	Open			Accounts Payable	LACO Associates	\$7,850.00		
85275	01/25/2024	Open			Accounts Payable	LEAGUE OF CALIFORNIA CITIES	\$5,585.00		
85276	01/25/2024	Open			Accounts Payable	LOCATE PLUS CORPORATION	\$25.00		
85277	01/25/2024	Open			Accounts Payable	Magneson, Michael	\$285.13		
85278	01/25/2024	Open			Accounts Payable	Mendes Supply Company	\$122.74		
85279	01/25/2024	Open			Accounts Payable	MID VALLEY TITLE & ESCROW	\$582.00		
85280	01/25/2024	Open			Accounts Payable	MUNIMETRIX SYSTEMS CORP	\$39.99		
85281	01/25/2024	Open			Accounts Payable	NAPA Auto Parts	\$68.92		
85282	01/25/2024	Open			Accounts Payable	North State Tire Co. Inc.	\$695.12		
85283	01/25/2024	Open			Accounts Payable	NORTHGATE PETROLEUM CO	\$8,798.33		
85284	01/25/2024	Open			Accounts Payable	NORTHSTATE AGGREGATE, INC.	\$495.66		
85285	01/25/2024	Open			Accounts Payable	O'REILLY AUTO PARTS	\$375.97		
85286	01/25/2024	Open			Accounts Payable	OFFICE DEPOT ACCT#36233169	\$298.63		
85287	01/25/2024	Open			Accounts Payable	PACIFIC GAS & ELECTRIC	\$15,251.61		
85288	01/25/2024	Open			Accounts Payable	PARADISE SANITATION COMPANY	\$2,000.00		
85289	01/25/2024	Open			Accounts Payable	PERKINS MOBILE AUTO GLASS	\$100.00		
85290	01/25/2024	Open			Accounts Payable	RENTAL GUYS - CHICO	\$108.25		
85291	01/25/2024	Open			Accounts Payable	River City Plastics, Inc.	\$44.00		
85292	01/25/2024	Open			Accounts Payable	Shelby's Pest Control, Inc.	\$100.00		
85293	01/25/2024	Open			Accounts Payable	SILVERLINE PACIFIC	\$2,470.00		
85294	01/25/2024	Open			Accounts Payable	SKYWAY TOWING & SERVICE	\$250.00		
85295	01/25/2024	Open			Accounts Payable	Spherion Staffing	\$3,609.06		
85296	01/25/2024	Open			Accounts Payable	Stratti	\$10,159.35		
85297	01/25/2024	Open			Accounts Payable	Stratton Appraisals	\$400.00		
85298	01/25/2024	Open			Accounts Payable	Tahoe Pure Water Co.	\$70.00		
85299	01/25/2024	Open			Accounts Payable	Thea Baker	\$15.00		
85300	01/25/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - ENG. DEPT.	\$498.53		

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
85301	01/25/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - FIRE DEPT.	\$8.11		
85302	01/25/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - MOTORPOOL	\$42.61		
85303	01/25/2024	Open			Accounts Payable	THOMAS ACE HARDWARE - POLICE DEPT.	\$20.71		
85304	01/25/2024	Open			Accounts Payable	Thompson, Johnny David	\$765.00		
85305	01/25/2024	Open			Accounts Payable	THOMSON-WEST/BARCLAYS	\$420.22		
85306	01/25/2024	Open			Accounts Payable	Top Notch Commercial Cleaning Inc.	\$6,000.00		
85307	01/25/2024	Open			Accounts Payable	Tri Flame Propane	\$711.20		
85308	01/25/2024	Open			Accounts Payable	TUCKER PEST CONTROL INC	\$90.00		
85309	01/25/2024	Open			Accounts Payable	TYLER TECHNOLOGIES, INC.	\$878.00		
85310	01/25/2024	Open			Accounts Payable	VERIZON WIRELESS	\$298.32		
85311	01/25/2024	Open			Accounts Payable	VERIZON WIRELESS	\$503.97		
85312	01/25/2024	Open			Accounts Payable	VERIZON WIRELESS	\$1,253.16		
85313	01/25/2024	Open			Accounts Payable	WILKEY, JOHN	\$169.00		
85314	01/25/2024	Open			Accounts Payable	Williams Scotsman, Inc. (Mobile Mini)	\$475.93		
85315	01/25/2024	Open			Accounts Payable	WILSON PRINTING	\$663.46		
85316	01/29/2024	Open			Accounts Payable	Owen Equipment Sales	\$298,817.69		
Type Check Totals:									
188 Transactions								\$2,756,796.74	
EFT									
1517	01/04/2024	Open			Accounts Payable	CALPERS - RETIREMENT	\$58,804.62		
1518	01/04/2024	Open			Accounts Payable	ING LIFE INS & ANNUITY COMPANY	\$12,394.44		
1519	01/05/2024	Open			Accounts Payable	EMPLOYMENT DEVELOPMENT DEPARTMENT	\$9,211.12		
1520	01/05/2024	Open			Accounts Payable	INTERNAL REVENUE SERVICE	\$32,066.97		
1521	01/18/2024	Open			Accounts Payable	CALPERS - RETIREMENT	\$59,365.80		
1522	01/18/2024	Open			Accounts Payable	EMPLOYMENT DEVELOPMENT DEPARTMENT	\$9,637.10		
1523	01/18/2024	Open			Accounts Payable	ING LIFE INS & ANNUITY COMPANY	\$12,394.44		
1524	01/18/2024	Open			Accounts Payable	INTERNAL REVENUE SERVICE	\$33,668.77		

Payment Register

From Payment Date: 1/1/2024 - To Payment Date: 1/31/2024

Number	Date	Status	Void Reason	Reconciled/ Voided Date	Source	Payee Name	Transaction Amount	Reconciled Amount	Difference
1525	01/10/2024	Open			Accounts Payable	CALPERS	\$155,942.79		
Type EFT Totals:									
AP - US Bank TOP AP Checking Totals							\$383,486.05		

Checks	Status	Count	Transaction Amount	Reconciled Amount
	Open	188	\$2,756,796.74	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Stopped	0	\$0.00	\$0.00
	Total	188	\$2,756,796.74	\$0.00

EFTs	Status	Count	Transaction Amount	Reconciled Amount
	Open	9	\$383,486.05	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Total	9	\$383,486.05	\$0.00

All	Status	Count	Transaction Amount	Reconciled Amount
	Open	197	\$3,140,282.79	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Stopped	0	\$0.00	\$0.00
	Total	197	\$3,140,282.79	\$0.00

Grand Totals:

Checks	Status	Count	Transaction Amount	Reconciled Amount
	Open	188	\$2,756,796.74	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Stopped	0	\$0.00	\$0.00
	Total	188	\$2,756,796.74	\$0.00

EFTs	Status	Count	Transaction Amount	Reconciled Amount
	Open	9	\$383,486.05	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Total	9	\$383,486.05	\$0.00

All	Status	Count	Transaction Amount	Reconciled Amount
	Open	197	\$3,140,282.79	\$0.00
	Reconciled	0	\$0.00	\$0.00
	Voided	0	\$0.00	\$0.00
	Stopped	0	\$0.00	\$0.00
	Total	197	\$3,140,282.79	\$0.00



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(c)

ORIGINATED BY: Scott Huber, Town Attorney
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Adoption of Town Ordinance No. 633
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Waive the second reading of Town Ordinance No. 633 and read by title only; and,
2. Adopt Town Ordinance No. 633 “An Ordinance Amending Paradise Municipal Code Chapter 15.09 Relating to The Fire Code And Burn Permits.”

Background:

On January 9, 2024, the Town Council introduced Ordinance No. 633 for purposes of eventual adoption. If adopted, the intent of the proposed ordinance is to amend the Paradise Municipal Code relating to the Fire Code and Burn Permits within the Town of Paradise. The ordinance will clarify the conditions under which a burn permit may be issued or denied and will help ensure the safety of the Town, while still allowing property owners to dispose of excess brush and debris from their property.

Analysis:

Town staff recommends that the Town Council waive the second reading of this entire ordinance; read it by title only; and formally adopt Town Ordinance No. 633 (copy attached). Once adopted, the provisions of this ordinance will be effective thirty (30) days thereafter.

Financial Impact:

A nominal cost for publication of the ordinance within the local newspaper and for codification will be borne by the Town of Paradise.

**TOWN OF PARADISE
ORDINANCE NO. 633**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
AMENDING CHAPTER 15.09 RELATING TO THE FIRE CODE AND BURN PERMITS**

The Town Council of the Town of Paradise does ordain as follows:

Section 1. Chapter 15.09 of the Paradise Municipal Code is amended to read as follows:

15.09.010 2022 California Fire Code (Title 24, Part 9), adopted.

The 2022 California Building Standards Code, Title 24, Part 9, including Appendix Chapters 4, "B", "B.B.", "C", "CC", "D", "E", "F", "G", "H", "I", "K", "N" and "O" known as the California Fire Code, as published and adopted by the California Building Standards Commission, including the town's amendments and additions, is hereby adopted by reference and incorporated herein as if fully set forth.

15.09.020 Chapter 1, Division II, Section 103, Dept. of Fire Prevention, amended.

The California Fire Code shall be enforced by the Fire Prevention Bureau within the Town of Paradise, which is hereby established, and which shall be operated under the direction of the Fire Chief of the Fire Department. The Fire Chief of the Fire Department may detail to the fire prevention bureau such members of the Fire Department as may from time to time be necessary. The Fire Chief of the Fire Department shall review, authorize, or require technical experts as may be necessary in order to ensure that life and property protection requirements have met the requirements of this and all other Title 24 codes and standards.

Sections 103.1; 103.2; and 103.3 are hereby deleted in their entirety.

15.09.030 Chapter 1, Division II, Section 105.2.3, Time Limitation of Application, amended.

An application for a permit for any proposed work shall expire one (1) year after the date of filing unless the permit has been issued.

15.09.040 Chapter 1, Division II, Section 106.6.29, Miscellaneous Combustible Storage, amended.

An operational permit is required to store in any building or upon any premises in excess of 2,500 cubic feet gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, rubber, cork, firewood (retail or storage) or similar combustible material.

15.09.050 Chapter 1, Division II, Section 109.3, Violation Penalties, amended.

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as set forth in section 15.02.210. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

15.09.060 Chapter 1, Division II, Section 111.4, Failure to Comply, amended.

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$100 or more than \$500.

15.09.070 Chapter 1, Division II, Section 113.3, Work commencing before permit issuance, amended.

Any *person* who commences any work, activity or operation regulated by this code before obtaining the necessary permits shall be subject to an investigation fee that is equal to 50% of the original permit fee, which shall be in addition to the required permit fees.

15.09.080 Chapter 1, Division II, Section 113.5, Refunds, amended.

The Fire Marshal may authorize refunding of a fee paid hereunder which was erroneously paid or collected. The Fire Marshal may authorize refunding of not more than 80 percent of the permit or plan review fee paid when no work or plan examination has been done under an application or permit issued in accordance with this code, provided a written refund application is filed by the original permittee prior to the expiration of the permit.

15.09.090 Chapter 2, Section 202, Definitions, Sky Lantern, added.

SKY LANTERN: An unmanned device with a fuel source that incorporates an open flame in order to make the device airborne.

NEW CONSTRUCTION: For the purposes of enforcing the provisions of the California Fire Code, California Building Code, and the California Residential Building Code, any work, addition to, remodel, repair, renovation, or alteration of any building(s) or structure(s) shall be considered "New Construction" when 50 percent or more of the exterior weight bearing walls are removed or demolished.

15.09.XXX Chapter 3, Section 201, Fire Chief, added.

"Fire Chief," for the purposes of this Chapter, means the Chief of the Town of Paradise Fire Department as defined in Section 2.20.030 of this Code. The definition of Fire Chief expressly includes the Fire Chief's designated authority or duly authorized representative, including the Fire Marshal, charged with the administration of this Chapter or Code.

15.09.XXX Burn Permit Defined

"Burn permit" means an official document issued by the Fire Chief, or his designated authority or duly authorized representative, as defined in this Chapter, that authorizes outdoor burning in the Town of Paradise. The definition of burn permit shall include but is not limited to Residential Burn Permits, Land Clearing Permits, Fuel Reduction Permits, and any permit required for Campfires, Bon Fires, Recreational Fires, and Special Event Fires.

15.09.XXX Chapter 3, Section 307.1, General Open Burning Prohibited, added

No person shall kindle or maintain, or cause or authorize to be kindled or maintained, any open burning in the Town of Paradise unless conducted and approved in accordance with this Chapter.

15.09.100 Chapter 3, Section 307.2, Permit Required, amended.

Burn permits are required for all outdoor burning within the Town of Paradise limits with the exception of barbeque equipment used for the preparation of food and outdoor fireplaces or warming devices used in accordance with the manufacturer’s specifications, approved screening not to exceed 3/8-inch opening and in a safe manner.

Residential Burn Permits: Permits shall be issued annually, July 1 through June 30 by application to the Town of Paradise Fire Chief. Burn permits may be limited, restricted, suspended, revoked, denied, or prohibited as determined by the Fire Chief as set forth in this Chapter. A fee in accordance with the Master Fee schedule of the Town of Paradise shall be charged. Permits shall only be valid for the address and name of the individual cited on the permit. Permits shall not be transferable to other addresses or individuals. Permits may be issued to persons to perform maintenance on residential property, providing the owner of the residential property has given their written consent and that the written consent is produced to the Fire Chief and verified as to the owner of record. The owner shall be responsible for the cost of a Fire Department response caused by the maintenance person as a result of an escape burn in violation of the rules of the burn permit on behalf of the maintenance person. Residential burn permits shall be issued for parcels containing one- and two-family residences, for which an address has been issued by the Town of Paradise, and only for the purpose of maintenance of vegetation growth on the parcel. Garbage, rubbish, demolition, construction debris, lumber, painted or treated lumber, plywood, particle board, petroleum waste, tires, plastics, cloth or other similar smoke producing materials are strictly prohibited from being burned. Burn bans shall be strictly adhered to. Failure to follow the burn ban restrictions may result in the requirements of Section 109.3 as amended to apply and any emergency response cost recovery.

Land Clearing Permits: Land clearing permits are issued for a specific timeframe to coincide with the time when open, outdoor burning is permitted. Land Clearing Permits may be limited, restricted, suspended, revoked, denied, or prohibited as determined by the Fire Chief as set forth in this Chapter. The Fire Department, with the authorization of the Fire Chief, may revoke the permit at any time due to unsafe conditions, practices, or violations of the permit. Land clearing permits expire when seasonal burn bans go into effect in the late spring of each year and shall be null and void. Persons burning on the property for which a permit is issued shall be responsible for following all of the requirements of that permit until the permit has expired or is revoked. Burning of wood waste from trees, vines, or bushes on property being developed for commercial or residential purposes, may be disposed of by open outdoor fires on the property where it was grown, pursuant to the provisions of section 41802-41805 of the California Health and Safety Code and in compliance with the conditions of Butte County Air Quality Management District Rule 300, and authorized by the Town of Paradise Fire Department. Permits are required by both agencies prior to burning. All burning times must be strictly adhered to otherwise it may require another method of disposal. The land clearing burn site must be determined and inspected prior to releasing the permit by the Paradise Fire Department. This site must be the only site authorized to burn once the permit is issued. Any changes in site location will require additional inspections and fees. The owner shall be responsible for the cost of a Fire Department response caused by the maintenance person as a result of an escape burn in violation of the rules of the burn permit on behalf of the maintenance person. Garbage, rubbish, demolition, construction debris, lumber, painted or treated lumber, plywood, particle board, petroleum waste, tires, plastics, cloth or other similar smoke producing materials are strictly prohibited from being burned.

Fuel Reduction Permits: Fuel reduction permits are issued for parcels 2/3 acre or larger on an annual basis July 1 through June 30 by application to the Town of Paradise Fire Chief. Fuel Reduction Permits may be limited, restricted, suspended, revoked, denied, or prohibited as determined by the Fire Chief as set forth in this Chapter. Fuel reduction permits expire when the

seasonal burn ban goes into effect in the late spring of each year. Persons burning on the property for which the permit is issued shall be responsible for following all of the requirements of that permit as indicated until the permit expires or is revoked. The Fire Department may revoke the permit at any time due to unsafe burning conditions, practices, or violations of the permit. Burning of wood waste from trees, vines, or bushes on existing improved property, may be disposed of by open outdoor fires on the property where it was grown, pursuant to the provisions of section 41802—41805 of the California Health and Safety Code and in compliance with the conditions of Butte County Air Quality Management District Rule 300, and authorized by the Town of Paradise Fire Department. All burning times must be strictly adhered to otherwise it may require another method of disposal. The fuel reduction burn site must be determined and inspected prior to releasing the permit by the Paradise Fire Department. This site must be the only site authorized to burn once the permit is issued. Any changes in site location will require additional inspections and fees. The owner shall be responsible for the cost of a Fire Department response caused by the maintenance person as a result of an escape burn in violation of the rules of the burn permit on behalf of the maintenance person. Garbage, rubbish, demolition, construction debris, lumber, painted or treated lumber, plywood, particle board, petroleum waste, tires, plastics, cloth or other similar smoke producing materials are strictly prohibited from being burned.

Campfires/Bon Fires/Recreational Fires and Special Event Fires: Permits are required for these activities and a permit fee will be charged in accordance with the Master Fee schedule adopted by the Town Council. A minimum of 48 hours' notice is required for the inspection. Such activities shall be in strict conformance with the requirements provided for on the permit and the requirements within Section 307 of the California Fire Code. Permits are issued on an annual basis to coincide with the time when open, outdoor burning is permitted, unless they are approved by the Fire Chief.

15.09.XXX, Burn Permit – Restrictions.

A burn permit may set forth restrictions, conditions, and limitations on open burning, including but not limited to, restrictions on the time and manner of burning, the type of material that may be burned, and requirements that all open burning be attended until the fire is completely extinguished. All requirements provided for on a burn permit must be followed at all times.

15.09.XXX, Decision of the Fire Chief – Grounds.

The Fire Chief may, in his discretion, limit, restrict, suspend, revoke, deny, or prohibit permits as set forth in this Chapter. Grounds for limitation, restriction, suspension, revocation, denial, or prohibition of a burn permit include, but are not limited to, the following:

- (a) Fire Hazards, as defined in Section 8.04.010 of this Code, that a burn permit applicant or burn permit holder has created or caused to be created by others.
- (b) Violations by a burn permit applicant or burn permit holder of restrictions set forth on a burn permit.
- (c) A burn permit applicant's or burn permit holder's prior burning in the Town of Paradise without a burn permit required by this Chapter.
- (d) A burn permit applicant's or burn permit holder's prior leaving of burning material unattended.
- (e) A burn permit applicant's or burn permit holder's prior disregard of warnings by the Fire Chief to comply with burn permit restrictions and this Code

(f) Failure of a burn permit applicant or a burn permit holder to adhere to seasonal and daily burn bans, including burn restrictions and conditions imposed by the Butte County Air Quality Management District.

15.09.XXX, Decision of the Fire Chief – Content.

Any decision of the Fire Chief to restrict, suspend, revoke, or deny a permit shall be issued in writing to the holder of or applicant for a burn permit as is applicable. Nothing in this Chapter shall prohibit the Fire Chief from verbally restrict, suspend, revoke, or denying a burn permit provided that written notice is thereafter provided to the applicant or permit holder. The written decision shall have at its top, in bold capital letters, “TOWN OF PARADISE NOTICE OF DECISION ON BURN PERMIT” and the body of the decision shall include the following:

- (a) The date of the application for or issuance of the burn permit as is applicable,
- (b) The name and address of the applicant or holder of the burn permit,
- (c) A statement, in bold letters, of whether the burn permit has been restricted, suspended, revoked, or denied,
- (d) An explanation of the reason for the restriction, suspension, revocation, or denial of the burn permit, including any code section(s) or permit restrictions violated.
- (e) The rights of appeal set forth in this Chapter,
- (f) The signature of the Fire Chief

15.09.XXX, Appeal of Decision of the Fire Chief.

Any person to whom the Fire Chief has issued a decision restricting, suspending, revoking, or denying a burn permit may appeal that decision in the same manner and in within the same time periods prescribed for appeals of administrative citations in Chapter 1.09 of this Code. The time periods applicable to the filing of an appeal of the Fire Chief’s decision shall run from the date of issuance of the Fire Chief’s written decision.

15.09.XXX, Time Limitation – Application for Burn Permit

Unless otherwise provided by this Code or state law, burn permits are issued July 1 through June 30 and expire June 30 of the following calendar year. subject to any time limitations on burning on the permit. Burn permit applicants whose application was denied or burn permit holders whose permits were restricted, suspended, or revoked may reapply for a burn permit provided, however, that such persons shall not be eligible to reapply for a new permit for one (1) year from the date of the Fire Chief’s written decision restricting, suspending, revoking, or denying a burn permit.

15.09.XXX, Administrative Citation.

Any person violating this Chapter, or any restriction or limitation placed by the Fire Chief on a burn permit is subject to and may be issued an administrative citation by an enforcement officer as set forth in Chapter 1.09 of this Code.

15.09.XXX, Appeal of Administrative Citation

Any person who has been issued an administrative citation shall be entitled to appeal the citation in the same manner and within the same time periods prescribed for appeals of administrative citations in Chapter 1.09 of this Code.

15.09.110 Chapter 3, Section 308.6.3, added.

Sky Lanterns or similar devices. The ignition and/or launching of a Sky Lantern or similar device is prohibited. Exceptions: Upon approval of the fire code official, sky lanterns may be used as necessary for religious or cultural ceremonies providing that adequate safeguards have been taken as approved by the fire code official. Sky Lanterns must be tethered in a safe manner to prevent them from leaving the area and must be constantly attended until extinguished.

15.09.120 Chapter 5, Section 503.2.1 Dimensions, amended.

Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, exclusive of shoulders, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Exception: Residential driveways shall comply with Town of Paradise Road Standards.

15.09.130 Chapter 5, Section 503.2.3, Surface, amended.

Fire apparatus access roads shall be designed and maintained to support the imposed load of fire apparatus at 75,000 pounds and shall be surfaced so as to provide all-weather driving capabilities.

15.09.140 Chapter 5, Section 503.4.1, Roadway Design Features, added.

Roadway design features (speed bumps, speed humps, speed control dips, etc.) which may interfere with emergency apparatus responses shall not be installed on fire apparatus access roadways.

15.09.150 Chapter 5, Section 503.6, Gates, amended.

The installation of security gates across a fire apparatus access road shall be approved by the Fire Marshal. Where security gates are installed, they shall have an approved means of emergency operation. The emergency gates and emergency operation shall be maintained operational at all times. Electric gate operators are required when serving five or more residential lots, Assembly occupancies, Hazardous occupancies, Institutional occupancies, and Storage occupancies and shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F-2200. Access keypads shall be provided that are coded with the fire department emergency access code as specified. Plans and specifications shall be submitted for review and approval by the Fire Prevention Bureau prior to installation.

15.09.160 Chapter 5, Section 505.3, Map/Directory, added.

A lighted directory map, meeting current Fire Department standards, shall be installed at each driveway entrance to a multiple unit residential project and mobile home parks, where the number of units in such projects exceeds 15.

15.09.170 Chapter 5, Section 507.1.2, Required Water Supply, added.

Group R Division 3 Occupancies (Residential one- and two-family dwellings, mobile homes, manufactured housing, or modular home) shall comply with the fire flow requirements of Appendix "B". Fire Flow may be reduced to 750 GPM at 20 PSI for two hours when the unit is fully protected in accordance with NFPA 13D and there are no exposures of other buildings within twenty (20)

feet of each other; otherwise, the minimum required water supply capability will be in accordance with Appendix "B". In no case shall the water supply capability be less than 1000 GPM at 20 PSI for two hours within the requirements found in Appendix "B".

The required water supply for a detached "U" occupancy accessory to a Residential one- and two-family dwelling is not required to meet the water supply requirements of Appendix "B" if the "U" occupancy is less than 1500 square feet and separated from the dwelling unit by a minimum of 20 feet. If both requirements cannot be met, then the requirements of Appendix "B" will apply.

15.09.180 Chapter 5, Section 510.6.1 Testing and proof of compliance, added.

5. At the conclusion of the testing, a report, which shall verify compliance with Section 510.5.4, shall be submitted to the fire code official. In addition, one complete copy of the report shall be posted in the building, on the wall immediately adjacent to the Fire Alarm Control Panel.

15.09.190 Chapter 9, Section 901.4.2, Non-required Fire Protection Systems, amended.

Any fire protection system not required by this code, or the California Building Code shall be allowed to be furnished for complete protection only provided such installed system meets the requirements of this code and the California Building Code.

15.09.200 Chapter 22, Section 2306.2.3, Aboveground Storage Tanks, amended.

The storage of class I, II, and III liquids in aboveground tanks outside of buildings is prohibited in all areas of the Town except in areas zoned as Industrial Services (I.S.).

Exception: The installation of approved listed above ground storage tanks shall be allowed in areas zoned for commercial purposes. Such tanks shall meet with State and County Environmental codes, and the California Fire and Building Code requirements. Aggregate quantities and type(s) of liquid(s) to be stored shall not exceed 2,000 gallons. Tanks shall be located outside of buildings and in accordance with the requirements of the California Fire and Building Codes. On those rare occasions when there may be need for additional tank capacity beyond the 2,000 gallons, the applicant can submit a written request to the Fire Marshal. The Fire Marshal, after evaluating the circumstances, shall have the authority to modify the conditions to the installation of such tanks. Above ground storage tanks used only for heating fuels to heating appliances in areas zoned residential shall meet the requirements of the California Fire Code and the Town of Paradise Administrative policy but in no case shall tanks exceed 250 gallons.

15.09.210 Chapter 56, Fireworks, is deleted, amended.

Refer to Paradise Municipal Code Title 8 Chapter 8.44 for prohibition on fireworks.

The storage of explosives and blasting agents is prohibited within the limits of the Town of Paradise, except for temporary storage between the hours of 6:00 a.m. and 6:00 p.m. for use in connection with blasting operations approved by the Fire Marshal. This prohibition shall not apply to stock of small arms ammunition and supplies for retail or approved manufacturing facilities as outlined under the California Fire Code.

15.09.220 Appendix B, Section B105.2 Exception 1, Reduced Fire Flow, amended.

A reduction in required fire flow of 50 percent is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with section 903.1.1 or 903.3.1.2. The resulting fire flow shall not be less than 1,500 GPM at 20 PSI for prescribed hours provided for in Table B105.1.

15.09.230 Appendix D, Table D103.4, Requirements for Dead-End Access, amended.

Table D103.4, Requirements for Dead End Access and Turn Around requirements shall be used as a guide only. The Town of Paradise Fire Department Administrative Policy for turn-around requirements shall be complied with as though set forth in this amendment.

SECTION 2. This ordinance shall take effect thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, this ordinance or a summary thereof shall be published in a newspaper of general circulation published and circulated within the Town of Paradise along with the names of the members of the Town Council of Paradise voting for and against same.

PASSED AND ADOPTED BY THE Town Council of the Town of Paradise, County of Butte, State of California, on this ___ day of _____, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ronald Lasonde, Mayor

ATTEST:

DINA VOLENSKI, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney



Town of Paradise

Council Agenda Summary

Agenda Item: 2(d)

Date: February 13, 2024

ORIGINATED BY: Jessica Erdahl, Supervising Project Manager
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Accept Construction Contract - 2023 On-System Roadway Rehabilitation – Pearson (Project 2)/ HSIP Systemic Intersection Safety Improvement Project
LONG TERM RECOVERY PLAN: Yes, Tier 1, Evacuation Routes

COUNCIL ACTION REQUESTED:

1. Consider adopting Resolution No. 2024-____, “ A Resolution of the Town Council of Town of Paradise accepting the work performed under the 2023 On-System Roadway Rehabilitation – Pearson (Project 2)/ HSIP Systemic Intersection Safety Improvement Project Contract 7303.2 CON performed by Baldwin Contracting Company, Inc. dba Knife River Construction.”

Background:

Due to the ongoing recovery effort and debris removal operations within the Town and Butte County, the Town’s on-system roadway infrastructure sustained heavy damage in the wake of the Camp Fire. The pavement structural sections were damaged in two ways:

1. Pavement scarring due to car fires – on the day of the Camp Fire, several motorists were required to abandon their vehicles and continue evacuating on foot. The subsequent car fires damaged the pavement, justifying the need for repair.
2. Pavement structural section damage due to heavy truck traffic – Following the Camp Fire, the Town experienced a staggering level of truck traffic. During the CALOES Debris Removal effort, over 3.7 million tons of material was removed, equivalent to approximately 300,000 truckloads. During that same period, PG&E, Comcast, and AT&T restored their damaged distribution infrastructure. Additionally, PG&E removed over 92,000 trees, and an additional 100,000 trees were removed in 2020 as part of the Hazard Tree Removal Program. The volume of trucks using the Town’s on-system roads has resulted in damage to the pavement structural section, justifying the need for rehabilitation.

The Town coordinated with Caltrans and Federal Highways Administration (FHWA) to secure Emergency Relief permanent restoration funding to repair damaged on-system roads town wide. Through the Emergency Relief Program, the Town of Paradise has been approved for \$55,439,200 for the on-system road rehabilitation project. The approved project is located on Federal-Aid “On-System” roads – meaning the Town’s primary collectors and arterials such as Skyway, Clark, Pearson, Elliott, Bille, Wagstaff, Pentz, etc.

Additionally, in 2018 the Town has been approved for \$1,229,300 in Cycle 9 Highway Safety Improvement Program (HSIP) funds to improve safety at sixteen stop-controlled intersections at various locations. The countermeasure will be to systemically improve minor street approaches with a combination of additional intersection warning/regulatory signs, improved pavement markings, and providing improved sight triangles. For efficiency this project will be bid and constructed with the On-System Road Rehabilitation projects.

On November 10, 2020, Paradise Town Council awarded master on-call contracts to Mark Thomas, Dokken Engineering, GHD, Inc., Wood Rodgers, Inc. and Dewberry Drake Haglan to perform on-call professional civil engineering services for a variety of local, state, and federally funded projects. Subsequently, in January 2021, task orders were issued to Mark Thomas, Dokken Engineering, and Wood Rodgers, Inc. to perform civil design services on the on-system road rehabilitation project.

The overall scope of work for the combined 2023 Road Rehabilitation and HSIP Project can be summarized as follows:

- Repair Camp Fire damaged on-system roads to achieve a pre-fire condition.
- Improve safety at three stop-controlled intersection with a combination of striping, warning/regulatory signs, improved pavement markings and providing improved sight triangles.

On June 14, 2022 Paradise Town Council awarded Contract No. 7303.1.CON, 2022 On-System Roadway Rehabilitation –Skyway (Project 1) to Baldwin Contracting Company, Inc. dba Knife River Construction in the amount of their base bid plus additive bid \$5,069,864.78 and approved contingency expenditures not exceeding 10%.

On January 10, 2023 Paradise Town Council awarded Contract No. 7303.2.CON, 2023 On-System Roadway Rehabilitation – Pearson (Project 2) to Baldwin Contracting Company, Inc. dba Knife River Construction in the amount of their base bid, \$5,339,517.50 and approved contingency expenditures not exceeding 10%.

Analysis:

Construction efforts began on April 3, 2023 and the project was substantially complete on September 19, 2023.

Financial Impact:

FHWA Emergency Relief and HSIP funds have been authorized for construction and construction engineering phases at actual documented cost incurred.

The total estimated construction cost of the Project, including a 10% contingency, was \$5,873,496 contract award. The actual total construction cost is \$5,783,056, below budget. Project expenditures and a funding summary is detailed below:

On-System Road Rehabilitation ER 5425(012)

Contract Items	Total Estimated Cost	Total Participating Cost	Emergency Relief 75.25 %	CDBG-DR Match 24.75%	Non-Participating (Utility Adjustments)
Construction Contract - Actuals	\$ 5,756,881	\$ 5,454,907	\$ 4,104,817	\$ 1,350,089	\$ 301,974
Construction Management - Est.	\$ 620,000	\$ 620,000	\$ 466,550	\$ 153,450	\$ -
Total	\$ 6,376,881	\$ 6,074,907	\$ 4,571,367	\$ 1,503,539	\$ 301,974
Total Available Funding CON/CE	\$ 47,164,110	\$ 46,482,748	\$ 34,978,268	\$ 11,504,480	\$ 301,974
Balance	\$ 40,787,229	\$ 40,407,841	\$ 30,406,901	\$ 10,000,941	\$ (0)

Systemic Safety Improvements HSIPL 5425 (041)

Contract Items	Total Estimated Cost	Total Participating Cost	HSIP 5425(041) 90%	LTF HSIP Match 10%
Construction Contract - Actuals	\$ 26,175	\$ 26,175	\$ 23,557	\$ 2,617
Construction Management - Est.	\$ 5,000	\$ 5,000	\$ 4,500	\$ 500
Total	\$ 31,175	\$ 31,175	\$ 28,057	\$ 3,117
Total Available Funding CON/CE	\$ 421,542	\$ 421,542	\$ 379,388	\$ 42,154
Balance	\$ 390,368	\$ 390,368	\$ 351,331	\$ 39,037

Required On-System Road Rehabilitation matching funds, \$1,503.539 (24.75%), will be funded by Community Development Block Grant-Disaster Recovery funds. Required HSIP matching funds, \$3,117 (10%), will be funded by Local Transit Funds. Utility partners will reimburse the Town for non-participating utility adjustments.

Attachments:

- A. Resolution
- B. Notice of Completion

**TOWN OF PARADISE
RESOLUTION NO. 2024- _____**

**A RESOLUTION OF THE TOWN COUNCIL OF TOWN OF PARADISE ACCEPTING THE
WORK PERFORMED UNDER THE 2023 ON-SYSTEM ROADWAY REHABILITATION –
PEARSON (PROJECT 2)/ HSIP SYSTEMIC INTERSECTION SAFETY IMPROVEMENT
PROJECT CONTRACT 7303.2 CON PERFORMED BY TO BALDWIN CONTRACTING
COMPANY, INC. DBA KNIFE RIVER CONSTRUCTION**

WHEREAS, the Town of Paradise has heretofore contracted with Baldwin Contracting Company, Inc. dba Knife River Construction for certain work performed under that certain project known as the 2023 On-System Roadway Rehabilitation – Pearson (Project 2)/ HSIP Systemic Intersection Safety Improvement Project, being Contract No. 7303.2 CON; and

WHEREAS, said work of improvements, as called for by the contract between the Town of Paradise and Baldwin Contracting Company, Inc. dba Knife River Construction, referable to said project was completed on September 19, 2023 to the satisfaction of the Town; and

WHEREAS, there has been posted a bond insuring the work of improvements from a maintenance standpoint for a period of one year from and after completion.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise that it hereby accepts the work performed on those certain improvements, the subject of a contract between the Town of Paradise and Baldwin Contracting Company, Inc. dba Knife River Construction, known and referred to as the 2023 On-System Roadway Rehabilitation – Pearson (Project 2)/ HSIP Systemic Intersection Safety Improvement Project.

BE IT FURTHER RESOLVED that the Town Manager or a designee is authorized to execute any necessary documents related to this acceptance.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 13th day of February, 2024, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:**

By: _____
Ron Lassonde, Mayor

ATTEST:

Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney

RECORDING REQUESTED BY:

TOWN OF PARADISE

AND WHEN RECORDED MAIL TO:

TOWN CLERK
TOWN OF PARADISE
5555 SKYWAY
PARADISE, CA 95969

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF COMPLETION

Notice is hereby given:

1. The undersigned is Owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the undersigned is Town of Paradise, a Municipal Corporation
3. The full address of the undersigned is 5555 Paradise, California 95969
4. The nature of the title of the undersigned is: IN FEE
5. The full names and full addresses of all persons, if any, who hold such interest or estate with the undersigned as joint tenants or as tenants in common are:

NAMES

ADDRESSES

None

6. The names of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work or improvements herein referred to:

NAMES

ADDRESSES

None

7. A work of improvement on the property hereinafter described was completed on September 19, 2023
8. The name of the original contractor, if any, for such work of improvement is Baldwin Contracting Company, Inc. dba Knife River Construction of Chico, CA
9. The property on which said work of improvement was completed is in the Town of Paradise, County of Butte, State of California, and is described as follows:

On-System Road Rehabilitation Project 7303.2.CON

10. The street address of said property is Various Roads, Paradise, CA
(If no street address has been officially assigned, insert "None.")

Dated: February 14, 2024

Signature of Owner
named in Paragraph 2:
TOWN OF PARADISE

By: _____
Jim Goodwin
Town Manager, Town of Paradise

VERIFICATION

I, the undersigned say:

I am the Town Manager for the Town of Paradise, agent for the owner of the aforesaid interest or estate in the property described in the above notice:

I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are the true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2024 at Town Hall, Town of Paradise, Paradise, California.

TOWN OF PARADISE

Jim Goodwin, Town Manager

Project Name: On-System Road Rehabilitation Project 7303.2.CON



Town of Paradise

Council Agenda Summary

Agenda Item: 2(e)

Date: February 13, 2024

ORIGINATED BY: Dina Volenski, Town Clerk/Elections Official
Crystal Peter, Human Resources Director

REVIEWED BY: Scott E. Huber, Town Attorney
Jim Goodwin, Town Manager

SUBJECT: Authorize destruction of certain records maintained in the Town Clerk and Human Resources Departments in keeping with the principles of an effective and cost-efficient Records Management Program.

LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Adopt Resolution No. 2024-___, "A Resolution of The Town Council of the Town of Paradise Authorizing Disposal of Certain Town Records Maintained in the Town Clerk Department Pursuant to Government Code Section 34090"; and,
2. Adopt Resolution No. 2024-___, "A Resolution of The Town Council of the Town of Paradise Authorizing Disposal of Certain Town Records Maintained in the Human Resources Department Pursuant to Government Code Section 34090."; or,
3. Make the determination that certain records listed for destruction have value to the agency, and direct that all or some of the records listed in Exhibit B continue to be maintained.

Background:

The Town has had an established records management program since the early 1980's. Based upon recommendations from the California Secretary of State, all Town records have been appraised, inventoried and scheduled with a retention/destruction code pursuant to Town of Paradise Resolution No. 04-27 (original schedule was adopted in 1993 by Resolution No. 93-30). This resolution provides the Town with legal authority to dispose of certain records that are no longer required by the Town.

Analysis:

Once records have fulfilled their administrative, fiscal, or legal function they should be disposed of as soon as possible to maintain an efficient, effective and economical management of information. Resolution No. 04-27 provides for the legal authority, with the Town Attorney's consent, to dispose of records that no longer serve the administrative, legal and/or fiscal purposes for which they were created. Since the records are eligible for destruction and no longer have value to the Town, it is appropriate that the Council adopt the proposed resolutions.

Financial Impact:

No additional cost will be borne by the Town in destroying these records. The Finance Division already contracts for regular shredding service and any documents not containing confidential or sensitive information will be recycled.

**TOWN OF PARADISE
RESOLUTION NO. 2024- ____**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
AUTHORIZING DISPOSAL OF CERTAIN TOWN RECORDS MAINTAINED IN THE
TOWN CLERK DEPARTMENT PURSUANT TO
GOVERNMENT CODE SECTION 34090.**

WHEREAS, Government Code Section 34090 authorizes the head of a Town department, with the written consent of the Town Attorney, to destroy certain records over two years of age upon approval of the legislative body; and,

WHEREAS, the Town Attorney consent is incorporated into this resolution as Exhibit A approving the destruction of those certain records set forth in Exhibit A; and,

WHEREAS the specific records are set forth on Exhibit B; and,

WHEREAS, the Town Clerk is requesting to dispose of certain records maintained in the Town Clerk Department as set forth on the attached Exhibit B.

NOW, THEREFORE, the Town Council of the Town of Paradise does resolve as follows:

SECTION 1: The Town Clerk of the Town of Paradise is hereby authorized to dispose of the records set forth in Exhibit "B" of this resolution.

PASSED AND ADOPTED by the Town Council of the Town of Paradise this 13th day of February, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ron, Lasonde Mayor

ATTEST:

Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney

EXHIBIT "A"

Consent to Destruction of Certain Records, Documents and Papers of the Town of Paradise

Pursuant to the Government Code Section 34090, I hereby consent to the destruction of those certain records, documents and papers of the Town of Paradise listed on Exhibit B attached to Resolution No. 2024- ____.

DATED: February 13, 2024

Scott E. Huber, Town Attorney

EXHIBIT “B” LIST OF FILES ELIGIBLE FOR DESTRUCTION

BOX 2021-00001

SUBJECT NO.	DESCRIPTION
155-15-020	Freedom of Information Act Requests (FOIA) 2015-2016
155-15-023	Freedom of Information Act Requests (FOIA) 2017-2018
155-15-024	Freedom of Information Act Requests (FOIA) Brigit S. Barnes & Associates, Inc.
155-15-025	Freedom of Information Act Requests (FOIA) Michael J. Orr File #1 and File #2

BOX 2022-00002

SUBJECT NO.	DESCRIPTION
N/A	Agenda Packets January September 2020 -August 2021

BOX 2022-00003

SUBJECT NO.	DESCRIPTION
N/A	Agenda Packets September 2021-December 2021
	FINANCIAL/FISCAL
395-40-004	Business Licenses (2018)
	PERSONNEL
620-20-031	Ursula Smith
	HEALTH, SAFETY & WELFARE
410-10-007	Animal Control Administrative Hearings 2016-2018
	ADMINISTRATION
155-15-022	Freedom of Information (FOIA) Public Records Request -Bailey/Braun

Reviewed by:

 Dina Volenski, CMC, Town Clerk

**TOWN OF PARADISE
RESOLUTION NO. 2024-__**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
AUTHORIZING DISPOSAL OF CERTAIN TOWN RECORDS MAINTAINED IN
STORAGE FOR THE HUMAN RESOURCES DEPARTMENT PURSUANT TO
GOVERNMENT CODE SECTION 34090.**

WHEREAS, Government Code Section 34090 authorizes the head of a Town department, with the written consent of the Town Attorney, to destroy certain records over two years of age upon approval of the legislative body; and,

WHEREAS, the Town Attorney consent is incorporated into this resolution as Exhibit A approving the destruction of those certain records set forth in Exhibit “B”; and,

WHEREAS the specific records are set forth on Exhibit “B”; and,

WHEREAS, the Human Resources Director is requesting to dispose certain records maintained in the Human Resources and Town Clerk Departments as set forth on the attached Exhibits “B”.

NOW, THEREFORE, the Town Council of the Town of Paradise does resolve as follows:

SECTION 1: The Human Resource Director of the Town of Paradise is hereby authorized to dispose of the records set forth in Exhibit “B ”of this resolution.

PASSED AND ADOPTED by the Town Council of the Town of Paradise this 13th day of February 2024, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

Ron Lassonde, Mayor

ATTEST:

Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney

TOWN OF PARADISE
RESOLUTION NO. 2024- ____
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
AUTHORIZING DESTRUCTION OF CERTAIN TOWN RECORDS
PURSUANT TO GOVERNMENT CODE SECTION 34090

“EXHIBIT A”

**Consent to Destruction of Certain Records, Documents
and Papers of the Town of Paradise**

Pursuant to the Government Code Section 34090, I hereby consent to the destruction of those certain records, documents and papers of the Town of Paradise listed on Exhibit “B” to Resolution No. 2024- ____.

DATED:

Scott E. Huber, Town Attorney

TOWN OF PARADISE
 RESOLUTION NO. 2024- ____
 A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
 AUTHORIZING DESTRUCTION OF CERTAIN TOWN RECORDS
 PURSUANT TO GOVERNMENT CODE SECTION 34090

EXHIBIT “B”
LIST OF FILES ELIGIBLE FOR DESTRUCTION

PERSONNEL – Closed + 4 years	
CERTIFICATES OF LIABILITY – Closed + 2 years	
Administrative Assistant – Police Dept.	8/29/2019
Communications/Record Supervisor	5/28/2019
Environmental Technician	8/6/2019
Fleet Maintenance Shop Foreman	2/21/2019
Police Officer	9/9/2019
Police Sergeant	11/15/2019
Police Officer Trainee	05/31/2019
Public Safety Dispatcher	6/30/2019
Public Works Director/Town Engineer	10/14/2019
Public Works Maintenance Worker I/II	11/14/2019
Senior Mechanic	10/30/2019
Public Safety Dispatcher	05/21/2018
Fire Marshal/Building Official	05/22/2018
Police Officer Trainee	07/24/2018
Public Works Maintenance Worker	09/04/2018
PT Animal Shelter Assistant	11/05/2018
IT Manager	11/19/2018
Police Lieutenant	11/2018
Various Certificates of Liability Insurance	2021

Reviewed by:

 Crystal Peters, Human Resources/Risk Management



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(f)

ORIGINATED BY: Colette Curtis, Recovery and Economic Development Director
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Resolution Accepting CalFire California Climate Investments Program Grant for Category 4 Tree Removal
LONG TERM RECOVERY PLAN: Yes

COUNCIL ACTION REQUESTED:

1. Consider adopting Resolution No. 2024- ____ to finalize and obligate the CalFire California Climate Investment Grant Agreement in order to receive up to \$2,469,159.00 in match funding for Phase 2 Tree Removal.

Background:

The Town Category 4 Tree Removal Program Completed Phase 1 in December of 2022. The assessment phase of the project identified nearly 12,000 eligible trees on 574 parcels. The Town had been concerned that the 25% property owner match requirement could exponentially decrease the number of property owners able to proceed with Phase 2 removal and ultimately result in a large percentage of eligible trees remaining in the community that are a fire hazard, safety hazard, and impediment to recovery post Camp Fire.

The Town pursued grant opportunities to fulfill this 25% match requirement and was recently granted funding through the CalFire California Climate Investment Program. This grant for up to \$2,469,159.00 will cover the entirety of the property owner and Town match requirements for Phase 2 of the tree removal program.

On October 9, 2023, the Town of Paradise Council voted to accept the CalFire CCI grant. The final step required by CalFire to obligate the funds for the project is to pass the attached resolution accepting the funding.

Analysis:

This grant for up to \$2,469,159.00 will cover the entirety of the property owner and Town match requirements for Phase 2 of the tree removal program.

The Town continues to work with FEMA and CalOES in order to move forward with removal of identified trees and currently anticipates removal beginning in Spring of 2024.

This grant partnership with CAL FIRE is essential to the success of the Category 4 tree removal program.

Financial Impact:

This grant agreement will provide up to \$2,469,159.00 in funding to cover match requirements for property owners as well as match requirements for Town expenses. This alleviates expense concerns for this project for both enrolled private property owners and the Town of Paradise.

RESOLUTION OF THE TOWN COUNCIL OF PARADISE, STATE OF CALIFORNIA

Resolution Number: 2024-_____

WHEREAS, the Governor of the State of California in cooperation with the California State Legislature has enacted State of California Climate Investment, which provides funds to the State of California and its political subdivisions for fire prevention programs; and

WHEREAS, the State Department of Forestry and Fire Protection (CAL FIRE) has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing application by local agencies, non-profit organizations, and others under the program, and

WHEREAS, the applicant will enter into an agreement with the State of California to carry out the Category 4 Tree Removal project;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise the following:

1. Supported the filing of an application for “California Climate Investments Wildfire Prevention Grants Program”; and
2. Certifies that said applicant has or will have sufficient funds to operate and maintain the project; and,
3. Certifies that funds under the jurisdiction of the Town of Paradise are available to begin the project.
4. Certifies that said applicant will expend grant funds prior to December 31, 2025
5. Authorizes the Town Manager or a designee, to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the aforementioned project.

The foregoing resolution was approved and adopted the 13th day of February, 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ronald Lassonde, Mayor

---CERTIFICATION OF RESOLUTION---

Please note the person attesting cannot be the person(s) appointed in (5.)

ATTEST:

I _____, (Town Clerk) of the Town of Paradise witness my hand or the seal of the Town of Paradise on the _____ day of _____, 20_____.

Signature

Title

OFFICIAL SEAL OR NOTARY
CERTIFICATION
(if applicable)



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(g)

ORIGINATED BY: Aimee Beleu, Finance Director/Town Treasurer
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Annual Review of Town of Paradise Investment Policy
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Review and approve Town of Paradise Investment Policy – Administrative Policy No. 140.

Background:

Staff is submitting an Investment Policy for Town Council’s review and approval.

The investment policy was last approved by Town Council on December 13, 2022. Per the Policy, and California Government Code Section 53646, the Investment Policy is to be reviewed by the Treasurer and submitted to Town Council for consideration annually.

Analysis:

Changes include the following:

1. The Town may engage the services of external investment advisors to assist in the management of the Town’s investment portfolio in a manner consistent with the Town’s objectives. Such advisors may be granted discretion to purchase and sell investment securities in accordance with the Policy. Such advisors must be registered with the Security and Exchange Commission and possess experience in public funds investment management. All broker/dealers selected by an external advisor must comply with the requirements of California Government code Section 53601.5
2. Timing at which investment reports will be submitted, 30 days following the release of interest returns of the prior quarter.
3. Enabling the Town Manager to invest in preauthorized JPA pools in the absence of the Town Treasurer.

All current reserve investments adhere to this policy and will continue to be monitored closely to ensure ongoing compliance.

Financial Impact:

There is no financial impact associated with review and approval of the Investment Policy.

Town of Paradise



140 Investment Policy

**Approved by Town Council
February 13, 2024**

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II. PURPOSE

This investment policy is intended to provide guidelines for the prudent investment of the temporary idle cash of the Town of Paradise and to outline the policies for maximizing the efficiency of the Town's cash management system. The ultimate goal is to enhance the financial status of the Town of Paradise, while protecting its pooled cash.

III. SCOPE

The Town of Paradise cash management system is designed to accurately monitor and forecast revenues and expenditures, thus enabling the Town of Paradise to invest funds to the fullest extent possible. The Town of Paradise will attempt to obtain the highest yield obtainable, as long as investments meet the criteria established for safety and liquidity.

The Town of Paradise operates its pooled cash investments under the "Prudent Investor" standard pursuant to California Government Code Section 53600.3, and within the specific terms governing investments for municipal governments as set forth in California Government Code Sections 53600 through 53659.

The Town of Paradise shall strive to maintain the level of investment of all idle funds as near 100% as possible, through projected cash flow determinations. Idle cash management and investment transactions are the responsibility of the Town Treasurer, and the Town of Paradise Investment Committee.

IV. OBJECTIVES

Criteria for selecting investments and the order of priority are:

A. Safety

The safety and risk associated with an investment refers to the potential loss of principal, interest or a combination of these amounts. All "allowable investments" are of a very high quality and would be considered extremely safe and conservative.

B. Liquidity

An adequate percentage of the portfolio will be maintained in liquid short term securities that can be converted to cash as necessary to meet disbursement requirements. The liquidity percentage will be determined from time to time from projected cash flow reports. Investments will be made in securities with active secondary and resale markets.

C. Yield

Within the constraints of safety and liquidity, the highest and best return will be sought. The investment portfolio will be designed to attain a market average rate of return, taking into account the Town's risk constraints, the cash flow characteristics of the portfolio, and state law.

D. Maturity

The maturity of each investment shall not exceed a period of five years. Maturities shall be selected to anticipate cash needs, thus avoiding forced liquidations.

E. Diversification

The portfolio will be diversified to avoid incurring unreasonable and unavoidable risks regarding specific security types or individual financial institutions.

F. Prudence

Person(s) authorized to make investment decisions on behalf of local agencies are trustees and therefore, fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling and managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, a trustee is authorized to acquire investments as authorized by law.

G. Public Trust

All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust. In a diversified portfolio it must be recognized that occasional measured losses are inevitable and must be considered within the context of the overall investment return.

H. Non-Discriminatory

The Town of Paradise shall not knowingly make or allow investments in any institution, company, corporation, subsidiary or affiliate that practices or supports, directly or indirectly through its actions, discrimination on the basis of race, religion, creed, national or ethnic origin, age, sex, sexual preference or physical disability.

V. AUTHORITY TO INVEST

In accordance with the State of California Government Code section 53607, the Town Council has delegated the authority to invest with the Town Finance Director. The Town may engage the services of external investment advisors to assist in the management of the Town's investment portfolio in a manner consistent with the Town's objectives. Such advisors may be granted discretion to purchase and sell investment securities in accordance with the Policy. Such advisors must be registered with the Security and Exchange Commission and possess experience in public funds investment management. All broker/dealers selected by an external advisor must comply with the requirements of California Government code Section 53601.5~~California Government Code Section 53600 et seq. provides legal authorization for investment of funds of local agencies. All investments of the Town of~~

~~Paradise shall conform to the provisions of these laws.~~

VI. REPORTING REQUIREMENTS

A. Annually

In accordance with the California Government Code Section 53646, the Town Treasurer will annually submit to the Town Council and the Investment Committee (consisting of the Town Manager, Finance Director/Town Treasurer, and one member of Town Council,) a statement of investment policy which the Town Council shall consider at a public meeting. The policy shall be reviewed on an annual basis by the Treasurer and the Investment Committee. Any investment held at the time this Investment Policy is adopted that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, however, such monies shall be reinvested only as provided by this policy.

B. Quarterly

Pursuant to California Government Code Sections 53607 and 53646, the Town Treasurer shall submit a quarterly report (the "Report") detailing the performance of the investment portfolio to the Town Council and the Investment Committee. The Report will be submitted to the Town Council within 30 days following the release of interest returns of the prior end of the~~quarter~~. The Report will contain the following:

1. Type of investment
2. Issuer
3. Date of maturity
4. The par value
5. The cost of all funds invested subject to this policy
6. The current market value of securities with the source of the market valuation for all securities held by the Town, and under management of any outside party that is not also a local agency, or the State of California Local Agency Investment Fund (LAIF)
7. Rate of interest
8. A statement of compliance with the investment policy
9. Accrued interest
10. Interest earned to date
11. Average weighted book yield
12. Average term to maturity
13. Transactions
14. Percentage distribution of investment types
15. Modified duration
16. Total rate of return

VII. INTERNAL CONTROLS

The Town Treasurer, in cooperation with the Investment Committee, shall develop a

system of internal investment control procedures and a segregation of responsibilities of investment functions in order to assure an adequate system of internal control over the investment function. Internal control procedures shall address wire controls, separation of duties, delivery of securities to a third party for custodial safekeeping, and written procedures for placing investment transactions.

VIII. EXTERNAL CONTROLS

The Town's external auditor will review and verify the Town's investment activity, holdings and compliance with this Investment Policy on an annual basis, and submit a report to the Town Council relating thereto. The external auditor shall maintain errors and omissions insurance coverage.

IX. QUALIFIED DEALERS AND INSTITUTIONS

The Town shall transact business only with banks, savings and loans, and registered investment securities dealers. The purchase of any investment, other than those purchased directly from the issuer, shall be purchased either from an institution licensed by the State as a broker-dealer, as defined in Corporation Code Section 25004, or from a member of a federally regulated securities exchange, from a national or state chartered bank, from a savings association or federal association (as defined by Financial Code Section 5102), or a brokerage firm designated as a Primary Government Dealer by the Federal Reserve Bank.

The Town Treasurer and the Investment Committee shall investigate all institutions that wish to do business with the Town, in order to determine if they are adequately capitalized, make markets in securities appropriate to the Town's needs, and agree to abide by the conditions set forth in this Investment Policy. All financial institutions and broker-dealers who desire to become qualified bidders for investment transactions must provide a current audited financial statement, sign a statement that they have received a copy of this Investment Policy and will abide by its conditions, and document that they are properly regulated as indicated above.

X. COLLATERAL REQUIREMENTS

California Government Code, Sections 53652 through 53667 requires depositories to post certain types and levels of collateral for public funds above the Federal Deposit Insurance Corporation ("FDIC") insurance amounts. The collateral requirements apply to bank deposits, both active (checking and savings accounts) and inactive (non-negotiable time certificates of deposit).

Collateral is also required for repurchase agreements. The collateral level shall be valued daily and must be maintained at a level of 102% for the life of the repurchase agreement.

XI. AUTHORIZED INVESTMENTS AND DIVERSIFICATION

Securities purchased will be maintained within the statutory requirements imposed by California Government Code Section 53601. The Government Code currently allows for the following:

	Maximum % of Portfolio	Minimum Quality	Maximum Maturity
A. Asset Backed Securities	20%	Rated "AA" or better by NRSRO	5 Years
B. Bankers Acceptances	40% (30% of any one bank)	N/A	180 Days
C. Collateralized Bank Deposits	Unlimited	N/A	5 Years
D. Commercial Paper	25% (10% of single issuer)	Highest ranking of NRSRO	270 Days
E. Local Agency Investment Fund	Unlimited	Assets exceed \$500 million	5 Years
F. Medium Term Notes	30%	Rated "A" or better by NRSRO	5 Years
G. Mutual Funds	20% (10% of any one fund)	Highest rating by two NRSRO	5 Years
H. Certificates of Deposit	30%	N/A	5 Years
I. Repurchase Agreements	20%	Primary dealers	1 Year
J. Subnationals: IBRD, IFC, IADB	30%	Rated "AA" or better by NRSRO	5 Years
K. Treasury Bills and Notes	Unlimited	N/A	5 Years
L. US Government, State(s) and Agency Securities	Unlimited	N/A	5 Years

If the California Government Code adopts more restrictive investment restrictions, then those restrictions will have precedence over those listed above.

Funds deposited with a trustee for the purpose of debt reserve or future payment of indebtedness may be invested in accordance with the covenant of the trust agreement.

Investments shall be purchased according to the minimum credit standards listed above. In the event of a downgrade in credit after the date of purchase, the Town Treasurer shall advise the Investment Committee and will make a recommendation as to the disposition of the security.

XII. PROHIBITED INVESTMENTS

The following investments are prohibited under this Investment Policy:

- A. Investments not specifically stated under "authorized investments".
- B. The Town will not invest in inverse floaters, range notes, or mortgage derived, interest-only strips.
- C. The Town will not invest in any security that could result in zero interest accrual if held to maturity.

XIII. SAFEKEEPING AND CUSTODY

Securities purchased from broker/dealer will be held in a third-party custodian/safekeeping account except the collateral for time deposits in banks and savings and loans. Collateral for time deposits shall be held in accordance with California law.

XIV. DELEGATION OF AUTHORITY

The Town Treasurer is authorized to invest the Town's idle funds in accordance with California Government Code Sections 53600 et seq., 16429.1 and 53684. In the absence of the Town Treasurer the investment of the funds will be delegated to the Town Manager. Investments made by the Town Manager will be restricted to Joint Power Authority (JPA) Investment Pools authorized under California Government Code Section 53601 previously authorized by Town Council, ~~the State managed California Local Agency Investment Fund ("LAIF"), or to securities maturing within six months. Prior to investing in securities, the Town Manager will consider the cash flow requirements of the Town and may invest in securities maturing over six months if directed by the Treasurer in writing or verbally, if confirmed in writing within 30 days.~~

XV. ETHICS AND CONFLICTS OF INTEREST

The Town Treasurer and other officers, officials, and/or employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program or which could impair their ability to make impartial investment decisions. The Treasurer, other officers, officials and/or employees involved in the investment process shall disclose to the Town Council any material interest in financial institutions with which they conduct business. They shall further disclose to the Town Council any personal financial/investment positions that could be related to the performance of the investment portfolio and shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of their entity. The Treasurer, other officers, officials, and/or investment employees are required to file annual disclosure statements as required by the Fair Political Practices Commission ("FPPC"). During the course of the year, if there is an event

subject to disclosure that could impair impartial decisions, the Town Council will be notified in writing within ten (10) days of the event.



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(h)

ORIGINATED BY: Scott E. Huber, Town Attorney
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Modification of Assignment to the Legislative Committee
LONG TERM RECOVERY PLAN: N/A

COUNCIL ACTION REQUESTED:

1. Consider adopting Resolution No. 2024 - ____, "A Resolution of the Town Council of the Town of Paradise to Assign Council Member Participation to the Legislative Committee."

Background:

On February 14, 2023 Town Council created the Legislative Ad Hoc Committee for the purpose of tracking state and federal legislation and administrative regulation that have an impact on the Town. Committee members regularly report to the Council to seek direction as to what position they should take when interacting with elected and appointed officials. The Mayor and Vice Mayor were selected to represent the Council on the Legislative Ad Hoc Committee for the remainder of the 2023 calendar year. On December 12, 2023 Town Council completed their annual appointments for the upcoming calendar year for representatives and alternates to local and county committees/commissions. At that meeting two Council Members were appointed to the Legislative Committee who were not the Mayor and Vice Mayor.

At the January 9, 2024 Council Meeting, the Council reviewed the assignments of two committees due to a resignation. After discussion, the Town Council directed staff to return with a Resolution for formal adoption of the Legislative Committee with an assignment of the Mayor and Vice Mayor or his or her designee on the committee.

Analysis:

By prior action of the Council, the Legislative Committee representatives were assigned to the Mayor and Vice Mayor. At the direction of Council, the assignment to the Legislative Committee should be modified as such that the Mayor and Vice Mayor may designate an alternate Council Member to take their place on the Committee in the event it becomes necessary.

Financial Impact:

None.

**TOWN OF PARADISE
RESOLUTION NO. 2024- ____**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE TO
ASSIGN COUNCIL MEMBER PARTICIPATION TO THE LEGISLATIVE COMMITTEE**

WHEREAS, the Town Council has various committees to gather information and to perform certain functions on behalf of the Town Council; and

WHEREAS, the Town Council created a Legislative Committee on February 14, 2023 which previously assigned the Mayor and Vice Mayor to serve on the Legislative Committee; and

WHEREAS, the Town Council would like to modify the assignment to the Legislative Committee to provide more flexibility in the assignment to that Committee.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Paradise as follows:

Section 1. The Town Council hereby assigns the Mayor and Vice Mayor, or their Council Member designee, to serve on the Legislative Committee.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 13th day of February, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: _____
Ronald Lassonde, Mayor

ATTEST:

Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney



Town of Paradise

Council Agenda Summary

Agenda Item: 2(i)

Date: February 13, 2024

ORIGINATED BY: Eric Reinbold, Chief of Police
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Declaration of Certain Town Equipment from the Police Department to be Surplus and Obsolete.

LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Declare the attached Police Department equipment as surplus property; and
2. Adopt Resolution No. 2024-___, A Resolution of the Town Council of the Town of Paradise declaring certain Town Equipment to be surplus and obsolete and authorizing disposal by the Town Manager or his designee.

Background:

Over time, equipment, such as firearms, vehicles, Preliminary Alcohol Screening (PAS) devices, and computers are purchased, used, become obsolete and are replaced. The Generation 3, Glock 21C handgun, vehicle, computer equipment, and PAS devices listed below may be declared as unusable or outdated as they are no longer economical or effective to be used for Town purposes.

The handgun listed below is not economical to maintain or repair. Its discontinued parts and large frame size makes it impractical to be used by all personnel. The vehicle listed below is worn and in need of repair, and has been replaced by a new vehicle. With the age and condition of this vehicle, it is not economical to repair, and is no longer needed for Police operations. It is recommended that any useable equipment be removed and repurposed, the markings be removed as required, and the vehicle properly disposed. The computer equipment listed below is over 10 years old, is no longer manufactured, is not fully operational, and is not economically repairable. Any memory should be securely wiped, and the equipment properly disposed. The PAS devices listed below are obsolete and incapable of being calibrated as required by legal standards, and should be properly disposed. The miscellaneous vehicle parts listed below have been removed from vehicles over the years and have accumulated more parts than are needed to repair or replace parts on other vehicles and should be properly disposed. It is recommended that all these items be disposed of as surplus property through proper procedures.

FINANCIAL IMPACT:

All the listed equipment has been replaced. The disposal of these items will have no negative impact on the General Fund.

Property to Surplus:

1. Generation 3 Glock 21C
 - a. The Gen 3 Glock 21C is a .45 caliber, semi-auto handgun, serial number DXX677, with a 4.6" barrel, is to be surplus.
2. Police Crown Victoria Police Interceptor (CVPI)
 - a. The Ford Crown Victoria Police Interceptor is a purpose-built Law Enforcement and fleet vehicle. It has been out of production for over 10 years, making OEM quality parts more difficult to obtain. PD06, a 2000 Ford Crown Victoria Police Interceptor, VIN 2FAFP71W2YX202424, License 1065092, mileage 142,598, is to be surplus.
3. Computer Equipment
 - a. Mobile Data Computer (MDC) – The Panasonic Toughbook CF-31 is a ruggedized laptop computer that the Police Department utilized as an MDC in a marked Patrol vehicle. MDC serial number 1AKYA45516 is inoperable and obsolete, and is to be surplus.
 - b. Laser Printer – The HP CB514A laser printer Serial Number CNDY178245, was utilized in Police Dispatch and is no longer operable, is obsolete, has been replaced, and is to be surplus.
4. Preliminary Alcohol Screening (PAS) Devices
 - a. The PAS devices must be certified calibrated weekly for the DUI screening test with the PAS device to be admissible evidence in court proceedings. These PAS devices will no longer properly calibrate, their readings cannot be used for court proceedings. The following PAS devices are to be surplus:
 - i. Intoximeters Alco-Sensor III, S/N 1072707
 - ii. Intoximeters Alco-Sensor III, S/N 1092900
 - iii. Intoximeters Alco-Sensor III, S/N 1092901
 - iv. Intoximeters Alco-Sensor III, S/N 1092906
 - v. Intoximeters Alco-Sensor III, S/N 1096106
 - vi. Intoximeters Alco-Sensor III, S/N 1096107
 - vii. Intoximeters Alco-Sensor III, S/N 1096108
 - viii. Intoximeters Alco-Sensor III, S/N 1096110
 - ix. Intoximeters Alco-Sensor IV, S/N 002953
 - x. Intoximeters Alco-Sensor IV, S/N 034968
 - xi. Intoximeters Alco-Sensor IV, S/N 070891
 - xii. Intoximeters Alco-Sensor IV, S/N 070893
 - xiii. Intoximeters Alco-Sensor IV, S/N 107246
 - xiv. Intoximeters Alco-Sensor IV, S/N 107247
 - xv. Intoximeters Alco-Sensor FST, S/N 013862
5. Miscellaneous Automotive Parts
 - a. The miscellaneous automotive parts below have been removed from various vehicles and stored for future use in other vehicles utilizing the same parts. Over time, the supply of these parts has exceeded the stock necessary for expedient repair of other vehicles that may use the same parts. To reduce the excess spare parts inventory, the following items are

to be surplus:

- i. Two sets of Chevrolet Tahoe factory rear seat door panels for 2022 and newer Tahoes. These panels were replaced by aftermarket prisoner transport panels.
- ii. Two sets of Ford Explorer Police Interceptor Utility (PIU) factory rear seat door panels for 2016-2019 PIU's. These panels were replaced by aftermarket prisoner transport panels.
- iii. One set of PIU rear seats. These seats were replaced by aftermarket prisoner transport seats.
- iv. Three Federal Signal, Vector series light bars, 2 with amber light pod lenses, 1 with red & blue emergency vehicle light pod lenses.
- v. One unknown make & model, red and blue, LED, emergency vehicle light bar, removed from a full-size pickup converted from Police Department to Public Works use.
- vi. Six Whelen, Liberty series, non-CAN bus / non-WeCan, LED light bars and Whelen CenCom controllers, removed from previously surplus Crown Victoria Patrol vehicles.
- vii. Four (4) halogen work light sets on integrated stands, removed from previously surplus command trailer.

**TOWN OF PARADISE
RESOLUTION NO. 2024-__**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
DECLARING CERTAIN TOWN PROPERTY TO BE SURPLUS AND AUTHORIZING
DISPOSAL THEREOF**

WHEREAS, the Town of Paradise wishes to dispose of certain equipment from the Police Department through public auction, internet sale, salvage or other legal method that is no longer functional or necessary to the Town's operations.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise as follows:

Section 1. The following equipment is declared to be surplus:

1. Generation 3 Glock 21C
 - a. The Gen 3 Glock 21C is a .45 caliber, semi-auto handgun, serial number DXX677, with a 4.6" barrel, is to be surplus.
2. Police Crown Victoria Police Interceptor (CVPI)
 - a. The Ford Crown Victoria Police Interceptor is a purpose-built Law Enforcement and fleet vehicle. It has been out of production for over 10 years, making OEM quality parts more difficult to obtain. PD06, a 2000 Ford Crown Victoria Police Interceptor, VIN 2FAFP71W2YX202424, License 1065092, mileage 142,598, is to be surplus.
3. Computer Equipment
 - a. Mobile Data Computer (MDC) – The Panasonic Toughbook CF-31 is a ruggedized laptop computer that the Police Department utilized as an MDC in a marked Patrol vehicle. MDC serial number 1AKYA45516 is inoperable and obsolete, and is to be surplus.
 - b. Laser Printer – The HP CB514A laser printer Serial Number CNDY178245, was utilized in Police Dispatch and is no longer operable, is obsolete, has been replaced, and is to be surplus.
4. Preliminary Alcohol Screening (PAS) Devices
 - a. The PAS devices must be certified calibrated weekly for the DUI screening test with the PAS device to be admissible evidence in court proceedings. These PAS devices will no longer properly calibrate, their readings cannot be used for court proceedings. The following PAS devices are to be surplus:
 - i. Intoximeters Alco-Sensor III, S/N 1072707
 - ii. Intoximeters Alco-Sensor III, S/N 1092900
 - iii. Intoximeters Alco-Sensor III, S/N 1092901
 - iv. Intoximeters Alco-Sensor III, S/N 1092906
 - v. Intoximeters Alco-Sensor III, S/N 1096106
 - vi. Intoximeters Alco-Sensor III, S/N 1096107
 - vii. Intoximeters Alco-Sensor III, S/N 1096108

- viii. Intoximeters Alco-Sensor III, S/N 1096110
- ix. Intoximeters Alco-Sensor IV, S/N 002953
- x. Intoximeters Alco-Sensor IV, S/N 034968
- xi. Intoximeters Alco-Sensor IV, S/N 070891
- xii. Intoximeters Alco-Sensor IV, S/N 070893
- xiii. Intoximeters Alco-Sensor IV, S/N 107246
- xiv. Intoximeters Alco-Sensor IV, S/N 107247
- xv. Intoximeters Alco-Sensor FST, S/N 013862

5. Miscellaneous Automotive Parts

- a. The miscellaneous automotive parts below have been removed from various vehicles and stored for future use in other vehicles utilizing the same parts. Over time, the supply of these parts has exceeded the stock necessary for expedient repair of other vehicles that may use the same parts. To reduce the excess spare parts inventory, the following items are to be surplus:
 - i. Two sets of Chevrolet Tahoe factory rear seat door panels for 2022 and newer Tahoes. These panels were replaced by aftermarket prisoner transport panels.
 - ii. Two sets of Ford Explorer Police Interceptor Utility (PIU) factory rear seat door panels for 2016-2019 PIU's. These panels were replaced by aftermarket prisoner transport panels.
 - iii. One set of PIU rear seats. These seats were replaced by aftermarket prisoner transport seats.
 - iv. Three Federal Signal, Vector series light bars, 2 with amber light pod lenses, 1 with red & blue emergency vehicle light pod lenses.
 - v. One unknown make & model, red and blue, LED, emergency vehicle light bar, removed from a full-size pickup converted from Police Department to Public Works use.
 - vi. Six Whelen, Liberty series, non-CAN bus / non-WeCan, LED light bars and Whelen CenCom controllers, removed from previously surplus Crown Victoria Patrol vehicles.
 - vii. Four (4) halogen work light sets on integrated stands, removed from previously surplus command trailer.

Section 2. Pursuant to Paradise Municipal Code Section 2.45.130, the Town Manager is hereby authorized to dispose of the property set forth in Section 1 through public auction, internet, sale, salvage, donation, or other legal method.

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PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 13th day of February, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

By: _____
Ronald Lassonde, Mayor

ATTEST:

APPROVED AS TO FORM:

Dina Volenski, CMC, Town Clerk

Scott E. Huber, Town Attorney



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(j)

ORIGINATED BY: Aimee Belev, Finance Director/Town Treasurer
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Quarterly Investment Report
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

Review and file the 2nd Quarter Investment Report for the Fiscal Year ending June 30, 2024.

Background:

Attached is the report on the Town's cash and investments for the quarter ending December 31, 2023.

A US Bank checking account is currently being used for payroll, accounts payable and other operating purposes. Most accounts payable disbursements are drawn through checks, and most payroll disbursements are processed through direct deposit.

The Town has historically utilized the State of California managed Local Agency Investment Fund (LAIF) for investment of General Fund cash in excess of immediately needed operating capital. LAIF provides for same day liquidity as funds can be transferred electronically through computer authorization between LAIF and the Town checking account. LAIF has also provided historically competitive yields, with a return of 3.95% for the period ending December 31, 2023.

To provide additional opportunity for asset diversification, during the quarter ending September 30, 2022, the Town began utilizing the California Cooperative Liquid Assets Securities System (California CLASS) in conjunction with the aforementioned investment accounts to hold short-term reserves. California CLASS is a joint exercise of powers entity authorized under Section 6509.7, California Government Code. California CLASS is a pooled investment option that was created via a joint exercise of powers agreement (JPA Agreement) by and among California public agencies. California CLASS provides the Town with a convenient method for investing in high-quality, short- to medium-term securities carefully selected to optimize interest earnings while maximizing safety and liquidity. The California CLASS Prime fund has provided the Town with an opportunity to strengthen and diversify its cash management programs in accordance with the safety, liquidity, and yield hierarchy that governs the investment of public funds. During the third quarter of the fiscal year, CLASS has provided a very competitive yield, with a return of 5.55% for the quarter ending December 31, 2023.

In July 2020, the Town received a net settlement from PG&E related to the 2018 Camp Fire in the amount of \$219,187,262. Since that time, the Town continues to utilize three investment vehicles to manage these funds. Securities purchases are held in a custodial account with US Bank. The Town has contracted with Meeder Investments to assist with management of these funds. Excess funds that are not invested in specific securities are held in the State of California managed Local Agency Investment Fund (LAIF) and California CLASS. Future use of these funds continues to be evaluated through a long-term fiscal sustainability model. Based on current rebuild rates and revenue growth trends, at this time it is expected that at least 80% of the total fund balance will be required to be utilized for long-term revenue backfill to ensure continued fiscal sustainability. US Bank Custodial has provided yields of 1.64% for the quarter ending December 31, 2023.

In June of 2011, the Town established an irrevocable trust to begin funding the future obligations associated with retiree health as required by GASB 45. The funds are being managed by Self-Insured Schools of California (SISC) and can only be used for the payment of retiree health benefits. The statement from September 2023 is not available yet. Entries are rolled from September 30, 2023.

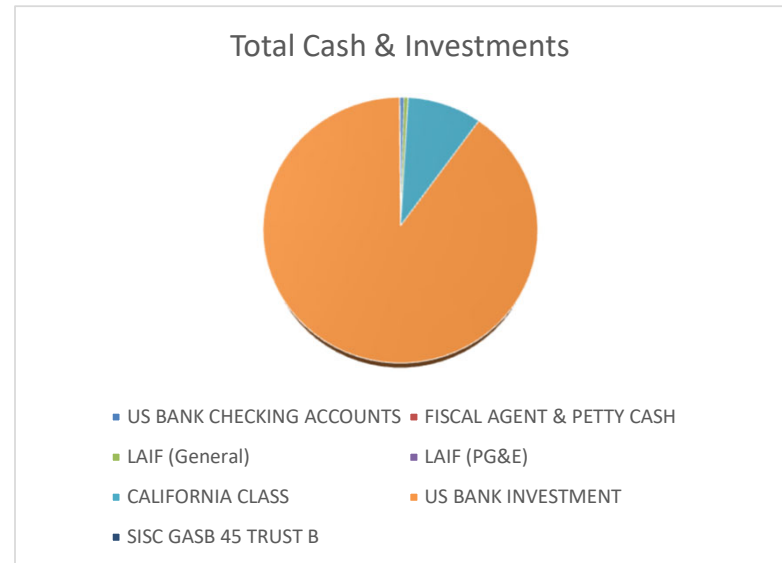
Financial Impact:

Total investment earnings for the quarter ending December 31, 2023 are estimated at \$849,810, as the investment revenue from SISC are not available yet.

TOWN OF PARADISE
 QUARTERLY SUMMARY OF INVESTMENTS
 QUARTER ENDING
 December 31, 2023

Investments Accounts		Current Quarter	Prior Quarter	Net Change	Current Quarter	Prior Quarter	Net Change
		December	September		December	September	
		Book Value	Book Value		Market Value	Market Value	
LAIF (General)	Savings	1,051,375	1,041,194	10,181	1,051,375	1,041,194	10,181
LAIF (PG&E)	Savings	48,235	47,804	431	48,235	47,804	431
CALIFORNIA CLASS	Savings	19,585,799	20,002,252	(416,453)	19,585,799	20,002,252	(416,453)
US BANK INVESTMENT	Various	194,784,856	194,239,778	545,078	187,647,345	181,853,441	5,793,904
SISC GASB 45 TRUST B	Various	275,570	281,643	(6,073)	275,570	281,643	(6,073)
		215,745,834	215,612,670	133,164	208,608,322	203,226,333	5,381,990

Investments Accounts	Yield	Current Quarter	Prior Quarter
		December	September
		Interest Earnings	Interest Earnings
LAIF (General)	3.95%	10,561	10,181
LAIF (PG&E)	3.95%	485	431
CALIFORNIA CLASS	5.55%	278,547	106,397
US BANK INVESTMENT	1.64%	566,149	549,518
SISC GASB 45 TRUST B - Delayed	-2.11%	(5,932)	7,439
		849,810	673,966



INVESTMENT BALANCES AT A GLANCE
 For Quarter Ended December 31, 2023
Total Cash & Investments

US BANK CHECKING ACCOUNTS	897,114
FISCAL AGENT & PETTY CASH	1,350
LAIF (General)	1,051,375
LAIF (PG&E)	48,235
CALIFORNIA CLASS	19,585,799
US BANK INVESTMENT	194,784,856
SISC GASB 45 TRUST B	275,570
	216,644,299

*Book Value: holding investments until sale date
 **Market Value: if all investments were sold today

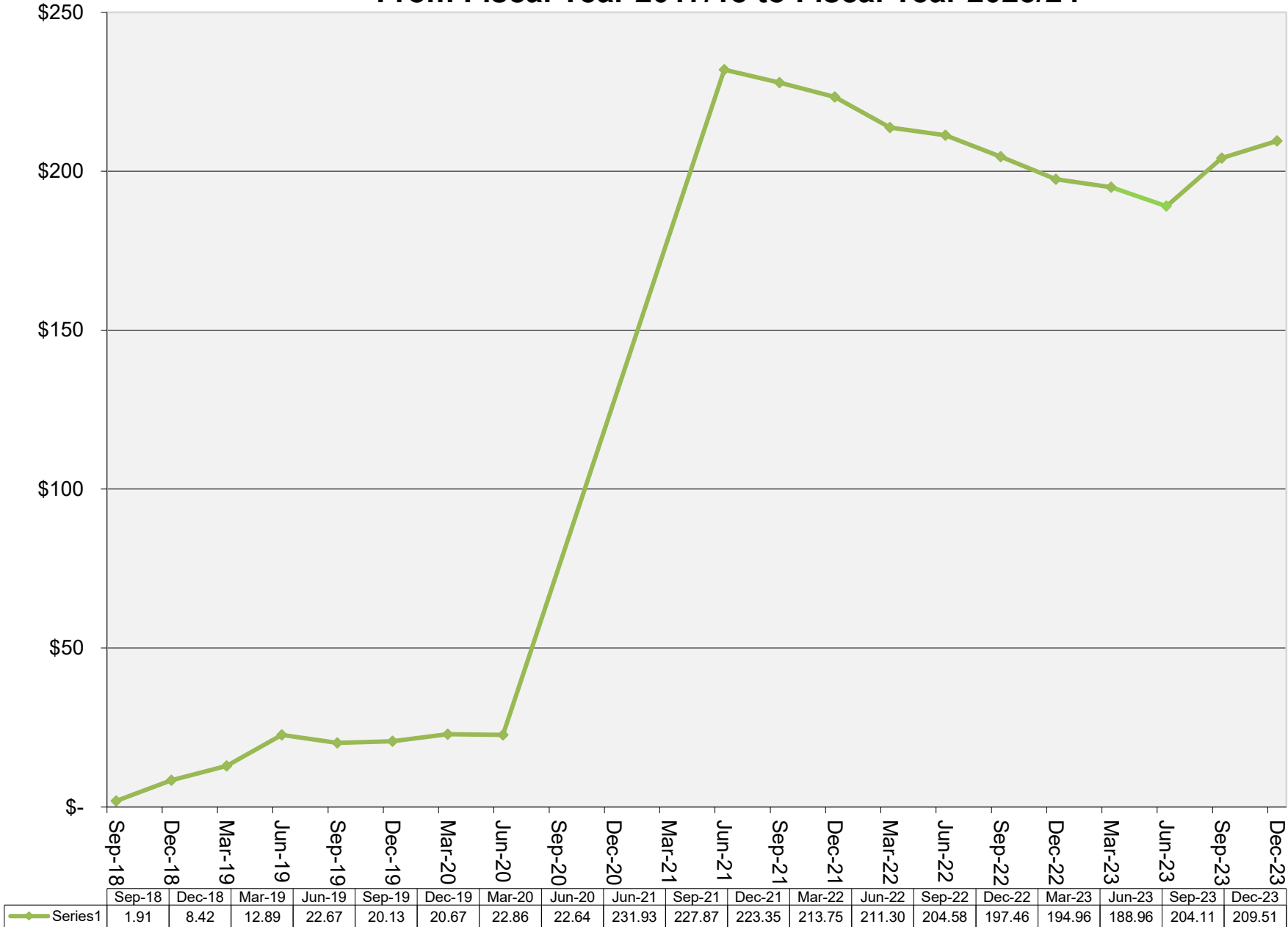
In compliance with the California Code Section 53646; the Treasurer of the Town of Paradise hereby certifies that sufficient investment liquidity and anticipated revenues are available to meet the Town's budgeted expenditure requirements for the next six months. Investments in the report meet the requirements of the Town of Paradise's adopted investment policy.

/s/
 Aimee Beleu
 Finance Director/Town Treasurer

TOWN OF PARADISE

Timeline of Investment Market Value Balances (in millions)

From Fiscal Year 2017/18 to Fiscal Year 2023/24





Town of Paradise Operating Account

Quarterly Investment Report
December 31, 2023

Your Investment Representative:

Jim McCourt
(614) 923-1151
jmccourt@meederinvestment.com

For questions about your account please contact your investment representative or contact publicfundsoperations@meederinvestment.com
Dublin, Ohio | Lansing, Michigan | Long Beach, California | Austin, Texas | 866-633-3371 | www.meederpublicfunds.com

PORTFOLIO SUMMARY

As of December 31, 2023



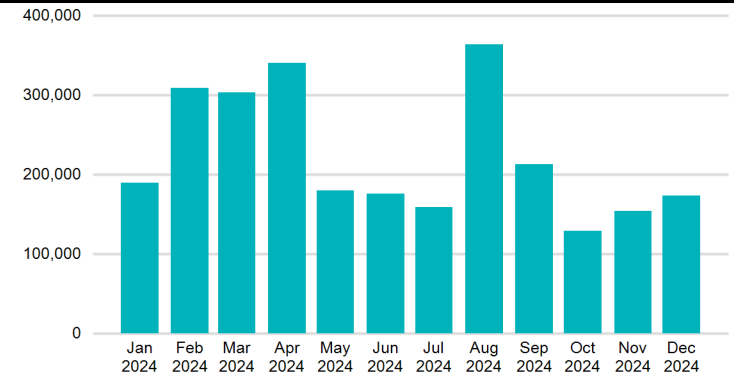
QUARTERLY RECONCILIATION

Beginning Book Value	194,239,778.16
Contributions	
Withdrawals	
Prior Month Management Fees	(16,500.00)
Prior Month Custodian Fees	(4,570.84)
Realized Gains/Losses	112,587.58
Purchased Interest	(50,847.17)
Gross Interest Earnings	504,408.59
Ending Book Value	194,784,856.32

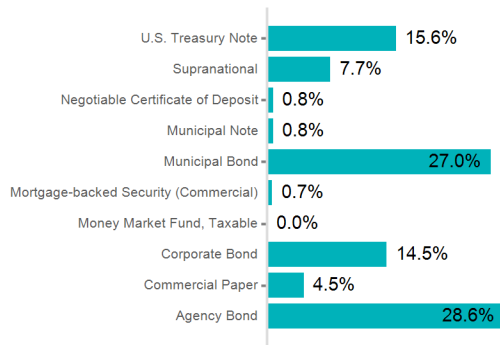
PORTFOLIO CHARACTERISTICS

Portfolio Yield to Maturity	1.63%
Portfolio Effective Duration	1.77 yrs
Weighted Average Maturity	1.95 yrs
Weighted Average Life	1.93 yrs

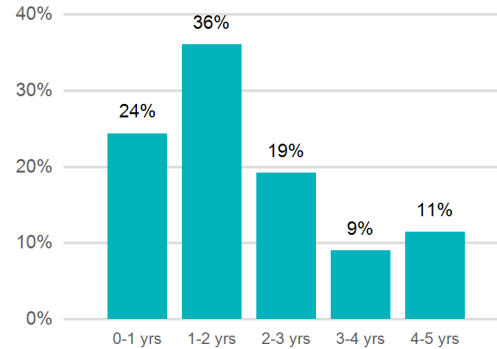
PROJECTED MONTHLY INCOME SCHEDULE



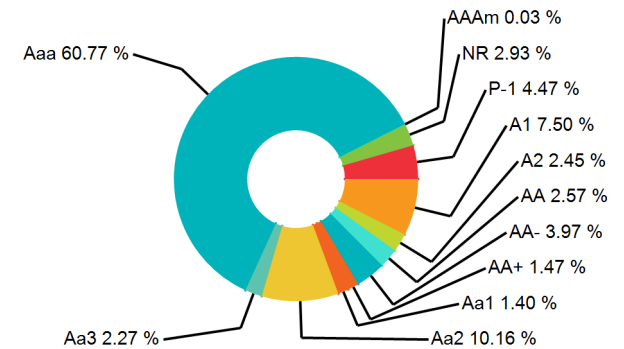
SECTOR ALLOCATION



MATURITY DISTRIBUTION



CREDIT QUALITY



Town of Paradise Operating Account
PROJECTED INCOME SCHEDULE
 As of December 31, 2023



CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
023135BW5	Amazon.com, Inc. 0.450% 05/12/2024					5,280							
023135CF1	Amazon.com, Inc. 3.300% 04/13/2027				33,000						33,000		
03667PHD7	Antelope Valley Community College District 0.545% 08/01/2024		613						613				
03667PHE5	Antelope Valley Community College District 0.866% 08/01/2025		736						736				
037833DB3	Apple Inc. 2.900% 09/12/2027			14,500						14,500			
037833EB2	Apple Inc. 0.700% 02/08/2026		17,500						17,500				
05580AE67	BMW Bank of North America 0.650% 10/08/2024				811						1,496		
119174AC4	Buena Park, City of 0.595% 07/01/2024	2,975						2,975					
13034AL65	California Infrastructure and Economic Development Bank 0.765% 10/01/2025				3,825						3,825		
13063DC48	California, State of 1.700% 02/01/2028		7,650						7,650				
13063DGB8	California, State of 3.375% 04/01/2025				8,016						8,016		
13607EC15	Canadian Imperial Holdings Inc. 03/01/2024			79,025									
13607EHW2	Canadian Imperial Holdings Inc. 08/30/2024								58,577				
14913R2P1	Caterpillar Financial Services Corporation 0.600% 09/13/2024			2,700						2,309			
14913R2Q9	Caterpillar Financial Services Corporation 1.150% 09/14/2026			14,375						14,375			
155105NM7	Central School District School Facilities Corporation 1.022% 08/01/2024		715						715				
20056XAA6	Commerce, City of 0.667% 08/01/2024		1,751						1,751				

Town of Paradise Operating Account
PROJECTED INCOME SCHEDULE
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CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
20056XAC2	Commerce, City of 1.212% 08/01/2026		3,182						3,182				
206849GM7	Conejo Valley Unified School District 0.702% 08/01/2024		702						702				
206849GN5	Conejo Valley Unified School District 0.974% 08/01/2025		998						998				
20772KNX3	Connecticut, State of 1.123% 06/01/2026						12,353						12,353
21969AAE2	Corona, City of 1.361% 05/01/2026					13,100						13,100	
21976THG0	Corona-Norco Unified School District 0.667% 09/01/2024			8,271					8,271				
223047AC5	Covina, City of 0.738% 08/01/2024		3,690						4,200				
24422EWD7	John Deere Capital Corporation 2.350% 03/08/2027			17,625					17,625				
3130AKQF6	FHLB 0.400% 01/27/2025	5,000						5,000					
3130ATUS4	FHLB 4.250% 12/10/2027						14,875						14,875
3133EMDZ2	FFCB 0.520% 10/21/2025				13,000						13,000		
3133EMMR0	FFCB 0.470% 01/12/2026	5,499						5,499					
3133EPNH4	FFCB 3.875 06/21/2028						21,313						21,313
3134GXCV4	FMCC 0.500% 05/30/2025					12,500						12,500	
3134GXDZ4	FMCC 0.450% 11/25/2024					6,750						7,200	
3134GXFA7	FMCC 0.650% 11/26/2025					9,750						9,750	
3134GXFV1	FMCC 0.625% 12/17/2025						7,813						7,813
3134GXJQ8	FMCC 0.320% 01/06/2025	2,800						2,800					
3134GXKU7	FMCC 0.375% 01/29/2025	6,563						6,563					
3135G06E8	FNMA 0.420% 11/18/2024					10,500						14,250	
3135G06Q1	FNMA 0.640% 12/30/2025						9,600						9,600

Town of Paradise Operating Account
PROJECTED INCOME SCHEDULE
 As of December 31, 2023



CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
3135G06R9	FNMA 0.550% 01/28/2026	8,250						8,250					
3135GA2A8	FNMA 0.580% 10/28/2025				14,500						14,500		
3140LLEB3	Federal National Mortgage Association, Inc. 4.390% 07/01/2028	4,300	4,231	4,162	4,092	4,023	3,952	3,882	3,811	3,740	3,668	3,596	3,524
31422B6K1	AGM 0.480% 01/15/2026	8,400						8,400					
38149MZJ5	Goldman Sachs Bank USA Holdings LLC 1.050% 09/08/2026			1,304						1,318			
419792ZL3	Hawaii, State of 0.852% 10/01/2025				21,300						21,300		
45818WDD5	IADB 0.39% 04/16/2024				5,580								
459058JA2	IBRD 0.750% 03/11/2025			11,813						11,813			
459058JL8	IBRD 0.500% 10/28/2025				12,500						12,500		
459058JS3	IBRD 0.650% 02/10/2026		6,500						6,500				
45950VPU4	IFC 0.75% 03/23/2026			7,500						7,500			
478160CN2	Johnson & Johnson 0.550% 09/01/2025			8,250						8,250			
48133PDZ3	JPMorgan Chase Financial Company LLC 5.000% 02/29/2024	25,000	4,028										
482124SN5	Jurupa Unified School District 0.625% 08/01/2024		1,563						1,563				
482124SP0	Jurupa Unified School District 1.059% 08/01/2025		2,648						2,648				
50420BDE9	La Quinta, City of 1.168% 09/01/2025			11,680						11,680			
546417DQ6	State of Louisiana 0.840% 06/01/2025						1,680						1,680
56781RJJ7	Marin Community College District 5.000% 08/01/2025		57,000						57,000				
574193TR9	Maryland, State of 0.660% 08/01/2025		9,900						9,900				
62479LD51	MUFG Bank, Ltd. 04/05/2024				184,371								

Town of Paradise Operating Account
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CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
626905PP2	Murrieta Valley Unified School District 0.698% 09/01/2024			1,745						1,745			
649447VM8	Flagstar Bank, National Association. 0.650% 09/10/2024			807						1,252			
649791RA0	New York, State of 0.910% 03/15/2025			4,550						4,550			
68609TWD6	Oregon, State of 0.895% 05/01/2025					7,831						7,831	
69371RR99	PACCAR Financial Corp. 3.550% 08/11/2025		35,500						35,500				
696735QQ5	Palmdale School District 1.071% 08/01/2026		1,339						1,339				
742651DY5	PEFCO 1.400% 07/15/2028	20,475						20,475					
742651DZ2	PEFCO 3.900% 10/15/2027				33,150						33,150		
757696AQ2	Redondo Beach - Community Financing Authority, City of 0.741% 05/01/2024					5,317							
7954507A7	Sallie Mae Bank 1.000% 07/14/2026	1,250						1,237					
797299MM3	San Diego, City of 1.450% 10/15/2024				6,525						(15,147)		
797412DM2	San Diego County Water Authority 0.743% 05/01/2025					3,994						3,994	
797412EK5	San Diego County Water Authority 0.593% 05/01/2024					(352)							
797412EL3	San Diego County Water Authority 0.593% 05/01/2024					(173)							
797686EL2	San Francisco Municipal Transportation Agency 0.389% 03/01/2024			2,322									
79771FFM4	San Francisco, City & County of 0.723% 11/01/2024					542						(1,463)	

Town of Paradise Operating Account
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CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
79771FFP7	San Francisco, City & County of 0.723% 11/01/2024					4,718						(12,730)	
79773KBF0	San Francisco, City & County of 0.616% 06/15/2024						770						
79773KBG8	San Francisco, City & County of 0.766% 06/15/2025						766						766
798153ND0	San Jose, City of 0.844% 06/01/2024						(2,757)						
798186N73	San Jose Unified School District 0.383% 08/01/2024		1,025						1,025				
798186N81	San Jose Unified School District 0.558% 08/01/2025		2,790						2,790				
80182AAE9	Santa Cruz, County of 1.024% 06/01/2026						10,931						10,931
802649TH6	Santa Rosa, City of 0.827% 09/01/2024			4,135						(6,275)			
802649TJ2	Santa Rosa, City of 0.977% 09/01/2025			7,474						7,474			
87165HC32	Synchrony Bank 0.550% 09/03/2024			683						1,437			
880591EZ1	TVA 3.875% 03/15/2028			40,688						40,688			
89235MLN9	Toyota Financial Savings Bank 0.650% 09/09/2024			807						1,438			
89236THU2	Toyota Motor Credit Corporation 0.450% 01/11/2024	4,840											
89236TJG1	Toyota Motor Credit Corporation 0.500% 06/14/2024						3,750						
89236TJZ9	Toyota Motor Credit Corporation 3.050% 03/22/2027			26,688						26,688			
9128284N7	UST 2.875% 05/15/2028					31,625						31,625	
912828X88	UST 2.375% 05/15/2027					34,438						34,438	
91282CCP4	UST 0.625% 07/31/2026	7,813						7,813					
91282CCW9	UST 0.750% 08/31/2026		9,375						9,375				

Town of Paradise Operating Account
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CUSIP	SECURITY DESCRIPTION	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Jun 2024	Jul 2024	Aug 2024	Sep 2024	Oct 2024	Nov 2024	Dec 2024
91282CCZ2	UST 0.875% 09/30/2026			12,906						12,906			
91282CEW7	UST 3.250% 06/30/2027						40,625						40,625
91282CFH9	UST 3.125% 08/31/2027		35,938						35,938				
91282CFM8	UST 4.125% 09/30/2027			19,594						19,594			
91282CGH8	UST 3.500% 01/31/2028	35,000						35,000					
91282CGP0	UST 4.000% 02/29/2028		44,500						44,500				
91282CHK0	UST 4.000% 06/30/2028						50,000						50,000
91282CHQ7	UST 4.125% 07/31/2028	51,563						51,563					
91282CHX2	UST 4.375% 08/31/2028		44,844						44,844				
91412HGE7	The Regents of the University of California 0.883% 05/15/2025					25,519						25,519	
91412HJL8	The Regents of the University of California 0.670% 05/15/2025					5,025						5,025	
969268DF5	William S. Hart Union High School District 0.607% 08/01/2024		6,829						6,829				
969268DG3	William S. Hart Union High School District 0.757% 08/01/2025		3,785						3,785				
TOTAL		189,727	309,330	303,602	340,670	180,385	175,671	159,455	363,968	212,876	129,308	154,633	173,479

POSITION STATEMENT

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CUSIP	Security Description	Trade Date/ Settlement Date	Par Value	Principal Cost/ Purchased Interest	Total Cost	Yield at Cost	Maturity/ Duration	Market Price/ Market Value	Unrealized Gain/ (Loss)	% of Assets	Moody's/ S&P Rating
Cash and Cash Equivalents											
00266CASH	LAIF-PG&E	12/29/2023 12/29/2023	\$48,234.65	\$48,234.65	\$48,234.65	3.95%	0.003 0.003	\$1.00 \$48,234.65	\$0.00	0.02%	NR
31846V567	First American Funds, Inc.	12/29/2023 12/29/2023	\$53,435.19	\$53,435.19	\$53,435.19	5.26%	0.003 0.003	\$1.00 \$53,435.19	\$0.00	0.03%	AAAm
00343CASH	California CLASS Prime Fund	12/29/2023 12/29/2023	\$19,585,798.53	\$19,585,798.53	\$19,585,798.53	5.55%	0.003 0.003	\$1.00 \$19,585,798.53	\$0.00	9.45%	
00365CASH	LAIF-GENERAL	12/29/2023 12/29/2023	\$1,051,374.78	\$1,051,374.78	\$1,051,374.78	3.95%	0.003 0.003	\$1.00 \$1,051,374.78	\$0.00	0.51%	
SubTotal			\$20,738,843.15	\$20,738,843.15	\$20,738,843.15	5.47%		\$20,738,843.15	\$0.00	10.01%	
Agency Bond											
3135G06E8	FNMA 0.420% 11/18/2024	11/23/2020 11/24/2020	\$5,000,000.00	\$4,996,250.00	\$4,996,250.00	0.44%	0.890	\$96.06 \$4,803,050.00	(\$193,200.00)	2.32%	Aaa AA+
3134GXDZ4	FMCC 0.450% 11/25/2024	11/25/2020 11/30/2020	\$3,000,000.00	\$2,999,550.00	\$2,999,550.00	0.45%	0.910	\$96.11 \$2,883,270.00	(\$116,280.00)	1.39%	Aaa AA+
3134GXJQ8	FMCC 0.320% 01/06/2025	1/27/2021 1/28/2021	\$1,750,000.00	\$1,749,125.00	\$1,749,125.00	0.33%	1.025	\$95.37 \$1,669,045.00	(\$80,080.00)	0.81%	Aaa AA+
3130AKQF6	FHLB 0.400% 01/27/2025	1/19/2021 1/27/2021	\$2,500,000.00	\$2,499,250.00	\$2,499,250.00	0.41%	1.082	\$95.23 \$2,380,825.00	(\$118,425.00)	1.15%	Aaa AA+
3134GXKU7	FMCC 0.375% 01/29/2025	1/11/2021 1/29/2021	\$3,500,000.00	\$3,495,450.00	\$3,495,450.00	0.41%	1.088	\$95.19 \$3,331,510.00	(\$163,940.00)	1.61%	Aaa AA+
3134GXCV4	FMCC 0.500% 05/30/2025	11/19/2020 11/30/2020	\$5,000,000.00	\$5,000,000.00	\$5,000,000.00	0.50%	1.419	\$94.28 \$4,713,900.00	(\$286,100.00)	2.27%	Aaa AA+
3133EMDZ2	FFCB 0.520% 10/21/2025	11/19/2020 11/20/2020	\$5,000,000.00	\$4,986,000.00	\$4,986,000.00	0.58%	1.814	\$93.00 \$4,650,050.00	(\$335,950.00)	2.24%	Aaa AA+
3135GA2A8	FNMA 0.580% 10/28/2025	12/21/2020 12/22/2020	\$5,000,000.00	\$5,013,800.00	\$5,013,800.00	0.43%	1.833	\$93.24 \$4,661,900.00	(\$351,900.00)	2.25%	Aaa AA+
3134GXFA7	FMCC 0.650% 11/26/2025	11/24/2020 11/30/2020	\$3,000,000.00	\$3,000,000.00	\$3,000,000.00	0.65%	1.912	\$93.17 \$2,795,070.00	(\$204,930.00)	1.35%	Aaa AA+
3134GXFV1	FMCC 0.625% 12/17/2025	12/3/2020 12/17/2020	\$2,500,000.00	\$2,498,750.00	\$2,498,750.00	0.64%	1.970	\$92.79 \$2,319,650.00	(\$179,100.00)	1.12%	Aaa AA+
3135G06Q1	FNMA 0.640% 12/30/2025	12/23/2020 12/30/2020	\$3,000,000.00	\$3,003,750.00	\$3,003,750.00	0.61%	2.005	\$92.85 \$2,785,410.00	(\$218,340.00)	1.34%	Aaa AA+

POSITION STATEMENT

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CUSIP	Security Description	Trade Date/ Settlement Date	Par Value	Principal Cost/ Purchased Interest	Total Cost	Yield at Cost	Maturity/ Duration	Market Price/ Market Value	Unrealized Gain/ (Loss)	% of Assets	Moody's/ S&P Rating
3133EMMR0	FFCB 0.470% 01/12/2026	1/5/2021 1/12/2021	\$2,340,000.00	\$2,336,536.80	\$2,336,536.80	0.50%	2.041	\$92.45 \$2,163,236.40	(\$173,300.40)	1.04%	Aaa AA+
31422B6K1	AGM 0.480% 01/15/2026	1/7/2021 1/15/2021	\$3,500,000.00	\$3,496,500.00	\$3,496,500.00	0.50%	2.049	\$92.64 \$3,242,505.00	(\$253,995.00)	1.56%	
3135G06R9	FNMA 0.550% 01/28/2026	1/5/2021 1/28/2021	\$3,000,000.00	\$3,000,000.00	\$3,000,000.00	0.55%	2.085	\$92.46 \$2,773,920.00	(\$226,080.00)	1.34%	Aaa AA+
742651DZ2	PEFCO 3.900% 10/15/2027	6/14/2023 6/16/2023	\$1,700,000.00	\$1,680,883.50	\$1,680,883.50	4.19%	3.797	\$98.88 \$1,680,892.00	\$8.50	0.81%	Aaa AA+
3130ATUS4	FHLB 4.250% 12/10/2027	12/20/2022 12/21/2022	\$700,000.00	\$710,829.00	\$710,829.00	3.90%	3.951	\$100.99 \$706,923.00	(\$3,906.00)	0.34%	Aaa AA+
880591EZ1	TVA 3.875% 03/15/2028	3/28/2023 3/30/2023	\$2,100,000.00	\$2,088,678.90	\$2,088,678.90	4.00%	4.214	\$99.62 \$2,091,936.00	\$3,257.10	1.01%	Aaa AA+
3133EPNH4	FFCB 3.875 06/21/2028	6/15/2023 6/21/2023	\$1,100,000.00	\$1,095,105.00	\$1,095,105.00	3.97%	4.482	\$99.35 \$1,092,806.00	(\$2,299.00)	0.53%	Aaa AA+
742651DY5	PEFCO 1.400% 07/15/2028	9/8/2023 9/12/2023	\$2,925,000.00	\$2,532,336.30 \$6,483.75	\$2,538,820.05	4.52%	4.548	\$89.20 \$2,609,129.25	\$76,792.95	1.26%	Aaa AA+
SubTotal			\$56,615,000.00	\$56,182,794.50 \$6,483.75	\$56,189,278.25	1.07%		\$53,355,027.65	(\$2,827,766.85)	25.74%	

Commercial Paper

13607EC15	Canadian Imperial Holdings Inc. 03/01/2024	6/13/2023 6/14/2023	\$2,000,000.00	\$1,920,975.00	\$1,920,975.00	5.67%	0.173	\$99.03 \$1,980,620.00	\$59,645.00	0.96%	P-1 A-1
62479LD51	MUFG Bank, Ltd. 04/05/2024	8/10/2023 8/11/2023	\$4,980,000.00	\$4,795,629.33	\$4,795,629.33	5.82%	0.268	\$98.50 \$4,905,150.60	\$109,521.27	2.37%	P-1 A-1
13607EHW2	Canadian Imperial Holdings Inc. 08/30/2024	12/8/2023 12/11/2023	\$1,510,000.00	\$1,451,423.33	\$1,451,423.33	5.52%	0.671	\$96.30 \$1,454,099.80	\$2,676.47	0.70%	P-1 A-1
SubTotal			\$8,490,000.00	\$8,168,027.66	\$8,168,027.66	5.73%		\$8,339,870.40	\$171,842.74	4.02%	

Corporate Bond

89236THU2	Toyota Motor Credit Corporation 0.450% 01/11/2024	1/7/2021 1/11/2021	\$4,000,000.00	\$4,004,160.00	\$4,004,160.00	0.42%	0.036	\$99.87 \$3,994,760.00	(\$9,400.00)	1.93%	A1 A+
48133PDZ3	JPMorgan Chase Financial Company LLC 5.000% 02/29/2024	1/26/2023 1/31/2023	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	4.99%	0.170	\$99.40 \$993,950.00	(\$6,050.00)	0.48%	A1 A-

Town of Paradise Operating Account

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CUSIP	Security Description	Trade Date/ Settlement Date	Par Value	Principal Cost/ Purchased Interest	Total Cost	Yield at Cost	Maturity/ Duration	Market Price/ Market Value	Unrealized Gain/ (Loss)	% of Assets	Moody's/ S&P Rating
023135BW5	Amazon.com, Inc. 0.450% 05/12/2024	5/11/2021 5/13/2021	\$2,000,000.00	\$1,999,220.00	\$1,999,220.00	0.46%	0.370	\$98.21 \$1,964,140.00	(\$35,080.00)	0.95%	A1 AA
89236TJG1	Toyota Motor Credit Corporation 0.500% 06/14/2024	6/4/2021 6/14/2021	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00	0.50%	0.460	\$97.73 \$1,466,010.00	(\$33,990.00)	0.71%	A1 A+
14913R2P1	Caterpillar Financial Services Corporation 0.600% 09/13/2024	9/9/2021 9/14/2021	\$420,000.00	\$420,151.20	\$420,151.20	0.59%	0.710	\$96.79 \$406,501.20	(\$13,650.00)	0.20%	A2 A
14913R2P1	Caterpillar Financial Services Corporation 0.600% 09/13/2024	9/8/2021 9/14/2021	\$480,000.00	\$480,240.00	\$480,240.00	0.58%	0.710	\$96.79 \$464,572.80	(\$15,667.20)	0.22%	A2 A
69371RR99	PACCAR Financial Corp. 3.550% 08/11/2025	8/10/2022 8/12/2022	\$2,000,000.00	\$2,002,020.00	\$2,002,020.00	3.51%	1.619	\$98.30 \$1,965,980.00	(\$36,040.00)	0.95%	A1 A+
478160CN2	Johnson & Johnson 0.550% 09/01/2025	1/12/2021 1/14/2021	\$3,000,000.00	\$2,992,050.00	\$2,992,050.00	0.61%	1.677	\$93.61 \$2,808,180.00	(\$183,870.00)	1.35%	Aaa AAA
037833EB2	Apple Inc. 0.700% 02/08/2026	2/2/2021 2/8/2021	\$5,000,000.00	\$4,988,750.00	\$4,988,750.00	0.75%	2.115	\$92.58 \$4,628,800.00	(\$359,950.00)	2.23%	Aaa AA+
14913R2Q9	Caterpillar Financial Services Corporation 1.150% 09/14/2026	9/17/2021 9/21/2021	\$2,500,000.00	\$2,506,275.00	\$2,506,275.00	1.10%	2.712	\$91.80 \$2,294,925.00	(\$211,350.00)	1.11%	A2 A
24422EWD7	John Deere Capital Corporation 2.350% 03/08/2027	3/8/2022 3/10/2022	\$1,500,000.00	\$1,497,345.00	\$1,497,345.00	2.39%	3.192	\$93.97 \$1,409,520.00	(\$87,825.00)	0.68%	A2 A
89236TJZ9	Toyota Motor Credit Corporation 3.050% 03/22/2027	3/18/2022 3/22/2022	\$1,750,000.00	\$1,757,752.50	\$1,757,752.50	2.95%	3.230	\$95.74 \$1,675,450.00	(\$82,302.50)	0.81%	A1 A+
023135CF1	Amazon.com, Inc. 3.300% 04/13/2027	5/17/2022 5/19/2022	\$2,000,000.00	\$1,982,220.00	\$1,982,220.00	3.50%	3.290	\$97.11 \$1,942,280.00	(\$39,940.00)	0.94%	A1 AA
037833DB3	Apple Inc. 2.900% 09/12/2027	1/30/2023 2/1/2023	\$1,000,000.00	\$946,510.00	\$946,510.00	4.19%	3.707	\$95.78 \$957,770.00	\$11,260.00	0.46%	Aaa AA+
SubTotal			\$28,150,000.00	\$28,076,693.70	\$28,076,693.70	1.57%		\$26,972,839.00	(\$1,103,854.70)	13.01%	

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CUSIP	Security Description	Trade Date/ Settlement Date	Par Value	Principal Cost/ Purchased Interest	Total Cost	Yield at Cost	Maturity/ Duration	Market Price/ Market Value	Unrealized Gain/ (Loss)	% of Assets	Moody's/ S&P Rating
Mortgage-backed Security (Commercial)											
3140LLEB3	Federal National Mortgage Association, Inc. 4.390% 07/01/2028	8/15/2023 8/18/2023	\$1,250,000.00	\$1,222,656.25	\$1,222,656.25	4.94%	4.510	\$100.02 \$1,250,300.00	\$27,643.75	0.60%	Aaa AA+
SubTotal			\$1,250,000.00	\$1,222,656.25	\$1,222,656.25	4.94%		\$1,250,300.00	\$27,643.75	0.60%	
Municipal Bond											
797686EL2	San Francisco Municipal Transportation Agency 0.389% 03/01/2024	9/16/2021 9/20/2021	\$500,000.00	\$498,650.00	\$498,650.00	0.50%	0.173	\$99.21 \$496,060.00	(\$2,590.00)	0.24%	Aa3 A+
757696AQ2	Redondo Beach - Community Financing Authority, City of 0.741% 05/01/2024	7/2/2021 7/15/2021	\$1,435,000.00	\$1,435,000.00	\$1,435,000.00	0.74%	0.340	\$98.50 \$1,413,489.35	(\$21,510.65)	0.68%	AA
797412EL3	San Diego County Water Authority 0.593% 05/01/2024	8/18/2023 8/18/2023	\$330,000.00	\$331,151.70	\$331,151.70	0.51%	0.340	\$98.56 \$325,234.80	(\$5,916.90)	0.16%	AAA
797412EK5	San Diego County Water Authority 0.593% 05/01/2024	8/18/2023 8/18/2023	\$670,000.00	\$672,338.30	\$672,338.30	0.51%	0.340	\$98.40 \$659,306.80	(\$13,031.50)	0.32%	NR
798153ND0	San Jose, City of 0.844% 06/01/2024	4/16/2021 4/20/2021	\$705,000.00	\$710,731.65	\$710,731.65	0.58%	0.425	\$98.24 \$692,599.05	(\$18,132.60)	0.33%	Aa2 AA
79773KBF0	San Francisco, City & County of 0.616% 06/15/2024	11/20/2020 12/8/2020	\$250,000.00	\$250,000.00	\$250,000.00	0.62%	0.463	\$97.96 \$244,900.00	(\$5,100.00)	0.12%	Aaa AAA
119174AC4	Buena Park, City of 0.595% 07/01/2024	8/18/2021 8/31/2021	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	0.60%	0.507	\$97.61 \$976,120.00	(\$23,880.00)	0.47%	AA+
969268DF5	William S. Hart Union High School District 0.607% 08/01/2024	12/10/2020 12/23/2020	\$2,250,000.00	\$2,250,000.00	\$2,250,000.00	0.61%	0.592	\$97.50 \$2,193,727.50	(\$56,272.50)	1.06%	Aa2
798186N73	San Jose Unified School District 0.383% 08/01/2024	1/8/2021 1/20/2021	\$535,000.00	\$535,000.00	\$535,000.00	0.38%	0.592	\$97.43 \$521,239.80	(\$13,760.20)	0.25%	Aaa AA+

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482124SN5	Jurupa Unified School District 0.625% 08/01/2024	4/13/2021 5/4/2021	\$500,000.00	\$500,000.00	\$500,000.00	0.63%	0.592	\$97.48 \$487,410.00	(\$12,590.00)	0.24%	Aa3
03667PHD7	Antelope Valley Community College District 0.545% 08/01/2024	8/11/2021 8/31/2021	\$225,000.00	\$225,000.00	\$225,000.00	0.55%	0.592	\$97.46 \$219,294.00	(\$5,706.00)	0.11%	Aa2 AA
20056XAA6	Commerce, City of 0.667% 08/01/2024	8/25/2021 8/31/2021	\$525,000.00	\$525,000.00	\$525,000.00	0.67%	0.592	\$97.31 \$510,893.25	(\$14,106.75)	0.25%	AA-
206849GM7	Conejo Valley Unified School District 0.702% 08/01/2024	9/1/2021 9/22/2021	\$200,000.00	\$200,000.00	\$200,000.00	0.70%	0.592	\$97.50 \$194,996.00	(\$5,004.00)	0.09%	Aa3
223047AC5	Covina, City of 0.738% 08/01/2024	10/6/2021 10/8/2021	\$1,000,000.00	\$999,490.00	\$999,490.00	0.76%	0.592	\$97.38 \$973,800.00	(\$25,690.00)	0.47%	AA
155105NM7	Central School District School Facilities Corporation 1.022% 08/01/2024	11/17/2021 12/9/2021	\$140,000.00	\$140,000.00	\$140,000.00	1.02%	0.592	\$97.73 \$136,827.60	(\$3,172.40)	0.07%	Aa3 AA
802649TH6	Santa Rosa, City of 0.827% 09/01/2024	11/24/2020 12/1/2020	\$1,000,000.00	\$1,010,410.00	\$1,010,410.00	0.55%	0.677	\$97.29 \$972,880.00	(\$37,530.00)	0.47%	AA
21976THG0	Corona-Norco Unified School District 0.667% 09/01/2024	4/23/2021 5/13/2021	\$2,480,000.00	\$2,480,000.00	\$2,480,000.00	0.67%	0.677	\$97.03 \$2,406,294.40	(\$73,705.60)	1.16%	AA-
626905PP2	Murrieta Valley Unified School District 0.698% 09/01/2024	7/15/2021 7/28/2021	\$500,000.00	\$500,000.00	\$500,000.00	0.70%	0.677	\$97.26 \$486,275.00	(\$13,725.00)	0.23%	Aa2
797299MM3	San Diego, City of 1.450% 10/15/2024	4/12/2021 4/14/2021	\$900,000.00	\$921,672.00	\$921,672.00	0.75%	0.797	\$97.20 \$874,773.00	(\$46,899.00)	0.42%	AA-
79771FFM4	San Francisco, City & County of 0.723% 11/01/2024	8/24/2023 8/24/2023	\$150,000.00	\$152,005.50	\$152,005.50	0.76%	0.844	\$96.48 \$144,715.50	(\$7,290.00)	0.07%	NR
79771FFP7	San Francisco, City & County of 0.723% 11/01/2024	8/24/2023 8/24/2023	\$1,305,000.00	\$1,322,447.85	\$1,322,447.85	0.76%	0.844	\$96.54 \$1,259,820.90	(\$62,626.95)	0.61%	AA-
649791RA0	New York, State of 0.910% 03/15/2025	4/19/2021 4/21/2021	\$1,000,000.00	\$1,007,440.00	\$1,007,440.00	0.72%	1.211	\$95.45 \$954,480.00	(\$52,960.00)	0.46%	Aa1 AA+

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13063DGB8	California, State of 3.375% 04/01/2025	12/23/2020 12/28/2020	\$475,000.00	\$531,610.50	\$531,610.50	0.54%	1.258	\$98.25 \$466,682.75	(\$64,927.75)	0.23%	Aa2 AA-
797412DM2	San Diego County Water Authority 0.743% 05/01/2025	11/24/2020 11/27/2020	\$1,075,000.00	\$1,081,987.50	\$1,081,987.50	0.59%	1.340	\$94.76 \$1,018,713.00	(\$63,274.50)	0.49%	Aa2 AAA
68609TWD6	Oregon, State of 0.895% 05/01/2025	12/8/2020 12/10/2020	\$1,750,000.00	\$1,780,887.50	\$1,780,887.50	0.49%	1.340	\$95.06 \$1,663,480.00	(\$117,407.50)	0.80%	Aa1 AA+
91412HGE7	The Regents of the University of California 0.883% 05/15/2025	12/15/2020 12/17/2020	\$1,425,000.00	\$1,442,199.75	\$1,442,199.75	0.61%	1.378	\$94.82 \$1,351,156.50	(\$91,043.25)	0.65%	Aa2 AA
91412HGE7	The Regents of the University of California 0.883% 05/15/2025	12/21/2020 12/23/2020	\$1,355,000.00	\$1,372,736.95	\$1,372,736.95	0.58%	1.378	\$94.82 \$1,284,783.90	(\$87,953.05)	0.62%	Aa2 AA
91412HGE7	The Regents of the University of California 0.883% 05/15/2025	1/20/2021 1/22/2021	\$3,000,000.00	\$3,047,880.00	\$3,047,880.00	0.51%	1.378	\$94.82 \$2,844,540.00	(\$203,340.00)	1.37%	Aa2 AA
546417DQ6	State of Louisiana 0.840% 06/01/2025	8/24/2021 8/26/2021	\$400,000.00	\$401,512.00	\$401,512.00	0.74%	1.425	\$94.70 \$378,788.00	(\$22,724.00)	0.18%	Aa2 AA-
79773KBG8	San Francisco, City & County of 0.766% 06/15/2025	11/20/2020 12/8/2020	\$200,000.00	\$200,000.00	\$200,000.00	0.77%	1.463	\$94.15 \$188,296.00	(\$11,704.00)	0.09%	Aaa AAA
574193TR9	Maryland, State of 0.660% 08/01/2025	11/18/2020 11/20/2020	\$3,000,000.00	\$3,014,580.00	\$3,014,580.00	0.56%	1.592	\$93.66 \$2,809,680.00	(\$204,900.00)	1.36%	Aaa AAA
56781RJJ7	Marin Community College District 5.000% 08/01/2025	11/25/2020 11/30/2020	\$2,280,000.00	\$2,742,270.00	\$2,742,270.00	0.59%	1.592	\$100.51 \$2,291,582.40	(\$450,687.60)	1.11%	Aaa AAA
969268DG3	William S. Hart Union High School District 0.757% 08/01/2025	12/10/2020 12/23/2020	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	0.76%	1.592	\$94.05 \$940,450.00	(\$59,550.00)	0.45%	Aa2
798186N81	San Jose Unified School District 0.558% 08/01/2025	1/8/2021 1/20/2021	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00	0.56%	1.592	\$93.75 \$937,460.00	(\$62,540.00)	0.45%	Aaa AA+
482124SP0	Jurupa Unified School District 1.059% 08/01/2025	5/27/2021 6/1/2021	\$500,000.00	\$504,265.00	\$504,265.00	0.85%	1.592	\$94.28 \$471,415.00	(\$32,850.00)	0.23%	Aa3

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03667PHE5	Antelope Valley Community College District 0.866% 08/01/2025	8/11/2021 8/31/2021	\$170,000.00	\$170,000.00	\$170,000.00	0.87%	1.592	\$94.07 \$159,910.50	(\$10,089.50)	0.08%	Aa2 AA
206849GN5	Conejo Valley Unified School District 0.974% 08/01/2025	9/1/2021 9/22/2021	\$205,000.00	\$205,000.00	\$205,000.00	0.97%	1.592	\$94.08 \$192,870.15	(\$12,129.85)	0.09%	Aa3
802649TJ2	Santa Rosa, City of 0.977% 09/01/2025	11/24/2020 12/1/2020	\$1,530,000.00	\$1,554,357.60	\$1,554,357.60	0.64%	1.677	\$93.99 \$1,437,985.80	(\$116,371.80)	0.69%	AA
50420BDE9	La Quinta, City of 1.168% 09/01/2025	4/8/2021 4/14/2021	\$2,000,000.00	\$2,022,960.00	\$2,022,960.00	0.90%	1.677	\$93.83 \$1,876,660.00	(\$146,300.00)	0.91%	AA-
419792ZL3	Hawaii, State of 0.852% 10/01/2025	11/19/2020 11/23/2020	\$5,000,000.00	\$5,052,250.00	\$5,052,250.00	0.63%	1.759	\$93.71 \$4,685,700.00	(\$366,550.00)	2.26%	Aa2 AA+
13034AL65	California Infrastructure and Economic Development Bank 0.765% 10/01/2025	12/8/2020 12/17/2020	\$1,000,000.00	\$1,007,250.00	\$1,007,250.00	0.61%	1.759	\$93.35 \$933,480.00	(\$73,770.00)	0.45%	AAA
21969AAE2	Corona, City of 1.361% 05/01/2026	9/30/2021 10/14/2021	\$860,000.00	\$860,000.00	\$860,000.00	1.36%	2.340	\$92.10 \$792,068.60	(\$67,931.40)	0.38%	AA+
21969AAE2	Corona, City of 1.361% 05/01/2026	10/5/2021 10/14/2021	\$1,065,000.00	\$1,071,336.75	\$1,071,336.75	1.23%	2.340	\$92.10 \$980,875.65	(\$90,461.10)	0.47%	AA+
20772KNX3	Connecticut, State of 1.123% 06/01/2026	6/4/2021 6/9/2021	\$2,200,000.00	\$2,213,090.00	\$2,213,090.00	1.00%	2.425	\$92.47 \$2,034,340.00	(\$178,750.00)	0.98%	Aa3 AA-
80182AAE9	Santa Cruz, County of 1.024% 06/01/2026	9/21/2021 9/23/2021	\$1,060,000.00	\$1,060,763.20	\$1,060,763.20	1.01%	2.425	\$91.80 \$973,027.00	(\$87,736.20)	0.47%	AAA
80182AAE9	Santa Cruz, County of 1.024% 06/01/2026	9/28/2021 9/30/2021	\$1,075,000.00	\$1,071,237.50	\$1,071,237.50	1.10%	2.425	\$91.80 \$986,796.25	(\$84,441.25)	0.48%	AAA
696735QQ5	Palmdale School District 1.071% 08/01/2026	8/6/2021 9/2/2021	\$250,000.00	\$250,000.00	\$250,000.00	1.07%	2.592	\$91.17 \$227,935.00	(\$22,065.00)	0.11%	Aa3
20056XAC2	Commerce, City of 1.212% 08/01/2026	8/25/2021 8/31/2021	\$525,000.00	\$525,000.00	\$525,000.00	1.21%	2.592	\$91.06 \$478,054.50	(\$46,945.50)	0.23%	AA-
13063DC48	California, State of 1.700% 02/01/2028	1/25/2023 2/1/2023	\$900,000.00	\$805,545.00	\$805,545.00	4.04%	4.096	\$90.35 \$813,114.00	\$7,569.00	0.39%	Aa2 AA-
SubTotal			\$52,900,000.00	\$53,655,056.25	\$53,655,056.25	0.75%		\$50,364,981.95	(\$3,290,074.30)	24.30%	

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Municipal Note											
91412HJL8	The Regents of the University of California 0.670% 05/15/2025	2/24/2021 3/10/2021	\$1,500,000.00	\$1,500,000.00	\$1,500,000.00	0.67%	1.378	\$94.48 \$1,417,155.00	(\$82,845.00)	0.68%	Aa2 AA
SubTotal			\$1,500,000.00	\$1,500,000.00	\$1,500,000.00	0.67%		\$1,417,155.00	(\$82,845.00)	0.68%	
Negotiable Certificate of Deposit											
87165HC32	Synchrony Bank 0.550% 09/03/2024	8/31/2021 9/3/2021	\$249,000.00	\$248,253.00	\$248,253.00	0.65%	0.682	\$96.97 \$241,457.79	(\$6,795.21)	0.12%	
89235MLN9	Toyota Financial Savings Bank 0.650% 09/09/2024	8/31/2021 9/9/2021	\$249,000.00	\$248,377.50	\$248,377.50	0.73%	0.699	\$96.97 \$241,450.32	(\$6,927.18)	0.12%	
649447VM8	Flagstar Bank, National Association. 0.650% 09/10/2024	8/30/2021 9/10/2021	\$249,000.00	\$248,564.25	\$248,564.25	0.71%	0.701	\$96.96 \$241,422.93	(\$7,141.32)	0.12%	
05580AE67	BMW Bank of North America 0.650% 10/08/2024	9/30/2021 10/8/2021	\$249,000.00	\$248,315.25	\$248,315.25	0.74%	0.778	\$96.61 \$240,566.37	(\$7,748.88)	0.12%	
7954507A7	Sallie Mae Bank 1.000% 07/14/2026	7/14/2021 7/16/2021	\$248,000.00	\$246,760.00	\$246,760.00	1.10%	2.542	\$90.88 \$225,370.00	(\$21,390.00)	0.11%	
38149MZJ5	Goldman Sachs Bank USA Holdings LLC 1.050% 09/08/2026	8/31/2021 9/8/2021	\$249,000.00	\$247,879.50	\$247,879.50	1.14%	2.696	\$90.46 \$225,242.91	(\$22,636.59)	0.11%	
SubTotal			\$1,493,000.00	\$1,488,149.50	\$1,488,149.50	0.84%		\$1,415,510.32	(\$72,639.18)	0.68%	
Supranational											
45818WDD5	IADB 0.39% 04/16/2024	4/8/2021 4/16/2021	\$3,000,000.00	\$3,000,270.00	\$3,000,270.00	0.39%	0.299	\$98.58 \$2,957,250.00	(\$43,020.00)	1.43%	Aaa AA+
459058JA2	IBRD 0.750% 03/11/2025	3/4/2021 3/9/2021	\$3,150,000.00	\$3,167,671.50	\$3,167,671.50	0.61%	1.200	\$95.44 \$3,006,486.00	(\$161,185.50)	1.45%	Aaa AA+
459058JL8	IBRD 0.500% 10/28/2025	2/3/2021 2/8/2021	\$5,000,000.00	\$4,994,200.00	\$4,994,200.00	0.52%	1.833	\$93.15 \$4,657,350.00	(\$336,850.00)	2.25%	Aaa AA+

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459058JS3	IBRD 0.650% 02/10/2026	5/27/2021 6/1/2021	\$2,000,000.00	\$1,981,720.00	\$1,981,720.00	0.85%	2.121	\$92.41 \$1,848,100.00	(\$133,620.00)	0.89%	Aaa AA+
45950VPU4	IFC 0.75% 03/23/2026	3/4/2021 3/23/2021	\$2,000,000.00	\$1,994,880.00	\$1,994,880.00	0.80%	2.233	\$92.23 \$1,844,540.00	(\$150,340.00)	0.89%	Aaa AA+
SubTotal			\$15,150,000.00	\$15,138,741.50	\$15,138,741.50	0.59%		\$14,313,726.00	(\$825,015.50)	6.91%	

U.S. Treasury Note

91282CCP4	UST 0.625% 07/31/2026	9/23/2021 9/24/2021	\$2,500,000.00	\$2,462,792.97	\$2,462,792.97	0.94%	2.589	\$91.54 \$2,288,375.00	(\$174,417.97)	1.10%	Aaa AA+
91282CCW9	UST 0.750% 08/31/2026	9/23/2021 9/24/2021	\$2,500,000.00	\$2,481,054.69	\$2,481,054.69	0.91%	2.674	\$91.63 \$2,290,825.00	(\$190,229.69)	1.11%	Aaa AA+
91282CCZ2	UST 0.875% 09/30/2026	9/28/2021 9/30/2021	\$2,950,000.00	\$2,930,525.39	\$2,930,525.39	1.01%	2.756	\$91.79 \$2,707,893.50	(\$222,631.89)	1.31%	Aaa AA+
912828X88	UST 2.375% 05/15/2027	11/10/2023 11/13/2023	\$2,900,000.00	\$2,679,214.84	\$2,679,214.84	4.76%	3.378	\$94.96 \$2,753,753.00	\$74,538.16	1.33%	Aaa AA+
91282CEW7	UST 3.250% 06/30/2027	8/21/2023 8/22/2023	\$2,500,000.00	\$2,383,886.72 \$11,701.77	\$2,395,588.49	4.58%	3.504	\$97.68 \$2,441,900.00	\$58,013.28	1.18%	Aaa AA+
91282CFH9	UST 3.125% 08/31/2027	11/22/2023 11/24/2023	\$2,300,000.00	\$2,187,785.16 \$16,783.99	\$2,204,569.15	4.55%	3.674	\$97.16 \$2,234,588.00	\$46,802.84	1.08%	Aaa AA+
91282CFM8	UST 4.125% 09/30/2027	3/3/2023 3/6/2023	\$950,000.00	\$941,835.94	\$941,835.94	4.33%	3.756	\$100.60 \$955,681.00	\$13,845.06	0.46%	Aaa AA+
91282CGH8	UST 3.500% 01/31/2028	2/13/2023 2/14/2023	\$2,000,000.00	\$1,960,156.25	\$1,960,156.25	3.95%	4.093	\$98.40 \$1,968,040.00	\$7,883.75	0.95%	Aaa AA+
91282CGP0	UST 4.000% 02/29/2028	2/23/2023 3/1/2023	\$1,175,000.00	\$1,165,866.21	\$1,165,866.21	4.17%	4.173	\$100.31 \$1,178,583.75	\$12,717.54	0.57%	Aaa AA+
91282CGP0	UST 4.000% 02/29/2028	8/21/2023 8/22/2023	\$1,050,000.00	\$1,028,548.83	\$1,028,548.83	4.50%	4.173	\$100.31 \$1,053,202.50	\$24,653.67	0.51%	Aaa AA+
9128284N7	UST 2.875% 05/15/2028	5/15/2023 5/16/2023	\$2,200,000.00	\$2,137,609.38	\$2,137,609.38	3.50%	4.381	\$95.88 \$2,109,338.00	(\$28,271.38)	1.02%	Aaa AA+
91282CHK0	UST 4.000% 06/30/2028	8/21/2023 8/22/2023	\$2,500,000.00	\$2,448,242.19 \$14,402.17	\$2,462,644.36	4.48%	4.507	\$100.47 \$2,511,625.00	\$63,382.81	1.21%	Aaa AA+
91282CHQ7	UST 4.125% 07/31/2028	8/21/2023 8/22/2023	\$2,500,000.00	\$2,463,964.84 \$6,165.08	\$2,470,129.92	4.45%	4.592	\$101.03 \$2,525,675.00	\$61,710.16	1.22%	Aaa AA+

POSITION STATEMENT

As of December 31, 2023



CUSIP	Security Description	Trade Date/ Settlement Date	Par Value	Principal Cost/ Purchased Interest	Total Cost	Yield at Cost	Maturity/ Duration	Market Price/ Market Value	Unrealized Gain/ (Loss)	% of Assets	Moody's/ S&P Rating
91282CHX2	UST 4.375% 08/31/2028	9/27/2023 9/28/2023	\$2,050,000.00	\$2,027,818.36 \$6,899.04	\$2,034,717.40	4.62%	4.677	\$102.13 \$2,093,644.50	\$65,826.14	1.01%	Aaa AA+
SubTotal			\$30,075,000.00	\$29,299,301.77 \$55,952.05	\$29,355,253.82	3.52%		\$29,113,124.25	(\$186,177.52)	14.05%	
Grand Total			\$216,361,843.15	\$215,470,264.28 \$62,435.80	\$215,532,700.08	2.01%		\$207,281,377.72	(\$8,188,886.56)	100.00%	

TRANSACTION STATEMENT

As of December 31, 2023



Transaction Type	Trade Date	Settlement Date	CUSIP	Security Description	Par Value	Principal Amount	Purchased Interest	Total Cost	Yield at Cost
Purchase									
Purchase	11/10/2023	11/13/2023	912828X88	UST 2.375% 05/15/2027	2,900,000.00	2,679,214.84	34,063.18	2,713,278.02	4.76%
Purchase	11/22/2023	11/24/2023	91282CFH9	UST 3.125% 08/31/2027	2,300,000.00	2,187,785.16	16,783.99	2,204,569.15	4.55%
Purchase	12/8/2023	12/11/2023	13607EHW2	Canadian Imperial Holdings Inc. 08/30/2024	1,510,000.00	1,451,423.33		1,451,423.33	5.52%
Total					6,710,000.00	6,318,423.33	50,847.17	6,369,270.50	

Transaction Type	Trade Date	Settlement Date	CUSIP	Security Description	Par Value	Principal Cost	Total Proceeds	Realized Gain/Loss
Maturity								
Maturity	10/31/2023	10/31/2023	17330Y4T4	Citigroup Global Markets Holdings Inc. 5.500% 10/31/2023	2,700,000.00	2,700,000.00	2,700,000.00	0.00
Maturity	11/24/2023	11/24/2023	62479MYQ0	MUFG Bank, Ltd. 11/24/2023	2,008,000.00	1,929,838.60	2,008,000.00	78,161.40
Maturity	12/6/2023	12/6/2023	62479MZ63	MUFG Bank, Ltd. 12/06/2023	1,205,000.00	1,170,573.82	1,205,000.00	34,426.18
Total					5,913,000.00	5,800,412.42	5,913,000.00	112,587.58

Transaction Type	Payment Date	Settlement Date	CUSIP	Security Description	Interest Received
Interest/Dividends					
Interest/Dividends	10/2/2023	10/2/2023	91282CFM8	UST 4.125% 09/30/2027	19,593.75
Interest/Dividends	10/2/2023	10/2/2023	91282CCZ2	UST 0.875% 09/30/2026	12,906.25
Interest/Dividends	10/2/2023	10/2/2023	13063DGB8	California, State of 3.375% 04/01/2025	8,015.63
Interest/Dividends	10/2/2023	10/2/2023	13034AL65	California Infrastructure and Economic Development Bank 0.765% 10/01/2025	3,825.00
Interest/Dividends	10/2/2023	10/2/2023	419792ZL3	Hawaii, State of 0.852% 10/01/2025	21,300.00

TRANSACTION STATEMENT

As of December 31, 2023



Transaction Type	Payment Date	Settlement Date	CUSIP	Security Description	Interest Received
Interest/Dividends	10/2/2023	10/2/2023	31846V567	First American Funds, Inc.	8,504.81
Interest/Dividends	10/10/2023	10/10/2023	05580AE67	BMW Bank of North America 0.650% 10/08/2024	811.47
Interest/Dividends	10/13/2023	10/13/2023	023135CF1	Amazon.com, Inc. 3.300% 04/13/2027	33,000.00
Interest/Dividends	10/16/2023	10/16/2023	45818WDD5	IADB 0.39% 04/16/2024	5,850.00
Interest/Dividends	10/16/2023	10/16/2023	742651DZ2	PEFCO 3.900% 10/15/2027	29,835.00
Interest/Dividends	10/16/2023	10/16/2023	797299MM3	San Diego, City of 1.450% 10/15/2024	6,525.00
Interest/Dividends	10/23/2023	10/23/2023	3133EMDZ2	FFCB 0.520% 10/21/2025	13,000.00
Interest/Dividends	10/25/2023	10/25/2023	3140LLEB3	Federal National Mortgage Association, Inc. 4.390% 07/01/2028	4,572.92
Interest/Dividends	10/30/2023	10/30/2023	459058JL8	IBRD 0.500% 10/28/2025	12,500.00
Interest/Dividends	10/30/2023	10/30/2023	3135GA2A8	FNMA 0.580% 10/28/2025	14,500.00
Interest/Dividends	10/31/2023	10/31/2023	17330Y4T4	Citigroup Global Markets Holdings Inc. 5.500% 10/31/2023	37,125.00
Interest/Dividends	11/1/2023	11/1/2023	797412DM2	San Diego County Water Authority 0.743% 05/01/2025	3,993.63
Interest/Dividends	11/1/2023	11/1/2023	68609TWD6	Oregon, State of 0.895% 05/01/2025	7,831.25
Interest/Dividends	11/1/2023	11/1/2023	757696AQ2	Redondo Beach - Community Financing Authority, City of 0.741% 05/01/2024	5,316.68
Interest/Dividends	11/1/2023	11/1/2023	21969AAE2	Corona, City of 1.361% 05/01/2026	13,099.63
Interest/Dividends	11/1/2023	11/1/2023	797412EL3	San Diego County Water Authority 0.593% 05/01/2024	978.45
Interest/Dividends	11/1/2023	11/1/2023	797412EK5	San Diego County Water Authority 0.593% 05/01/2024	1,986.55
Interest/Dividends	11/1/2023	11/1/2023	79771FFM4	San Francisco, City & County of 0.723% 11/01/2024	542.25
Interest/Dividends	11/1/2023	11/1/2023	79771FFP7	San Francisco, City & County of 0.723% 11/01/2024	4,717.58

TRANSACTION STATEMENT

As of December 31, 2023



Transaction Type	Payment Date	Settlement Date	CUSIP	Security Description	Interest Received
Interest/Dividends	11/1/2023	11/1/2023	31846V567	First American Funds, Inc.	1,034.44
Interest/Dividends	11/13/2023	11/13/2023	023135BW5	Amazon.com, Inc. 0.450% 05/12/2024	4,500.00
Interest/Dividends	11/15/2023	11/15/2023	91412HGE7	The Regents of the University of California 0.883% 05/15/2025	25,518.70
Interest/Dividends	11/15/2023	11/15/2023	91412HJL8	The Regents of the University of California 0.670% 05/15/2025	5,025.00
Interest/Dividends	11/15/2023	11/15/2023	912828X88	UST 2.375% 05/15/2027	34,437.50
Interest/Dividends	11/15/2023	11/15/2023	9128284N7	UST 2.875% 05/15/2028	31,625.00
Interest/Dividends	11/20/2023	11/20/2023	3135G06E8	FNMA 0.420% 11/18/2024	10,500.00
Interest/Dividends	11/27/2023	11/27/2023	3134GXFA7	FMCC 0.650% 11/26/2025	9,750.00
Interest/Dividends	11/27/2023	11/27/2023	3134GXDZ4	FMCC 0.450% 11/25/2024	6,750.00
Interest/Dividends	11/27/2023	11/27/2023	3140LLEB3	Federal National Mortgage Association, Inc. 4.390% 07/01/2028	4,725.35
Interest/Dividends	11/30/2023	11/30/2023	3134GXCV4	FMCC 0.500% 05/30/2025	12,500.00
Interest/Dividends	12/1/2023	12/1/2023	798153ND0	San Jose, City of 0.844% 06/01/2024	2,975.10
Interest/Dividends	12/1/2023	12/1/2023	20772KNX3	Connecticut, State of 1.123% 06/01/2026	12,353.00
Interest/Dividends	12/1/2023	12/1/2023	546417DQ6	State of Louisiana 0.840% 06/01/2025	1,680.00
Interest/Dividends	12/1/2023	12/1/2023	80182AAE9	Santa Cruz, County of 1.024% 06/01/2026	10,931.20
Interest/Dividends	12/1/2023	12/1/2023	31846V567	First American Funds, Inc.	5,913.53
Interest/Dividends	12/11/2023	12/11/2023	3130ATUS4	FHLB 4.250% 12/10/2027	14,875.00
Interest/Dividends	12/14/2023	12/14/2023	89236TJG1	Toyota Motor Credit Corporation 0.500% 06/14/2024	3,750.00
Interest/Dividends	12/15/2023	12/15/2023	79773KBF0	San Francisco, City & County of 0.616% 06/15/2024	770.00

Town of Paradise Operating Account

TRANSACTION STATEMENT

As of December 31, 2023



Transaction Type	Payment Date	Settlement Date	CUSIP	Security Description	Interest Received
Interest/Dividends	12/15/2023	12/15/2023	79773KBG8	San Francisco, City & County of 0.766% 06/15/2025	766.00
Interest/Dividends	12/18/2023	12/18/2023	3134GXFV1	FMCC 0.625% 12/17/2025	7,812.50
Interest/Dividends	12/21/2023	12/21/2023	3133EPNH4	FFCB 3.875 06/21/2028	21,312.50
Interest/Dividends	12/26/2023	12/26/2023	3140LLEB3	Federal National Mortgage Association, Inc. 4.390% 07/01/2028	4,572.92
Total					504,408.59

Transaction Type	Trade Date	Settlement Date	Transaction Description	Amount
Custodian Fee				
Custodian Fee	10/25/2023	10/25/2023	Cash Out	(1,519.15)
Custodian Fee	11/27/2023	11/27/2023	Cash Out	(1,517.96)
Custodian Fee	12/26/2023	12/26/2023	Cash Out	(1,533.73)
Total				(4,570.84)

Management Fee				
Management Fee	10/20/2023	10/20/2023	Cash Out	(5,500.00)
Management Fee	11/13/2023	11/13/2023	Cash Out	(5,500.00)
Management Fee	12/20/2023	12/20/2023	Cash Out	(5,500.00)
Total				(16,500.00)

STATEMENT DISCLOSURE

As of December 31, 2023



Meeder provides monthly statements for its investment management clients to provide information about the investment portfolio. The information should not be used for audit or confirmation purposes. Please review your custodial statements and report any inaccuracies or discrepancies.

Certain information and data has been supplied by unaffiliated third parties. Although Meeder believes the information is reliable, it cannot warrant the accuracy of information offered by third parties. Market value may reflect prices received from pricing vendors when current market quotations are not available. Prices may not reflect firm bids or offers and may differ from the value at which the security can be sold.

Statements may include positions from unmanaged accounts provided for reporting purposes. Unmanaged accounts are managed directly by the client and are not included in the accounts managed by the investment adviser. This information is provided as a client convenience and the investment adviser assumes no responsibility for performance of these accounts or the accuracy of the data reported.

Investing involves risk. Past performance is no guarantee of future results. Debt and fixed income securities are subject to credit and interest rate risk. The investment return and principal value of an investment will fluctuate so that an investors shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data quoted.

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Town of Paradise

Council Agenda Summary

Agenda Item: 2(k)

Date: February 13, 2024

ORIGINATED BY: Dina Volenski, Town Clerk/Elections Official
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Conduct of Council Meetings – Amendment to Resolution No. 15-45
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Adopt Resolution No. 2024-____ “A Resolution of the Town Council of the Town of Paradise Repealing Resolution No. 15-45, and Amending and Restating Procedures Relating to the Conduct of Town Council Meetings.”

Background:

Resolution No. 15-45 was adopted October 13, 2015 with the purpose of streamlining the meeting process and approving Town Council meeting procedure to include the following: 1. Reformatting the agenda cover page to clarify meeting procedure; and, 2. Changing the Order of Business in Section XIII.

Analysis:

Since the Conduct of Council Meetings was amended in 2015, certain agenda and meeting procedures have evolved. The purpose of repealing and amending Resolution No. 15-45 is to bring the procedural manual into alignment with current standards and practices. Staff recommends the following changes to the Conduct of Council Meetings in the following sections and corresponding letters:

I. AGENDA PREPRATION

- A. Agenda Deadline (corrected number of days prior to meeting)
- B. Agenda Synopsis (changed order of approval process)
- C. Agenda Availability (changed from printed copies to Website)

V. Public Participation

- G. Bar Further Audience (Removed)
- H. Removal-Disorderly Conduct (included Government Code 54957.95)

VII. Public Hearing Procedure

- D. Written Material (number of copies required)
- E. Unreviewed Written Materials (number of copies required)

XVI. Rules of Debate

- B. Robert’s Rules of Order (changed to Rosenberg’s Rules of Order)

Financial Impact:

There is no fiscal impact for approving this item.

Attachments:

Resolution

**TOWN OF PARADISE
RESOLUTION NO. 2024-___**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PARADISE
REPEALING RESOLUTION NO. 15-45 AND AMENDING AND RESTATING
PROCEDURE RELATING TO CONDUCT OF TOWN COUNCIL MEETINGS**

WHEREAS, it is necessary to update certain sections of the resolution to comply with current procedures and/or law relating to the Conduct of Council meetings, and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Paradise as follows:

1. AGENDA PREPARATION

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A. Agenda Deadline. All reports, ordinances, resolutions, contract documents or other matters to be submitted to the Council at the scheduled regular meeting on the first Tuesday of the month shall be posted to the automated agenda system at least ~~ten-eleven~~ (14) days prior to the regular Town Council meeting. The Town Manager may determine that it is imperative that an item not meeting the Agenda deadline be heard by the Council. In such case, ~~an item may be added to the agenda and an Addendum to the Amended Agenda~~ may be prepared, distributed and posted so long as it meets the requirements of the applicable sections of the open meetings laws contained in Chapter 9 of the California Government Code known as the Brown Act.

B. Agenda Synopsis. The Town Clerk shall prepare the Agenda of all such matters according to the order of business and collate and distribute an Agenda Packet consisting of supporting written public information that pertains to matters on the agenda. The Agenda shall include a brief description of each item of business to be transacted or discussed at the Council meeting together with the time and location of said meeting. Agenda reports and supporting information shall be reviewed and approved as necessary by the Finance Director, Town Attorney, ~~the Finance Director and~~ and the Town Manager, or their respective designees, prior to submittal to the Town Clerk.

C. Agenda Availability. ~~Printed copies of~~ The Agenda and Agenda Packet shall be available ~~on the Town's Website to be picked up or delivered to each Council Member and each department director not later than 5:30 p.m. on the Wednesday preceding the scheduled meeting and shall be available for each Council Member, department director and the to the~~ public at 8:00 a.m. on the Thursday preceding the scheduled Regular Meeting.

Pursuant to Government Code Section 54957.5, agendas and other writings distributed for discussion or consideration at public meetings are to be made available for public inspection in the Town Clerk Department at the time the writing is distributed to all, or a majority of all, of the members of the legislative body.

The Town Clerk utilizes electronic means to make the Agenda and supporting written information relating to Agenda items for an open session available on the Town’s Internet Website in accordance with Brown Act.

D. Additional Agenda Material. Staff will make every attempt to include all backup Agenda material in the packets for distribution. However, on the rare occasion when unusual circumstances are unavoidable, staff will provide additional Agenda material no later than 12:00 noon on the Monday preceding the Tuesday Regular Meeting.

The Mayor, or Presiding Officer, shall note for the record the submission of additional agenda material, the corresponding agenda item number and subject matter, and request the concurrence of the Council to accept the additional agenda material.

II. AGENDA POSTING

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A. Posting of Agenda. The Agenda shall be posted in a location that is freely accessible to members of the public and on the Town’s Internet Website 72 hours before the regular meeting.

B. Affidavit of Posting. The Town Clerk or designee shall use a stamped affidavit of posting on the Agenda and said Agenda and affidavit of posting shall be retained pursuant to the Town’s adopted records retention resolution.

III. NO ACTION UNLESS POSTED

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A. No Action Unless Posted. No deliberation or action shall be taken on any item not appearing on the posted Agenda unless qualified within one of the three exceptions listed within Item IV below.

B. Automatic Referral to Staff. All matters on which action is requested, but which does not qualify within one of the three exceptions listed below, shall be directed to the Town Manager for analysis. The Town Manager shall place the matter on a subsequent Council Agenda if deemed appropriate, or when requested by any Council Member.

IV. NO ACTION UNLESS POSTED – EXCEPTIONS

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A. Previously Posted. The Council first determines by a majority vote that the item was properly posted for a prior meeting occurring not more than five days prior to the date action is proposed to be taken on the item, and at the prior meeting the item was continued to the meeting at which the action is proposed to be taken.

B. Emergency The Council determines that an emergency situation exists. This determination must be made by separate motion and vote. The motion shall specify the specific facts on which the Council relies in making the determination.

C. Definition of "Emergency Situation". An "emergency situation: as defined by Government Code Section 54956.5, means any of the following:

1. Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.
2. Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

D. Need Arose After Posting The Council determines by a two-thirds vote, or by a unanimous vote if less than two-thirds of the Council Members are present, that the "need to take action" on the item arose subsequent to the posting of the Agenda;

E. Written Justification. Except for Council and staff members, the party proposing immediate action shall present written justification to the Council prior to the Council's determination, addressing the following criteria:

1. The likelihood of public input on the item;
2. Knowledge of the Council's rules;
3. The date and time the applicant first learned of the facts and circumstances creating the need for Council action; and
4. An analysis of harm that may accrue to the Town, the public, and to the applicant if the matter is not addressed at the current meeting, but is continued to the next regular meeting.

V. PUBLIC PARTICIPATION

A. Agenda Item Required. Every Agenda for regular meetings shall provide an opportunity for members of the public to directly address the Council on items of interest to the public that are within the subject matter jurisdiction of the Council.

B. Item Already Considered. The Agenda need not provide an opportunity for members of the public to address the Council on any item that has already been considered by a committee composed exclusively of members of the Council at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, unless the item has been substantially changed since the committee heard the item, as determined by the Council.

C. Written Communications. Interested parties or their authorized representatives may address the Council by written communication in regard to the subject matter under discussion.

D. Oral Presentations. The purpose of oral and written presentations at Council meetings is to hear the public expression thereon and to solicit information on facts and circumstances not otherwise known. The Council considers that such presentations are helpful in arriving at its' decisions.

E. Previous Presentations. Presentations that are repetitive of previous presentations and irrelevant to the issue in question are not helpful and are thus out of order.

F. Criticism. Under Government Code Section 54954.3 the public has the right during presentations to criticize the Town's policies, procedures, programs or services, including acts or omissions of the Council. However, a Council meeting is not a public forum for personal attacks or disruptive presentations or demonstrations.

~~G. Bar Further Audience The Presiding Officer or Council may bar from further audience before the Council at a meeting any person who during the meeting:~~

- ~~1. Engages in the use of profanity or antagonistic behavior;~~
- ~~2. Becomes boisterous or disruptive while addressing the Council;~~
- ~~3. Speaks without being recognized by the Presiding Officer; or~~
- ~~4. Violates any rules of order established by this resolution or the Council~~

HG. Removal - Disorderly Conduct. Any person or persons who engages in indecorous or disorderly conduct, as defined in Government Code 54957.95, including, but not limited to such as hand clapping, stamping of feet, whistling, using profane language, yelling or similar demonstration which conduct disturbs the peace and good order of the meeting, shall, at the request of the Presiding Officer or the Council, be removed from the Council chambers.

Ht. Removal - Disobey Orders. Any person who refuses to comply with the lawful orders of the Presiding Officer shall, at the request of the Presiding Officer or the Council, be removed from the Council Chamber by the Sergeant-at-Arms.

Ij. Ruling of Chair - Appeal The ruling of the Presiding Officer to bar from further audience at that meeting shall be final and conclusive, subject only to the right of appeal by any Council Member to the entire Council.

JK. Oral Presentation - Matters on the Agenda.

1. Order. The public shall have the opportunity to address each item placed on the Agenda after each agenda item has been called, introduced for discussion with staff members, consultants, or applicants, and any presentations made with reference to the agenda item.
2. Written Request Encouraged -Each person wishing to be recognized and to speak on any listed agenda item may ~~complete~~ a written request and

submit it to the Town Clerk prior to the beginning of the scheduled Council meeting. The Town of Paradise shall provide the request form. Each person shall state his/her name and it is requested that they provide their address and specify which agenda item he/she wishes to discuss and give an estimate of how long the presentation will last. Persons who have not submitted written requested may be allowed to speak as time permits, at the discretion of the Council.

3. Time. Each agenda item shall be allotted a total of 15 minutes during which public discussion may take place, unless additional time is allowed by a majority of the Council. If there are numerous speakers, they will have to divide the 15 minutes among the speakers, with a maximum of 3 minutes per speaker. Speakers on a given item may yield their time to another speaker on the same item with the approval of the Council; but total time shall not exceed 15 minutes or such additional time as a majority of the Council may allow.

KL. Oral Presentation - Matters Not on Agenda

1. Public Communications. Each Council Agenda shall contain a public communication section where the public shall be given an opportunity to speak to the Council on items of interest to the public which are not listed on the Agenda for discussion or action.

2. Time. A person speaking shall be required to limit his/her total time as to all subjects in an aggregate of three (3) minutes unless additional time is granted by a majority of the Town Council. If more time is necessary the item should be requested to be placed on a future Agenda for Council consideration.

VI. ADDRESSING THE COUNCIL – PROCEDURE

A. Recognition. No person shall address the Council unless he/she has been first recognized by the Presiding Officer.

B. Podium. All speakers shall make their remarks from the podium.

C. Speaker Identification. The speakers shall first identify themselves by name and it is requested that they state their address and any parties they represent before making their comments.

D. Subject Matter. The speaker's comments shall be limited to the matter which is pending before the Council.

E. Public Communication to the Council. The purpose of public communication is to inform the Council. Therefore, all remarks shall be made to the Council as a whole and not to individual members. Questions to individual Council Members and individual staff

members should be addressed to those persons during time when Council is not in session.

VII. PUBLIC HEARINGS PROCEDURE

A. Time. Public Hearings shall be divided into four major sections: (1) Staff reports for a total of 15 minutes maximum; (2) Proponents presentation for a total of 15 minutes maximum; (3) Opponents presentations for a total of 15 minutes maximum; and (4) Rebuttals (if requested) for a total of 15 minutes maximum or 3 minutes maximum per speaker. If there are numerous speakers for any of the four sections, they will have to divide the 15 minutes total maximum among the speakers. Additional time may be granted by a majority of the Council.

B. Spokesperson for a Group/Committee. In order to expedite matters and avoid repetitious presentations, whenever a group of persons wish to address the Council on the same subject matter the Presiding Officer shall inquire whether or not the group has a spokesperson and, if so, that he/she be heard. Speakers from the group, following such spokesperson, shall be limited to facts not presented by the group spokesperson.

C. Evidence -Received. After the agenda item has been called and introduced, the Council shall receive all oral and written staff reports, reports of consultants to the staff presentations by applicants and their consultants relative to the matter being considered. The rules of evidence shall be substantially relaxed in order to afford full presentation of facts essential for judicious consideration on the matter which is the subject of the public hearing.

D. Written Material. Written material for Public Hearings to be submitted by either proponents or opponents shall be delivered to the Town Clerk by noon on the business day preceding the hearing with copies provided for the Town Manager, Town Attorney, Town Council and one copy for Public Viewing. Eight (8) copies total.

E. Unreviewed Written Materials. Written materials presented to the Council for the first time at or immediately prior to the public hearing, which have not been previously reviewed by staff or Council, may be accepted into evidence at the discretion of the Council. Sufficient copies should be made for each Council Member, the Town Manager, Town Attorney, Town Clerk and at least one extra copy for public viewing/the press. Nine (9) copies total.

F. Closing. When the presentation of evidence has been completed, or when in the opinion of the Presiding Officer or the majority of the Council, sufficient evidence has been presented, the Presiding Officer shall order the public hearing closed and no further evidence shall be accepted or heard.

G. Reopening. A public hearing on any matter, once closed, cannot be reopened on the date set for hearing unless by a 4/5 vote of the Council. Nothing herein, however, is intended to prevent or prohibit the reopening of public hearing at any subsequent, regular or special meeting of the Council. No public hearing may be reopened without the same notice as required for the original public hearing.

H. Continuance. If at any time it appears to the Presiding Officer or the majority of the Council, that inadequate evidence has been presented to afford judicious consideration of any matter before the Council, continuation of such hearing may be ordered to afford the applicant, his/her opponents, or the Town staff, adequate time to assemble additional evidence for the Council's consideration. A continuance may also be granted for matters covered by, and in conformance with, Section XVII(l) of this resolution.

I. Date of Continuance. Any continuation shall be to a date certain, which date shall be publicly announced and shall constitute notice to all parties and to the public that such further evidence will be taken at the time and place specified.

IX. QUORUM

A. Quorum. Three (3) members of the Council shall constitute a quorum for the transaction of business.

B. Deferral/Conflict of Interest. Where there is no quorum, the Mayor, Vice-Mayor or any member of the Council may adjourn or if no member of the Council is present, the Town Clerk shall adjourn such meeting. For the purpose of considering any item which is subject to the vote of the Council, when a member disqualifies himself/herself due to conflict of interest, his/her presence shall not be considered in determining the presence of a quorum. If by such disqualification a quorum of voting Council Members does not remain, consideration of such items shall be deferred until a quorum of Council Members who have no conflict are present to discuss and vote on the matter.

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X MEETINGS TO BE PUBLIC

A. Open to the Public. All regular and special meetings and study session of the Council shall be open to the public. The Council may hold closed sessions in the manner and form provided by law for such closed sessions.

XI. CLOSED SESSIONS

A. Non-disclosure. No member of the Council, employee of the Town or persons present during a closed session of the Council shall disclose to any person the content or substance of any confidential discussion which took place during said closed session, unless the Council votes to authorize disclosure of such information by a majority vote.

XII. PRESIDING OFFICER

A. Chairing Meeting. The Mayor, or in his/her absence, the Vice-Mayor, shall take the chair at the hour appointed for the meeting and shall call the meeting to order. In the absence of the Mayor and the Vice-Mayor, the Town Clerk or his/her assistant shall call the Council to order, whereupon a Temporary Chairman shall be selected by the Council Members present. Upon the arrival of the Mayor or the Vice-Mayor, as the case may be, the person who is then presiding shall relinquish the chair at the conclusion of the business then before the Council.

B. Presiding Officers Duties. The Presiding Officer shall preserve strict order and decorum at all Council meetings, state questions coming before the Council, announce its decision on all subjects and decide all questions or order; subject, however, to appeal by any Council Member as provided herein.

The Presiding Officer may make motions, debate and vote on all questions and on Roll Call his/her name should be called last.

C. Public Debate. The Presiding Officer controls public debate so that repetitive or irrelevant statements are not made, so that where public participation is in order, everyone will have a chance to speak before other persons have a second chance to speak, to expedite business at hand and to prevent Council meetings from being used as a forum for libel, slander or otherwise defamation of persons under the cloak of the "public privilege."

D. Signing Documents. The Mayor shall sign all ordinances and resolutions adopted and contracts approved by the Council at meetings at which he/she is in attendance. In the event of his/her absence, the Vice-Mayor shall sign such documents. In the absence of the Mayor and the Vice-Mayor, the Temporary Chairman shall sign such documents.

XIII. ORDER OF BUSINESS

A. Order of Business. All regular meetings of the Council shall take up for consideration and disposition matters in substantially the following order, except as may otherwise be agreed by a majority of the Council:

1. Opening

- a. Call to Order
- b. Flag Salute
- c. Invocation
- d. Roll Call
- e. Introductions, Proclamations, Presentations

2. Consent Calendar

3. Items Removed from Consent Calendar

4. Public Communication

This is the time for members of the audience who have completed a "Request to Address Council" card and given it to the Clerk to present items not on the Agenda. Comments should be limited to a maximum of three (3) minutes duration. The Town Council is prohibited by State Law from taking action on any item presented if it is not listed on the Agenda.

(A total of 30 minutes maximum will be allotted for this Agenda Item. Each speaker will be allowed a maximum of 3 minutes each, with the total time of 30 minutes divided between all speakers if there are more than ten.)

5. Public Hearings – Procedure on Cover Page

6. Council Consideration

7. Council Communication/Initiatives

8. Staff/Commission/Committee Communication

9. Closed Session

10. Adjournment

B. Directory. The provisions of this section shall be directory and not mandatory.

XIV. ROLL CALL

A. Roll Call. Before proceeding with the business of the Council, the Town Clerk shall call the roll of the members and the name of those present shall be entered in the minutes.

XV. CONSENT CALENDAR

A. Consent Calendar. Actions recommended by the staff or the Mayor to be listed in a Consent Calendar shall be listed in a summary form.

B. Reading of Resolutions/Ordinances. Each ordinance and resolution by reference on the written agenda is deemed to have been read by title only.

C. Adoption of Consent Calendar. The adoption of the Consent Calendar may be made in one motion by the Council; provided, however, that any Council Member may

request that the Council defer action on any matters on the Consent Calendar and place it/them on the regular agenda. In such event, the Presiding Officer shall order that such matter (except for reading by title only as set forth in this section, unless a full reading is specifically requested) be removed from the said Consent Calendar and be placed for Council consideration.

D. All Items Adopted. Adoption of the Consent Calendar and approval of the same shall constitute an affirmative vote for each and every item contained thereon.

E. Adopted by Roll Call. The Consent Calendar shall be adopted only by roll call.

XVI. RULES OF DEBATE

A. Rules of Debate. The Presiding Officer may move, second and debate from the chair, subject only to such limitations of debate as are by these rules imposed on all Council Members, and shall not be deprived of any of the rights and privileges of a Council Member by reason of his/her acting as the Presiding Officer.

B. ~~Robert's Rules of Order~~ Rosenberg's Rules of Order. Except as otherwise provided in this resolution or provided by law, ~~Robert's~~ Rosenberg's Rules of Order, Revised shall govern the conduct of regular meetings of the Council.

C. Objections to Informal Procedures. Objections to the use of informal procedures by the Council or the failure of the Council to act strictly in accordance with Robert's Rules of Order shall be deemed waived by all Council Members, unless a Council Member express his/her objections at the time when such procedure is used.

D. Taking Matters Out of Order. The Presiding Officer may at any time, by consent of a majority of the Council, permit a member to introduce an ordinance, matter, resolution or motion out of the regular Agenda order.

E. Dividing Issues. If a matter contains two or more divisible propositions, the Presiding Officer may, and upon the request of a Council Member shall, unless appealed, divide the same.

F. Points of Order. The Presiding Officer shall determine all points of order subject to the right of any Council Member to appeal and request full Council ruling on the question. In the event of an appeal, the questions shall be: "Shall the decision of the Presiding Officer be sustained?" The majority vote shall conclusively determine such question of order.

G. Point of Personal Privilege. The right of a Council Member to address the Council on a question of personal privilege shall be limited to cases in which his/her integrity, character or motives are questions, or where the welfare of the Council is concerned.

H. Gaining the Floor. Every Council Member desiring to speak shall first address the chair and gain recognition by the Presiding Officer. Such member shall confine

himself/herself to the question under debate, avoiding reference to character and indecorous language.

I. Interruptions of a Council Member. A Council Member, once recognized, shall not be interrupted while speaking, unless called to order by the Presiding Officer, or unless a point of order or personal privilege is raised by another Council Member, or unless the speaker chooses to yield to a question by another Council Member. If a Council Member, while speaking, is called to order, he/she shall cease speaking until the question of order is determined and, if determined to be in order, he/she may proceed. A Council Member, when speaking, shall speak to the subject matter of the item on the floor, and shall keep his/her remarks to a reasonable length. If a Council Member fails to do so, he/she may be called to order by a point of order.

Members of the Town staff, after recognition by the Presiding Officer, shall hold the floor until completion of their remarks or until recognition is withdrawn by the Presiding Officer.

J. Propriety of Conduct - Council. Members of the Council must observe order and decorum and shall not by conversation otherwise, delay or interrupt the proceedings of the Council or in any way make or disturb any other member of the Council while speaking, or refuse to obey the orders of the Council or the Presiding Officer, except as in this resolution otherwise provided.

XVII. VOTING

A. Passage of Motion. The passage of every motion shall be by roll call and entered in full upon the record.

B. Roll Call Vote Required. All ordinances, resolutions granting a franchise, and resolutions and orders for the payment of money shall be by roll call vote. Any member of the Council may demand a roll call vote on any matter before the Council.

C. Explanation of Vote. It shall not be in order for any Council Member to explain their vote during the roll call, except in conformance with Section XVIII below.

D. Disqualification. Every member should vote unless disqualified for cause, but no Council Member shall be forced to vote.

E. Tie Votes. Tie votes shall be lost motions and result in a rejection of the matter voted upon.

F. Change of Vote. After the roll call has been completed but before the result of the vote is announced, a member may change his/her vote. A member may not change his/her vote after the vote has been announced unless a majority consent is obtained.

G. Failure to Vote. A Council Member who is silent, or inattentive, or fails to vote without stating his/her abstention or without being disqualified, shall be deemed to have cast a "yes" vote.

H. Conflict of Interest. A Council Member who is disqualified by reason of conflict of interest shall be recorded as "absent" and a Council Member who states he/she is abstaining shall be recorded as "not voting."

1. Appeals from Planning Commission Actions. With regard to any matter that comes before the Town Council on appeal from determinations or actions taken by the Planning Commission, at least three (3) affirmative votes shall be required to uphold any appeal from said determinations or actions. Failure to obtain three (3) affirmative votes shall constitute rejections of any such appeal.

In the event that there is less than a full Council present and qualified to vote on any appeal from Planning Commission determinations or actions, the appellant may continue the public hearing and the Town Council's determination on the appeal until a date certain when a full Council is expected to be available to hear and vote on said appeal. The appellant is required to exercise his/her said option to continue prior to the opening of the public hearing on the appeal and prior to any vote or action being taken by the Town Council on the appeal. In the event the appellant chooses to have the matter heard and decided by less than a full Council, the action taken by the Town Council on the appeal at the meeting at which the appeal is heard shall be considered final. Any continuances granted pursuant to this section shall conform to the provisions of Section VIII of this resolution.

XVIII. RIGHT TO RECORD REASONS FOR VOTE

A. Reasons Entered into the Minutes. Any Council member shall have the right to have the reasons for his/her vote on any action before the Council entered in the minutes. Such statement shall be made in substantially the following manner: "I would like the minutes to show that I favor/oppose this action for the following reasons..."

XIX. RECONSIDERATION

A. Motion to Reconsider. A motion to reconsider any action taken by the Council may be made only at the meeting when such action was taken. It may be made either immediately during the same session, or a recessed or adjourned session thereof. Such a motion to reconsider shall be made only by one of the Council Members who voted with the prevailing side. Nothing herein shall be construed to prevent any Council member from making or remaking the same or another motion at a subsequent meeting of the Council.

XX. ENFORCEMENT OF ORDER

A. Sergeant-At-Arms. The Chief of Police is designated as Sergeant-at-Arms of the Council and shall carry out all orders by the Presiding Officer for the purpose of maintaining order at the Council meeting. In the absence of the Chief of Police or any member of the

Police Department, the Presiding Officer may designate any person to act as Sergeant-at-Arms.

B. Enforcement of Rules. Any Council Member may move to require the Presiding Officer to enforce these rules. An affirmative vote of the majority of the Council shall require the Presiding Officer to enforce said rules.

XXI. PROCEDURAL RULES - VIOLATION SHALL NOT INVALIDATE

A. Substantial Compliance. Insofar as practicable, the business of the Council shall be conducted substantially in the order and the manner provided in this resolution. However, the failure to observe or enforce such procedural rules shall in no manner affect the regularity, validity or legality of any action or proceeding taken by the Council. The Council, in its discretion, reserves the right to govern its own proceedings.

XXII. TESTIMONY UNDER OATH

A. Testimony Under Oath. The Presiding Officer may require any person addressing the Council to be sworn as a witness and testify under oath. The Presiding Officer shall require a witness to be sworn if directed to do so by a majority of the Council.

XXIII. MINUTES OF COUNCIL

A. Minutes. The official minutes of the Town Council will be kept by the Town Clerk in the Minute Book, with the record of each particular type of business transacted set off in the paragraph with the proper subheads.

B. Record Business Passed by Council. The Clerk shall be required to make a record only of such business actually passed upon by the Council, and shall not be required to record the remarks of any member of the Council or any other person, except as specifically provided by this resolution.

C. Persons Addressing Council. The names and addresses (if volunteered) of persons addressing the Council and the subject matter of their remarks shall be entered in the minutes.

D. Directory. The provisions of this section shall be directory and not mandatory.

XIV. INVESTIGATIONS AND HEARINGS

A. Investigations and Hearings. The Council shall have the discretionary right to make investigations and hold hearings with respect to all matters within its legislative power and all matters pertaining to the administration of the business of the Town.

B. Power of Subpoena. The Council shall have the power of subpoena as provided in Sections 37104 and 37109 of the Government Code. The Council may order the Clerk and the Chief of Police or his/her representative to issue subpoenas for any witnesses or records necessary for the production of evidence at any duly scheduled meeting of the Council.

XV. SMOKING AT MEETINGS

A. Smoking. No person shall smoke any cigarette, e-cigarette, vapor device, cigar or pipe during any meeting of the Town Council.

XVI. ADJOURNMENT

A. Time of Adjournment. It shall be the policy of the Town Council to adjourn its meetings at or before 11:00 p.m. If the Council has not completed all items of the Agenda by 11:00 p.m., the Council, shall, at that time, either (1) waive the adjournment hour by formal motion; or (2) determine a future date(s) and time(s) at which the remaining Agenda items will be heard. Violation of this section shall not invalidate the action taken.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 13th day of February, 2024, by the following vote:

AYES:

NOES:

ABSENT:

NOT VOTING:

Attest:

Ron Lassonde, Mayor

Dina Volenski, CMC, Town Clerk

Approved as to Form:

Scott E. Huber, Town Attorney



Town of Paradise

Council Agenda Summary

Agenda Item: 2(I)

Date: February 13, 2024

ORIGINATED BY: Eric Reinbold, Police Chief
REVIEWED BY: Jim Goodwin, Town Manager
Scott E. Huber, Town Attorney
SUBJECT: Rotary Club of Paradise Donation Acceptance

LONG TERM RECOVERY PLAN: No.

COUNCIL ACTION REQUESTED:

1. Consider accepting a donation of \$5,000 from the Rotary Club of Paradise to support the E-Citation program.

Background:

During the 1st quarter of the fiscal year 23/24, Officer Andrew Cooper spearheaded a program to improve the police department's process in completing traffic collision and citation reporting. The new process will improve accuracy and increase efficiency. By leveraging current technologies, the officers will have the ability to provide a more accurate picture of the community's traffic related issues.

Officer Cooper has already secured a grant to fund the software and service component of this transition. The Rotary Club of Paradise is providing a donation to assist with the purchase of hardware that will be needed to carry on this project.

Analysis:

Town Council Resolution No. 96-17 provides for the formal presentation and acceptance of donations made to the Town of Paradise at a public meeting. This process provides a tax record for the citizen or organization as well as clear direction to the Finance Director to deposit such donations to specific accounts as requested by donor(s).

Staff recommends Town Council accept the donation of the \$5,000 from the Rotary Club of Paradise.

Financial Impact:

The acceptance of the donation of \$5,000 is expected to have no fiscal impacts relating to its usage.



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 2(m)

ORIGINATED BY: Colette Curtis, Recovery and Economic Development Director

REVIEWED BY: Jim Goodwin, Town Manager

SUBJECT: Category 4 Tree Removal Management Partnership with the Butte Fire Safe Council – Pre-Phases 2 Contract Not to Exceed Increase

LONG TERM RECOVERY PLAN: Yes

COUNCIL ACTION REQUESTED:

1. Authorize the attached not to exceed (NTE) increase amendment for \$10,000 with the Butte Fire Safe Council and authorize the Town Manager to execute the amendment in order to continue with FEMA/CalOES approved Pre-Phase 2 award work.

Background:

The Town Council approved a professional services contract for the Butte Fire Safe Council (BCFSC) on May 9, 2023 for the management of Phase 2 of the Category 4 Tree Removal Program. That contract was approved to be executed upon full approval by FEMA of Phase 2 of the project which had been anticipated for Summer 2023. Town staff continues to wait for full approval to execute that contract.

Due to additional delays by FEMA for the Environmental Assessment process, staff now anticipates phase 2 approval before April 2024. In order to save time upon approval, FEMA agreed to allow the Town and BCFSC to initiate a number of phase 2 actions before full approval of the project. On October 9, 2023, the Town Council approved a BCFSC contract to work on FEMA Authorized Pre-Award actions.

Due to the FEMA delays, the project approval originally projected for February 2024 looks to be on track for full approval before the end of March. All work on the environmental analysis that has caused years of delay is now complete and in final CalOES review and authorization. We have been advised that this process should take no longer than one month before full approval is granted.

Analysis:

The BCFSC work in partnership with Town staff has been essential in preparing for a quick implementation of the project upon full approval. This NTE will allow their staff to continue moving forward with project preparation during this additional delay.

Financial Impact:

This contract will be funded through the FEMA-approved \$58,878.00 in pre-award period expenses. The professional services agreement and respective services will be 75% funded by FEMA/CalOES HMGP funds. The 25% remaining match funds will be provided by a CalFire Wildfire Prevention Grant. The BCFSC Management costs previously approved in May 2023 will not exceed \$585,851.00.

This pre-award work contract would now not exceed \$20,000 and is for work included in the previously approved contract scope of work. It will not increase the originally approved full BCFSC Management Contract once fully implemented. Scope of work actions originally intended for Phase 2 is being moved to the pre-award phase as approved by FEMA and CalOES. We anticipate this NTE would also cover any unforeseen short delays to full FEMA approval.

**ATTACHMENT A:
AMENDMENT TO AGREEMENT
BETWEEN THE TOWN OF PARADISE AND THE BUTTE FIRE SAFE COUNCIL.**

This Amendment to Agreement is made on February 13, 2024, to the Agreement dated October 9, 2023 by and between the Town of Paradise, a California municipal corporation (“Town”), and the Butte Fire Safe Council. (“Contractor”).

RECITALS

A. The initial amount of the Agreement was not to exceed \$10,000 for Category 4 Program Pre-Award services by Contractor for the Town.

AGREEMENT NOW, THEREFORE, Town and Contractor agree as follows:

1. The Agreement shall be amended as follows:
 - 1.1. Notwithstanding any other provisions in the Agreement, the amount payable by Town to Contractor shall be increased by \$10,000 for a not-to-exceed amount of \$20,000.
2. All other provisions of the Agreement shall remain in full force and effect.
3. If there is a conflict between this First Amendment and the Agreement, this First Amendment shall be controlling.

TOWN OF PARADISE:

By:
Date

REVIEWED FOR CONTRACT POLICY COMPLIANCE
By:

Butte Fire Safe Council

By:
Date:

REVIEWED AS TO FORM:
By:



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 6(a)

ORIGINATED BY: Aimee Belev, Finance Director/Town Treasurer
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Tri Counties Bank Banking Services
LONG TERM RECOVERY PLAN: No

COUNCIL ACTION REQUESTED:

1. Consider authorizing the Mayor and Town Manager to enter into an agreement for banking services with Tri Counties Bank for five years with an optional extension of two years, contingent upon final review and approval by the Town Attorney.

Background:

On October 2017, the Town of Paradise entered into a five-year banking agreement with an optional two-year extension with US Bank. The Town is fast approaching the end of its second and final extension year. On November 9, 2023, the Town submitted a request for proposal in Public Purchase in order to obtain as many local banking proposals as possible.

A copy of the request for proposal is attached for Town Council's review.

Discussion:

Staff was pleased to receive three comprehensive proposals for banking services. Each proposal was of high quality, and each addressed fifteen specific sections ranging from comparable experience to detailed options on specific services. A committee made up of the Finance Director, the Senior Accountant and Accountant was formed to evaluate the proposals. The proposals were evaluated in accordance with the criteria outlined in the proposal as follows:

1. **Conformity to RFP Specifications.** The proposal must be received by the Town by the specified due date. It is the responsibility of the bank to ensure proper submission and timely delivery of all required material.
2. **Responsiveness to RFP.** The quality of the proposal, i.e. did the bank demonstrate a good understanding of the Town's needs and respond in a comprehensive manner?
3. **Comprehensiveness of Services Provided.** The Town's evaluation of the overall capabilities of the bank to meet the required service levels described in this RFP.
4. **Related Experience.** The bank's related experience in providing services comparable to the Town's needs.

5. **Account Analysis.** The quality of the bank's standard account analysis statement.
6. **Conversion Plan.** The thoroughness of the conversion plan to ensure a smooth transition.
7. **Charges for Services.** The amount of the standard charges, proposed pricing increases in subsequent years and the pricing structure being proposed.
8. **Service Enhancements.** The bank's efforts to understand the Town's banking needs and goals and the creativity the bank shows in introducing new technologies and efficiencies to the Town to improve current practices and procedures.
9. **Other Factors.** Any other factors that the Town believes would be in the best interest of the Town to consider which were not previously described.

Out of 390 possible points assigned to these criteria, the committee scored the banks in order of ranking as follows:

<u>Rank</u>	<u>Bank</u>	<u>Score</u>
1	Tri Counties Bank	356
2	US Bank	346
3	Mechanics Bank	327

Staff recognizes and appreciates the time and effort taken by each of the banks to submit proposals. Ultimately, staff recommends Town Council approve a five-year banking service agreement with Tri Counties Bank, with the option of extending for an additional two years.

Tri Counties Bank demonstrated their understanding of the Town's banking priorities and has shown commitment to helping the Town achieve its unique financial goals with a dedication to customer service.

A copy of the Tri Counties proposal is attached for Town Council's review.

Financial Impact:

Banking fees will be in accordance with the agreement and will be locked in at current rates for the duration of the five-year agreement. Estimated fees were included in the 23/24 budget, and so the agreement will have minimal fiscal impact.

**TOWN OF PARADISE
PROFESSIONAL SERVICES AGREEMENT
FOR BANKING SERVICES WITH**

THIS AGREEMENT is made and entered into this day of February 13, 2024 (Effective Date”), by and between the Town of Paradise , a California municipal corporation (“Town”), and Tri Counties Bank, a California Corporation (“Bank”).

WITNESSETH:

A. WHEREAS, Town proposes to utilize the services of Bank as an independent contractor to provide general banking services, as more fully described herein; and

B. WHEREAS, Bank represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, Town and Bank desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of Town has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY BANK

1.1. Scope of Services. Bank shall provide the banking services described in the Bank’s Proposal (“Proposal”), attached hereto as Exhibit “A” and incorporated herein by this reference, as well as those contained in Bank’s Master Treasury Agreement¹, Business Deposit Account Agreement and Disclosures, Mobile & Online Banking User Agreement, Contract for Deposit of Moneys, Waiver of Security, Resolution for Acceptance of Treasury Management Services, and Signature Card, attached hereto as Exhibit “B” and incorporated herein by reference (collectively, “Bank Agreements”). Any conflicts between Bank Agreements and this Agreement shall be controlled by this Agreement.

1.2. Professional Practices. All banking services to be provided by Bank pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by banks in similar circumstances in accordance with sound banking practices. Bank also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise Town of

¹ Any reference to the Master Agreement shall be deemed to include the Master Treasury Management Services Agreement, the Acceptance, the respective Service Descriptions, and the Supporting Documents (each as defined in the Master Treasury Agreement), unless otherwise stated each of which may be amended from time to time.

any changes in any laws that may affect Bank's performance of this Agreement. Bank shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Bank shall at all times observe and comply with all such laws and regulations. Officers and employees shall not be liable at law or in equity occasioned by failure of the Bank to comply with this section.

1.3. Performance to Satisfaction of Town. Bank agrees to perform all the work to the complete satisfaction of the Town and within the hereinafter specified. Evaluations of the work will be done by the Town Manager or his or her designee. If the quality of service is not satisfactory, Town in its discretion has the right to:

- (a) Meet with Bank to review the quality of the service and resolve the matters of concern;
- (b) Require Bank to remedy the service at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Bank warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Bank shall indemnify and hold harmless Town from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against Town for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Bank's performance under this Agreement.

1.5. Non-discrimination. In performing this Agreement, Bank shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Bank agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Bank shall, in all solicitations and advertisements for employees placed by, or on behalf of Bank shall state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, marital status, national origin, or mental or physical disability. Bank shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial banking supplies or equipment.

1.6. Non-Exclusive Agreement. Bank acknowledges that Town may enter into agreements with other banks for services similar to the services that are subject to this Agreement

or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a banking service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of Town. Bank may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Bank's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Bank may engage during the term of this Agreement.

1.8. Confidentiality. Employees of Bank in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of Town. Bank covenants that all data, documents, discussion, or other information developed or received by Bank or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Bank without written authorization by Town. Town shall grant such authorization if disclosure is required by law. Subject to applicable bank regulatory requirements and document retention requirements, all Town data shall be returned to Town upon the termination of this Agreement. Bank's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Bank shall be paid in accordance with the fee schedule set forth in Exhibit "C" as may be modified from time to time as mutually agreed upon by Town and Bank.

2.2. Additional Services. Bank shall not receive compensation for any services provided outside the scope of services specified in the Bank's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the Town or the Project Manager for this Project, prior to Bank performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the Town request in writing additional services that increase the hereinabove described "SCOPE OF SERVICES", an additional fee based upon the Bank's standard hourly rates shall be paid to the Bank for such additional services.

2.3. Method of Billing. Bank may submit invoices to the Town for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Bank's services which have been completed to Town's sole satisfaction. Town shall pay Bank's invoice within forty-five (45) days from the date Town receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Bank's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to Town or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The banking services to be performed pursuant to this Agreement shall commence as soon as practicable following the Effective Date of this Agreement, unless a future date is described in Exhibit "A". Said services shall be performed in strict compliance with the Bank's Proposal and Scope of Work approved by Town as set forth in Exhibit "A."

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Bank is encountered, a time extension may be mutually agreed upon in writing by the Town and the Bank. The Bank shall present documentation satisfactory to the Town to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of 60 months, ending on February 28, 2029, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. This Section 4.2 is in addition to any similar provisions set forth in the Bank Agreements. The Town reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the services contemplated by this Agreement, with or without cause, at any time, by providing at least fifteen (15) days prior written notice to Bank. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Bank shall immediately stop rendering services under this Agreement unless directed otherwise by the Town. If the Town suspends, terminates or abandons a portion of this Agreement such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Bank defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Bank fails to cure its default within such period of time, the Town shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The Town shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Bank, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;

- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or rearrangement of its affairs.

4.3. Compensation. In the event of termination, Town shall pay Bank for reasonable costs incurred and banking services satisfactorily performed up to and including the date of Town's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the banking services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress. Town shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Bank in its performance of this Agreement shall be delivered to the Town within ten (10) days of delivery of termination notice to Bank, at no cost to Town. Any use of uncompleted documents without specific written authorization from Bank shall be at Town's sole risk and without liability or legal expense to Bank.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Bank shall obtain, maintain, and keep in full force and effect during the life of this Agreement all the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by Town:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO from #CG 00 01 04 13, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Bank maintains higher limits than the specified minimum limits, Town requires and shall be entitled to coverage for the high limits maintained by the Bank.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Bank. Bank agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the Town, its officers, agents, employees, and volunteers for

losses arising from work performed by Bank for the Town and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies. Before execution of this Agreement by the Town, the Bank shall file with the Town the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Bank shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Public Works Director/Town Engineer before execution of this Agreement by the Town. The Town, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the Bank to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Bank shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the Town nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Bank under this Agreement are adequate to protect Bank. If Bank believes that any such insurance coverage is insufficient, Bank shall provide, at its own expense, such additional insurance as Bank deems adequate.

5.2. Intentionally Omitted.

5.3. Intentionally Omitted.

5.4. Intentionally Omitted.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Bank may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement (including its Exhibits and any amendments thereto) constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The Town Manager or his or her designee shall be the

representative of Town for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the Town, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Bank shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Bank called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. Town shall designate a Project Manager to work directly with Bank in the performance of this Agreement. It shall be the Bank's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Bank shall refer any decision, which must be made by Town, to the Project Manager. Unless otherwise specified herein, any approval of Town required hereunder shall mean the approval of the Project Manager.

Bank shall designate a Project Manager who shall represent it and be its agent in all consultations with Town during the term of this Agreement and who shall not be changed by Bank without the express written approval by the Town. Bank or its Project Manager shall attend and assist in all coordination meetings called by Town.

6.4. Notices. In addition to any notice provisions in the Bank Agreements, any notices, documents, correspondence or other communications concerning this Agreement, or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; and b) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO BANK:

Tri Counties Bank
Attn: Sonny Ventimiglio
6848 Q Skyway
Paradise, CA 95969

IF TO TOWN:

Town of Paradise
Attn: Town Manager
5555 Skyway
Paradise, CA 95969

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Butte County, California. Bank agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Bank shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Bank's interest in this Agreement without Town's prior written

consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of Town's consent, no subletting or assignment shall release Bank of Bank's obligation to perform all other obligations to be performed by Bank hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless./ Bank agrees to defend, indemnify, hold free and harmless the Town, its elected and appointed officials, officers, agents and employees, at Bank's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the Town, its elected and appointed officials, officers, agents and employees arising out of the performance of the Bank, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement due to Bank's negligence or willful misconduct. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the Town, its elected and appointed officials, officers, agents and employees based upon the work performed by the Bank, its employees, and/or authorized subcontractors under this Agreement, whether or not the Bank, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Bank shall not be liable for the defense or indemnification of the Town for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the Town. To the extent this section 6.8 is in conflict with other indemnity provisions contained either in the Town's specifications or Bank's Proposal, including Bank Agreements, this provision shall govern.

6.9. Independent Contractor. Bank is and shall be acting at all times as an independent contractor and not as an employee of Town. Bank shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise act on behalf of Town as an agent. Neither Town nor any of its agents shall have control over the conduct of Bank or any of Bank's employees, except as set forth in this Agreement. Bank shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of Town. Bank shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Bank and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Bank shall indemnify and hold Town harmless from any and all taxes, assessments, penalties, and interest asserted against Town by reason of the independent contractor relationship created by this Agreement. Bank further agrees to indemnify and hold Town harmless from any failure of Bank to comply with the applicable worker's compensation laws. Town shall have the right to offset against the amount of any fees due to Bank under this Agreement any amount due to Town from Bank as a result of Bank's failure to promptly pay to Town any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. In the event that Bank or any employee, agent, or subcontractor of Bank providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the Town, Bank shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for PERS benefits on behalf of Bank or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Bank and any of its employees, agents, and subcontractors providing

service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by Town, including but not limited to eligibility to enroll in PERS as an employee of Town and entitlement to any contribution to be paid by Town for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against Town relating to Bank's performance or services rendered under this Agreement, Bank shall render any reasonable assistance and cooperation which Town might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Bank or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of Town. Bank agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of Town but shall be made available to the Town within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of Town and without liability or legal exposure to Bank. Town shall indemnify and hold harmless Bank from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from Town's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Bank. Bank shall deliver to Town any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by Town or its authorized representative, at no additional cost to the Town. Bank or Bank's agents shall execute such documents as may be necessary from time to time to confirm Town's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Bank has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Bank, or any of its subcontractors, pursuant to this Agreement and provided to Town may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 7920 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Public Records Act, and of which Bank informs Town of such trade secret. The Town will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The Town shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Bank and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Bank's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Bank and its officers, employees, associates and subcontractors shall not, without the prior written approval of the Town Representative, perform work for another person or entity for whom Bank is not currently performing work that would require Bank or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Bank shall be responsible for its work and results under this Agreement. Bank, when requested, shall furnish clarification and/or explanation as may be required by the Town's representative, regarding any services rendered under this Agreement at no additional cost to Town. In the event that an error or omission attributable to Bank occurs, then Bank shall, at no cost to Town, provide all necessary design drawings, estimates and other Bank services necessary to rectify and correct the matter to the sole satisfaction of Town and to participate in any meeting required with regard to the correction.

6.16. Prohibited Employment. Bank will not employ any regular employee of Town while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the Town's Request for Proposals, the Bank's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Town and Bank and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right

or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

TOWN OF PARADISE,
A municipal corporation

Ronald Lassonde, Mayor

Date: _____

James Goodwin, Town Manager

Date: _____

ATTEST:

Town Clerk

BANK

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A
BANK'S PROPOSAL AND SCOPE OF WORK



Request for Proposal

Banking Services

Prepared By:



Sonny Ventimiglio, VP Relationship Manager

6848 Q Skyway Paradise, CA 95969

(530) 520-8959

sonnyv@tcbk.com

December 13, 2023

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December 13, 2023

Town of Paradise
Attn: Aimee Belev
Finance Director
5555 Skyway
Paradise, CA 95969

Dear Ms. Belev:

Thank you for allowing Tri Counties Bank the opportunity to provide a proposal for banking services to the Town of Paradise.

Tri Counties Bank has a strong and local presence in Paradise and we feel our bank would be able to meet the needs of the Town with putting a focus on the community. Throughout this proposal you will find we strive for excellence in community banking while maintaining a large product and service offering.

While some larger financial institutions have terminated their banking relationships with public fund entities and associations based on the Liquidity Coverage Ratio (LCR) within Basel III, we remain committed to this business segment. Tri Counties Bank is not impacted by the LCR within Basel III as this affects Financial Institutions with \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure. Therefore, we are seeking and committed to offering a long-term banking relationship with the Town of Paradise while collateralizing the funds at 110% above the FDIC maximum amount.

The services and pricing set forth in this RFP response is valid through June 1, 2024 and will remain in effect for 5 years if the Town of Paradise moves forward with the proposal. Tri Counties Bank confirms that they meet all the minimum qualifications listed in Section III items 1-10 within the RFP.

Please direct any questions or inquiries regarding this proposal directly to all three of us. Again, we thank you and value this opportunity.

Sincerely,

Santino Ventimiglio

Sonny Ventimiglio
Vice President
Relationship Manager
(530) 520-8959
sonnyv@tcbk.com

Annette Mariottini

Annette Mariottini
Vice President
Treasury Management Officer
(530) 636-3289
annettemariottini@tcbk.com

3. Bank and Staff Profile

- a. *Describe the bank's experience in providing similar services. Summarize the services provided for no more than two of the bank's most comparable customers. It is preferable that one of the comparable customers be a municipal agency. Include a brief description of the services provided, how long such services have been provided and a contact person for each client described.*

Tri Counties Bank currently manages more than 200 public agency accounts with over \$250 million in balances. Tri Counties Bank provides public agencies a safe place to hold public monies. California government code Title 5, Division 2, Part 1, Chapter 4, Article 2, Sections 53630 through 53686 regulates the Local Agency Security Program (LASP). California law is supplemented by regulations, Title 2, Division 4.5, Section 16001.1.1 through 16010.1.3. TCB's Public Fund balances are collateralized up to 110% by government backed securities held at our custodian bank, The Independent Bank (TIB). <https://dfpi.ca.gov/local-agency-security-program>

Paradise Irrigation District

Brett Goodlin, Finance Director
(530) 877-4971
bgoodlin@paradiseirrigation.com

- PID has been a valued customer of Tri Counties Bank since 2010. As a public agency their balances are fully collateralized by an executed Public Fund Agreement. They utilize a full suite of Treasury Management services including: TriCo Treasury Center, Balance Reporting/Reconciliation, Report Delivery, Online Stop Payments, Wire Origination, ACH Origination for Payroll Direct Deposit, Positive Pay and Remote Deposit Capture

City of Mt. Shasta

Muriel Terrell, Finance Director
(530) 926-7510
mterrell@mtshastaca.gov

-The City of Mt. Shasta has more than a 20-year relationship with Tri Counties Bank established in 2000. The City is very similar to the Town of Paradise relating to deposit size, check volume and additional services. Treasury Management services include: TriCo Treasury Center, Balance Reporting/Reconciliation, Report Delivery, Online Stop Payments, Wire Origination, ACH Origination for Payroll Direct Deposit.



- b. Identify the key personnel or department group assigned to the Town's account. Describe the role and responsibility of each person or group.

Local people, Local bankers, Local customers

Sonny Ventimiglio

VP, Relationship Manager



Sonny Ventimiglio has been with Tri Counties Bank for 11 years and in the banking industry for 23 years. As a VP, Relationship Manager, Sonny thrives in being a strategic partner to the businesses he serves and works to provide value to his clients. He offers Business/Commercial Financing and Banking Solutions to new customers and manages a portfolio of Commercial Relationships. His approach is to work proactively with his customers to provide feedback and perspective to the organization's business and financial goals. Sonny holds a certificate in Business Financial Management from Cornell University and hosts a Profit Mastery education program that allows him to gain useful skills to be able to discuss a wide range of different financial considerations with his clients.

Annette Mariottini

VP, Treasury Management Officer



Annette Mariottini is a Vice President Treasury Management Officer for Tri Counties Bank for the Butte County area. For over 10 years, Annette has been guiding and assisting clients in maximizing their cash management processes by providing critical services that improve collections processes, reduce costs and save staff time while enhancing the security of money management. Prior to joining Tri Counties Bank, Annette spent a decade working with the top payroll companies consulting with mid-size businesses to help streamline their payroll and HR processes and was a key resource to local banks and CPA's seeking effective payroll solutions for their clients. Annette is currently a member of the Power of 100+ Women of Chico. Annette graduated from California State University, Chico with a mathematics degree.

Shirley Ahumada

Senior Banker



Shirley has been in banking since 1979 and has held various positions that include Daily Operations, Banker, Training, and Management. Her current role at Tri Counties Bank is a Senior Banker at the local Paradise Branch. As a Senior Banker her primary goal is to build a banker-client relationship based on purpose, value, and trust. Shirley will spend the time necessary to understand a customers' current financial state as well as their future financial needs. Through her financial expertise, a truly transparent, needs-based approach to providing solutions. Working in partnership with other financial professionals to provide a collaborative approach to the customer experience, as One Team.

Lisa Vierra

VP, TM Product Delivery Manager



Lisa Vierra has been with Tri Counties Bank for 23 years, with her most recent role serving as VP for Treasury Management in Product Delivery. Lisa has an extensive cash and treasury management background having held various roles within the industry. Lisa and her team are responsible for consulting with, training and onboarding Tri Counties Bank's most complex deposit and treasury management customers. Lisa holds a BS in Business Administration from Chico State and attends the Stonier Graduate School of Banking at the Wharton School of Business with the University of Pennsylvania.

- c. *Exceptions. List any services required by the Town that are not included in the bank's proposal.*

Throughout this proposal, you will find we strive for excellence in community banking while maintaining a large product and service offering. Tri Counties Bank does not foresee any exceptions in the services required by the Town of Paradise.



4. Balance Reporting

Describe the electronic media and process by which the Town would have access to daily transaction and balance information.

Tri Counties Bank offers a robust online treasury management platform called, TriCo Treasury Center. Treasury Center has several options available to access balance and daily transaction information. Within the function called Balance Reporting, users can create custom reports; the report templates are saved to simplify future reporting. (Image 1) Report Delivery is also available if the Town chooses to have these custom reports delivered automatically via email or SFTP at pre-selected time intervals. (Image 2)

Image 1

Create Report : Balance Reporting

1 What name would you like to use for this template? _____
 Template Name
Name is required only if you wish to save this as a template.

2 Which accounts would you like on this report? _____
 Please select an account...
✖ Tri Counties Bank (121135045) - *0005 - CHECKING (A Payroll 5)

3 What data should be presented on this report? _____

<input checked="" type="checkbox"/> All Data Types (ALL)	<input type="checkbox"/> Summary Transactions (SUMMARY)	<input type="checkbox"/> Status Transactions (STATUS)
<input type="checkbox"/> All Credit Transactions (CREDIT)	<input type="checkbox"/> All Debit Transactions (DEBIT)	<input type="checkbox"/> CHECK CHARGEBACKS (CHARGEBACKS)
<input type="checkbox"/> Incoming Wire (Incoming Wire)	<input type="checkbox"/> WIRE / ACH CREDITS (WIRE / ACH CREDITS)	<input type="checkbox"/> ACH CREDIT (CR)
<input type="checkbox"/> CHECKS (DB)	<input type="checkbox"/> WIRE TRANSFERS INCOMING (CR)	<input type="checkbox"/> ACH DEBIT (DB)
<input type="checkbox"/> WIRE TRANSFERS RETURN (CR)		<input type="checkbox"/> WIRE TRANSFERS OUTGOING (DB)

Image 2

Send report as attachment

8 When would you like this report delivered? _____

Daily

What data would you like in this daily file?

Current Day Previous Day

Whenever Data Becomes Available for This Template's Account(s)

Starting No Earlier Than - Do not deliver daily report before specified time

At Specific Times - Template is triggered by specific time settings, not file loads

Timed Intervals - Template is triggered at interval time settings during specified hours, not file loads

Weekly - Output created once per week, for previous calendar week, on specified day











Monthly - Output created once per month, for previous calendar month, on specified date



5. Monthly Account Statements

Describe the process and method of data transmission by which the bank would transmit monthly transaction and balance information for all of the Town's accounts.

All monthly account statements will cycle on the last calendar day of the month. Front and back of cleared check images can be included in the statement, if desired. Statements are mailed via USPS or the Town of Paradise can enroll in eStatements. Enrolling in eStatements will send an email notification when the statement is ready for viewing and downloading (PDF) online. Additional transaction and balance reports can be created and delivered (email or SFTP) through TriCo Treasury Center.

 <p>Service With Solutions® P.O. Box 909, Chico CA 95927</p> <p>TOWN OF PARADISE 5555 SKYWAY PARADISE, CA 95969</p>	<p>Statement Ending 11/30/2023</p> <p><i>TRI COUNTIES BANK</i> Page 1 of 4</p> <p>Account Number: XXXXX0005</p> <p>Service With Solutions</p> <table><tr><td></td><td>Speak with a Banker:</td><td>1-800-922-8742</td></tr><tr><td></td><td>Automated Phone Banking:</td><td>1-844-822-2447</td></tr><tr><td></td><td>Online Banking:</td><td>TriCountiesBank.com</td></tr></table>		Speak with a Banker:	1-800-922-8742		Automated Phone Banking:	1-844-822-2447		Online Banking:	TriCountiesBank.com
	Speak with a Banker:	1-800-922-8742								
	Automated Phone Banking:	1-844-822-2447								
	Online Banking:	TriCountiesBank.com								



6. Electronic Money Transfers

Describe the electronic money transfer services offered by the bank. Include safeguards and security measures offered by your service.

Tri Counties Bank offers and supports various electronic money transfer services. We participate as both the originating and receiving/destination bank.

Origination- The Town of Paradise can enroll and originate the following types of electronic transfers:

- ACH (Fed ACH)- Credits and Debits
- Same-Day ACH (Fed ACH)- Credits
- Wires (Fed Wire)- Domestic and International

Receiving- These payment types are received and posted to Tri Counties Bank accounts:

- ACH- Credits and Debits
- Same-Day ACH
- International ACH
- Wires- Domestic and International
- Reverse Wires/Drawdown Requests

Security protocols are a top priority when it comes to electronic transfers. Tri Counties Bank offers their payment origination through TriCo Treasury Center, which is accessed via a private secure browser. An out of band authorization (OOBA) that consists of a one-time electronic password is required to initiate an ACH or Wire transfer. This one-time password can be delivered by email or SMS text message. The Town of Paradise can choose to have single or dual approval for ACH and Wire transfers. Tri Counties Bank takes countless measures in the background surrounding the safety of money movement. We have an entire team monitoring activity using a state-of-the-art software called Guardian Analytics. One key function of this software provides is flagging non-routine transactions like new payees, updated payee account information, out of character dollar amounts and unknown or new IP addresses.


7. Payroll Direct Deposits

Describe the process and method of data transmission by which the bank would receive data from the Town for payroll direct deposits.

The Town of Paradise can process Payroll Direct Deposit through ACH Credit Origination. ACH files can be manually created within TriCo Treasury Center or a payment file can be uploaded. NACHA is the standardized ACH file format and we have NACHA file experts available to assist with this file type. Other file types, as CSV or XLSX, that include payment information can be imported based on a custom file mapping. All file types can be uploaded in the Treasury Center portal or picked up via SFTP. Our ACH file cut-off times are as follows:

4:00 pm Pacific- next day settlement

11:00 am Pacific- same day settlement

Data Import : ACH Transaction Import	
File Maps	Is Active
 Non-NACHA	<input type="button" value="Set as Active"/> <input type="button" value="Edit File Map"/> <input type="button" value="Upload"/> <input type="button" value="Print"/>
ED1820 ACH Transfer Import	<input type="button" value="Set as Active"/> <input type="button" value="Upload"/>
ISO20022 ACH Transfer Import	<input type="button" value="Set as Active"/> <input type="button" value="Upload"/>
NACHA ACH Transfer Import	<input checked="" type="checkbox"/> <input type="button" value="Upload"/>
NACHA Flat File Import	<input type="button" value="Set as Active"/> <input type="button" value="Upload"/>
<input type="button" value="Create File Map"/> <input type="button" value="Help"/>	<input type="button" value="Clear Active"/>

8. Payroll Tax Processing

Describe the services available from the bank to accommodate the Town's payment and reporting of payroll taxes.

Initiating both Federal and State tax payments are processed through TriCo Treasury Center. ACH next day settlement cut-off times apply.

4:00 pm Pacific- next day settlement

Choose a Tax ✕

Tax Selection _____

Division 🔍

Agency ▼

Tax Type ▼

Choose a Tax ✕

Tax Selection _____

Division 🔍

Agency ▼

Tax Type ▼

Federal					
	Tax Type Description	Tax ID	* Tax Period	* Amounts	
✕	Federal - 941 Fed Tax Deposit Tax Type: 94105	*1923	Q4 ▼ 2023 ▼	Social Security	<input type="text"/>
				Medicare	<input type="text"/>
				Withheld	<input type="text"/>
Total					\$0.00

State					
	Tax Type Description	Tax ID	* Tax Period	* Amounts	
✕	California - Unemployment Insurance/Employment Training Tax Tax Type: 01300	*6789	Q4 ▼ 2023 ▼	Unemp Ins	<input type="text"/>
				Emp Training Tax	<input type="text"/>
Total					\$0.00




9. Credit Card Processing

Describe the electronic system(s) available to the Town for processing credit card transactions.


Tri Counties Bank’s payment processing solution will get you paid faster and give you piece of mind. Our goal is to deliver solutions that mirror what the marketplace needs, with a wide-ranging ability to accept payments seamlessly, including mobile, e-commerce, and traditional POS. Tri Counties partners with Celero, which can support the Town of Paradise’s current software Accela. Celero Commerce is a full-service, integrated electronic commerce solutions provider powered by leading-edge technology, strategic partnerships, and business intelligence. Celero offers small and medium-sized businesses payment processing services, business management software, and data intelligence, empowering them to drive growth and profitability. Visit <https://www.celerocommerce.com/> to learn more.

Faster Funding & High Security Everywhere You Do Business.




Online

Create a fast, secure payment experience on your website.



In-Person

Get everything you need to accept payments in-store.



Mobile

Sell anywhere. Accept payments wherever you go.

Current Scenario:

6 Merchant Accounts: Town of Paradise Fire, Police, Finance, CDD, AC, Web

September 2023 card volume: \$9,000

Proposed TCB Pricing:

32 basis points and \$.15 per transaction

Costs & Savings:

	<u>Current Provider</u>	<u>Tri Counties Bank</u>
Fees for Sept 2023	\$1,387	\$850
Savings Sept 2023	\$0	\$537

Added benefits:

- Next day deposit into your Tri Counties Bank account
- Tech & Customer Service department is available 24/7 – 365 days a year
- No hidden fees
- Very simple conversion with a local representative



10. Interest Allowance/Earnings

Describe the methodology that would be used to give interest earnings to the Town for bank balances. Provide the proposed formula to calculate interest earnings. All interest earnings for any bank account shall be credited to that account on a monthly basis.

The Town of Paradise can choose from several account structures. Accounts can be placed in Traditional Analysis, where an earnings credit rate is calculated on the average monthly balance and that credit is used to offset account and treasury management fees. TCB also offers an Interest Analysis, where a true interest calculation is accrued on the daily balance, paid to the account monthly and all account/treasury management fees are debited from the account at month end. The Town can opt for a hybrid of both analysis earnings credits and an interest bearing account linked by an automated sweep structure. Here are some generic examples based on a customer with a total average balance of \$1,000,000 and calculated account fees of \$750 monthly.

*Account structures and rates at Tri Counties Bank are entirely customized based on each customer's needs and goals.

Traditional Analysis- Earnings Credit Rate (ECR) 1.00% (example)

$$1,000,000 \times .90 \text{ (withhold 10\%)} = 900,000$$

$$900,000 \times .01 \text{ (ECR)} = 9,000$$

$$9,000 / 365 \text{ (daily)} = 24.66$$

$$24.66 \times 30 \text{ (days in cycle)} = 739.80$$

$$739.80 - 650 \text{ (fees)} = -10.20$$

Interest Collected: \$0.00

Fees Paid: \$10.20

Interest Analysis- APY 1.00% (example)

$$1,000,000 \times .01 \text{ (rate)} = 10,000$$

$$10,000 / 365 \text{ (daily)} = 27.40$$

$$27.40 \times 30 \text{ (days in cycle)} = 822.00$$

Interest Collected: \$822.00

Fees Paid: \$750.00




11. Pricing

Describe the pricing for services and supplies that the bank proposes. The bank should provide a complete listing of all hard dollar costs for services. Proposals should reflect two options: (one) utilizing hard dollar costs and (two) utilizing compensating balance. An additional option may be proposed utilizing a combination thereof. Include a pro forma detailed monthly billing statement as part of this section. (Pricing schedules and billing statements are not included as part of the page maximum for this section). Indicate if the bank will cap or propose a flat monthly service fee based on information provided by the Town in this RFP. Pricing must include all Accounts, as well as other limited activity accounts that may be required by the Town during the term of the agreement.

Tri Counties Bank’s account and treasury management fees are per item volume based. The below information is based on a 3 month volume average from the US Bank Analysis statements. In order to meet the goal of this section and include all services listed 1-19, a column was added to show what fee correlates to the needed service. We have prepared a proforma with formulas in Excel and included all required service listed on Attachment 2, Banking Services Pricing Form. The worksheet has an additional tab to show an earnings credit rate (ECR) utilizing compensating balances and the volume calculations. (see schedule 1)

TCB is willing to propose a flat monthly fee if traditional analysis with offsetting credits is not the choice of the Town. If traditional analysis is chosen, the earnings credit will entirely cover the monthly fees. Tri Counties Bank does not charge for many of the line items listed on the US Bank statement and we do not have any one-time set up fees. A sample account analysis statement is provided to show what the Town of Paradise will receive on a monthly basis. (see schedule 2)

 Service With Solutions™			
BALANCE COMPUTATION		ACCOUNT POSITION	
Average Daily Collected Balance	\$ 1,292,067.16	Earnings Credit (1.00 %)	\$ 987.63
Less Reserve 10% Requirement	\$ 129,206.72	Analyzed Charges	\$ 511.17
Balance to Support Services	\$ 1,162,860.44	TOTAL FEES DEBITED	\$ -



SERVICE	VOLUME	UNIT PRICE	TOTAL FEE	ATTACHMENT 2 PRICING FORM
Account Services				
Monthly Maintenance	2	\$ 25.00	\$ 50.00	
Stop Payment	0	\$ 34.00	\$ -	
Online Banking Services				
Trico Treasury Center (per enrollment)	1	\$ 18.00	\$ 18.00	5.,6.,10.,11.,13
Depository Services				
Checks Deposited	242	\$ 0.20	\$ 48.40	3.
Checks Paid	229	\$ 0.22	\$ 50.38	
Deposits	8	\$ 1.75	\$ 14.00	
Electronic Credits	47	\$ 0.22	\$ 10.34	
Electronic Debits	10	\$ 0.22	\$ 2.20	
Cash Handling (per \$1,000)	5	\$ 1.60	\$ 8.00	2.
Returned Items/Checks	1	\$ 10.00	\$ 10.00	
Remote Deposit Services				
Remote Deposit Capture	1	\$ 35.00	\$ 35.00	17.
RDC Scanner Lease (per Scanner)	1	\$ 25.00	\$ 25.00	17.
Remote Deposit Items	242	\$ 0.05	\$ 12.10	17.
ACH Services				
ACH Credit Origination Module	1	\$ 35.00	\$ 35.00	12.,14.,15.,16.
ACH Originated Per Item	240	\$ 0.17	\$ 40.80	12.,14.,15.,16.
Wire Services				
Wire Origination Module	1	\$ 20.00	\$ 20.00	8.
Incoming Wire	1	\$ 15.00	\$ 15.00	8.
Outgoing Online Domestic Wire	2	\$ 12.50	\$ 25.00	8.
Fraud Prevention Services				
Payee Positive Pay	1	\$ 60.00	\$ 60.00	1.
ACH Positive Pay	1	\$ 20.00	\$ 20.00	1.
Positive Pay Paid Item	239	\$ 0.05	\$ 11.95	1.
		TOTAL	\$ 511.17	



KEY	COMMENTS
1. Positive pay system for the operating account	
2. Currency deposits	
3. Check deposits	
4. Deposit error corrections	No Fee
5. Online system access to all account activity	
6. On-line stop payments	
7. NSF/Returned Item (two attempts to clear)	No Fee
8. Wire transfers (in and out)	
9. Courier services (weekly)	No Fee
10. Account reconciliations	Included with Treasury Center
11. Access to cleared checks/imaging	Included with Treasury Center
12. ACH processing	
13. ACH return information	Included with Treasury Center
14. Federal and State tax payments by phone or on-line system	
15. Direct deposit for employee payroll	
16. Payroll tax payments	
17. Remote Deposit	
18. Procurement Cards	No Fee
19. FDIC Insurance	No Fee



12. Pricing Adjustments

Prices are to remain constant for the five years of the contract. (If the bank's proposed pricing is based on the activity levels of the Town's accounts, the basis for determining the pricing must remain constant for these years of the contract.) For subsequent years, indicate what process the bank proposes for price increases, if any. Bank may propose an annual adjustment to prices either on a fixed percentage basis or on a variable percentage based on the increase in a nationally recognized index. Indicate if there is a maximum percentage increase applicable.

All pricing set forth in this RFP response shall remain in effect for 5 years per the request of the Town. Subsequent years will be handled as part of Tri Counties Bank's annual pricing review in January of each year. Your local Treasury Management Officer does TCB annual pricing reviews at the relationship review level. No fee increase will take place without discussion and approval from the Town.

13. Conversion Plan

If applicable. Describe the overall plan your bank would coordinate to ensure a smooth transition from the current provider. Indicate what direct costs the Town would be responsible for in the conversion. Indicate what conversion costs, if any, would be absorbed by the bank as start-up costs. The current provider should discuss any issues that may be different from the existing services. Also, discuss the training program for Town staff that the bank would provide, if any.

A custom conversion plan and timeline like the one below will be built to suit the Town of Paradise. TCB does not foresee any direct costs the Town would be responsible for pertaining to a bank conversion. Tri Counties Bank will cover the cost of an initial check stock supply for 1,000 checks. The Town of Paradise will receive in-person or live-virtual training for all TM services and TriCo Treasury Center.

TOPIC	ESTIMATED COMPLETION DATE	TRUE COMPLETION DATE	NOTES
MEETINGS			
Implementation Kick-Off Call			
Establish Weekly Recurring Meeting			
Establish Weekly Recurring Meeting TCB Internal			
Complete Vendor Review / Service Agreement			
NEW ACCOUNTS			
Assign New Account Numbers			
Provide New Account Document Needs List			
Collect ID Profile Information on all Signers			
Prepare Signature Cards / Public Fund Contract			
Fund Accounts with Initial Deposit			
Check Orders Harland/Clark			
TREASURY MANAGEMENT AGREEMENTS			
Resolution			
Acceptance, Master Treasury Agreement			
Service Descriptions			
Online Set-Up Form			
Sub-User Forms			
RDC Forms			
ACH Form			
Wires			
Positive Pay (Sub-User)			
TREASURY CENTER			
TCB set-up Company w/ Admin			
TCB set-up Initial Sub-Users			
Platform Training			
REMOTE DEPOSIT			
Drop off Scanner(s)			
Install during Training			
ACH ORIGINATION			
Town to send TCB NACHA File			
TCB to Test File			
ACH Import & Free Form Batch Training			
SFTP Transmission Link			
WIRE TRANSFERS			
Wire Import & Free Template Training			
SFTP Transmission Link			
POSITIVE PAY			
Town to send TCB Check Issue File			
TCB to format and map File			
Upload, Exception Review Training			
SFTP Transmission Link			
PHASE 2 ITEMS			
Integrated Payables			
Purchasing Card			



14. Service Enhancements

Based on the bank's understanding of the Town's banking needs and goals, describe any enhancements, technological or otherwise, that the Town should consider to improve operational or cash management efficiencies.

Tri Counties Bank would value the opportunity to do a deep-dive profile into the full cash management cycle of the Town of Paradise in order to make the best service enhancement recommendations. Once we better understand the A/R, A/P and liquidity structure, we can get more specific on potential improvements. Based on some of the information provided in the RFP we can make these following suggestions as future discussions.

Purchasing/Commercial Card Program-

Manage A/P expenses, improve controls over purchasing processes, track purchase receipts and T/E with online expense management, set individual and departmental spending limits, no per card or annual fees

Integrated Payables-

One platform for all payment needs with a single payment file that accepts all file formats for three payment types: checks, ACH and virtual card. Outsource check processing to save countless hours of administrative work.



15. Collateralization

Please describe how the bank will collateralize all deposits in excess of FDIC insured balances in accordance with California Government Code Sections 53630-53686.

Tri Counties Bank currently manages more than 200 public agency accounts with over \$250 million in balances. Tri Counties Bank provides public agencies a safe place to hold public monies. California government code Title 5, Division 2, Part 1, Chapter 4, Article 2, and Sections 53630 through 53686 regulates the Local Agency Security Program (LASP). California law is supplemented by regulations, Title 2, Division 4.5, and Section 16001.1.1 through 16010.1.3. TCB's Public Fund balances are collateralized up to 110% by government backed securities held at our custodian bank, The Independent Bank (TIB).

The Town of Paradise and Tri Counties Bank will jointly execute a Public Fund contract outlining the above government code along with a waiver of security for the first \$250,000 that is fully insured under FDIC, pursuant to Section 53653.

At the Town's request, we can provide quarterly statements showing Tri Counties Bank collateral holdings versus public deposit balances.

16. References

Please provide five (5) references. Both long-standing and recent customers should be included among the bank's references.

1. Brett Goodlin, Finance Director
Paradise Irrigation District (customer since June 14, 2010)
6332 Clark Rd Paradise, CA 95969
Phone: 530-877-4971
Services provided: Public Funds Collateralization, Positive Pay, Remote Deposit Capture daily, ACH Direct Deposit for payroll bi-weekly

2. Holly McCormick, COO/CFO
Community Housing Improvement Program (customer since May 6, 1999)
1001 Willow St Chico, CA 95928
Phone: 530-518-4340
Services provided: Remote Deposit Capture daily, ACH processing bi-weekly, Wire Transfers weekly, Online access to all account activity for multiple accounts with multiple users.

3. Rick Krepelka, COO
Golden State Risk Management Authority (customer since March 22, 2018)
247 W. Sycamore St Willows, CA 95988
Phone: 530-934-5633
Services provided: Public Funds Collateralization, Positive Pay, Remote Deposit Capture daily, ACH processing bi-weekly

4. Peter Leonard, President
Ferguson and Brewer Investment Company (customer since September 27, 2019)
7052 Skyway Paradise, CA 95969
Phone: 530-872-1810
Services provided: Positive Pay Services and ACH Services used daily

5. Dan Efseaff, District Manager
Paradise Recreation and Park District (customer since November 8, 2023)
6626 Skyway Paradise, CA 95969
Phone: 530-872-6393
Services provided: Public Funds Collateralization, currently onboarding



17. Other Information

Briefly describe any other information not previously mentioned that the bank believes should be given consideration by the Town.

Tri Counties Bank has a strong connection to Paradise, not only with a traditional branch within the Town, but also with several community support projects. This includes presence and participation in numerous public activities within the Town.

Tri Counties Bank feels they are the perfect bank partner to meet the growing and re-building needs of the Town. We would be honored to be the Town of Paradise’s primary banking relationship.

Below you will find a list of the Marketing Sponsorships and Community Reinvestment donations Tri Counties Bank has made to support the Paradise and Ridge Community since the 2018 CAMP Fire totaling: \$1,543,550

Sponsorships		Community Reinvestment Donations	
Paradise Recreation & Park District "Paradise on Ice"	\$ 1,500	Boys & Girls Clubs of the North Valley	\$ 25,000
Paradise Chocolate Festival "18th Annual Chocolate Fest"	\$ 3,500	Town of Paradise	\$ 171,000
Rotary Club of Paradise "Annual Crab Feed"	\$ 1,000	Paradise Ridge Chamber of Commerce	\$ 3,000
Paradise Chocolate Festival "16th Annual Chocolate Fest"	\$ 3,000	Paradise Police Officers Association	\$ 2,000
Paradise Chocolate Festival "17th Annual Chocolate Fest"	\$ 1,000	The Salvation Army	\$ 85,000
Boys & Girls Clubs of North Valley "Paradise Cook Off"	\$ 500	United Way of Northern California	\$ 85,000
Paradise Parks & Recreation District "Paradise on Ice"	\$ 400	The Salvation Army	\$ 85,000
Paradise Little League	\$ 150	United Way of Northern California	\$ 85,000
Rotary Club of Paradise "Blues and Brews"	\$ 500	Northern Valley Catholic Social Service	\$ 27,000
		United Way of Northern California	\$ 85,000
		The Salvation Army	\$ 85,000
		Community Housing Improvement Program (CHIP)	\$ 225,000
		3CORE	\$ 60,000
		Enloe Health Foundation	\$ 25,000
		PEP Housing	\$ 100,000
		Northern Valley Catholic Social Service	\$ 27,000
		Habitat for Humanity of Butte County-Camp Fire Recovery	\$ 10,000
		Magalia Community Park	\$ 10,000
		United Way - Camp Fire Recovery	\$ 85,000
		Salvation Army-Camp Fire Recovery	\$ 85,000
		Rebuilding Paradise Fund	\$ 50,000
		Butte County Office of Education - Camp Fire Recovery	\$ 75,000
		Magalia Community Park	\$ 7,000
		Magalia Community Center	\$ 3,000
		Paradise Rotary	\$ 3,000
		Paradise Rotary	\$ 2,000



400
Volunteer Hours for Paradise Team in
2023



EXHIBIT B

**Master Treasury Agreement
Business Deposit Account Agreement and Disclosures
Mobile & Online Banking User Agreement
Contract for Deposit of Moneys
Waiver of Security
Resolution for Acceptance of Treasury Management
Services
Signature Card**

1. INTRODUCTION.

Client has caused one or more Acceptance of Master Treasury Agreement (each, an “Acceptance”) to be signed by one or more Executing Representatives, each such Acceptance is applicable to the enumerated services (“Service(s)”) to be performed by Tri Counties Bank (“Bank”), subject to Bank’s approval. The Services are more specifically described in the following, as updated from time to time: (i) the Acceptance(s); (ii) the service descriptions to the Master Treasury Agreement (“Master Agreement”), including any schedules, and exhibits to the same (collectively, “Service Descriptions”); and (iii) user guides, user manuals, set-up forms and other user materials, including online terms and information (collectively, “Supporting Documents”). The Master Agreement and each Service Description may include exhibits, appendices, schedules or similar materials, which form a part of the Master Agreement and Service Description, respectively. Any reference to the Master Agreement shall be deemed to include the Master Treasury Management Services Agreement, the Acceptance, the respective Service Descriptions, and the Supporting Documents, unless otherwise stated each of which may be amended from time to time. Unless otherwise agreed in writing, the Master Agreement including the Service Descriptions and Supporting Documents will be deemed accepted by Client upon provision by Bank of a Service to Client and continued use of such Service after any modification thereto.

The terms and conditions of the Master Agreement apply to the Services, and Client’s deposit accounts held at Bank which Client uses for transactions associated with the Services, in addition to the account deposit terms and conditions otherwise applicable to Client’s accounts with Bank. Unless otherwise provided, to the extent any provision of the Master Agreement conflicts with a Service Description, the provision of the Service Description will control. To the extent any term or provision of the Master Agreement conflicts directly with any term or provision of the applicable deposit account terms and conditions or the Supporting Documents, the provision of the Master Agreement (including any Service Description) will control. All transfers to and from an account will be subject to the terms and conditions applicable to the account as set forth in the deposit account terms and conditions governing the account, including but not limited to transfer limitations, as amended by the Master Agreement. The term “may,” when used in reference to action by Bank, is permissive and means that Bank reserves the right or is allowed, but not required, to take any action or inaction. Unless expressly provided otherwise, all references to time will be Pacific Standard Time.

2. SECURITY PROCEDURES; COMMUNICATIONS.

- (a) Client and Bank may agree to certain procedures and security devices, which may include without limitation, codes, encryption, passwords, and other security devices, systems and Software (referred to individually and collectively, “Security Device(s)”) designed to verify the authenticity of information (including without limitation transaction information), instructions, orders (including without limitation payment orders) and other communications relating to a Service (each a “Communication”). The term “payment order(s)” includes payment orders, as defined in Division 11 of the California Commercial Code. In this regard, application of the procedures and Security Devices to authenticate a Communication will be collectively referred to as the “Security Procedures” in the Master Agreement. If Bank takes any action not provided in the Security Procedures in connection with any Communication, such additional action shall not be deemed to become a mandatory part of the continuing Security Procedures. Client understands and agrees that Bank will use the Security Procedures to verify the authenticity of Communications and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of Communications, including discrepancies between account names and numbers. As between Bank and Client, any transaction resulting from a Security Procedure which has been previously agreed upon between Bank and Client shall be deemed authentic for all purposes, and accordingly Client shall be bound thereby.
- (b) Before using a Service and before sending a Communication to Bank, Client will review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable

method for verifying whether a Communication is that of Client. As part of the review, Client will consider the size, type, and frequency of Communications Client normally makes or anticipates making, along with such other factors as Client may deem relevant or appropriate.

- i) *Commercially Reasonable Procedures.* If the size, type or frequency of Communications made by Client changes such that the Security Procedures in use by Client no longer provide a commercially reasonable method of providing security against unauthorized Communications, Client shall immediately notify Bank.
 - ii) *Supplemental Security Devices.* Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, challenge questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client's access to some or all of the Services may be limited or denied entirely. The term "Security Devices" will include any supplemental authentication tools that are offered by Bank and used by Client. Client's continued use of any modified Security Procedures will evidence Client's agreement that the modified Security Procedures are commercially reasonable for Client.
 - iii) *Client Responsible for Verified Communications, Even if Unauthorized.* If Bank acts on a Communication in compliance with the Security Procedures, then Client will be obligated on the Communication, and it will be treated as Client's Communication, whether or not authorized by Client.
 - iv) *Client Responsible for Communications Actually Authorized.* Regardless of whether or not Bank complied with the Security Procedures, any Communication received by Bank will be treated as Client's and will bind Client if the Communication is delivered to Bank directly or indirectly by any Authorized Representative (as defined below), or if Client would otherwise be legally bound by the Communication, regardless of whether the Communication was erroneous in any respect or that any loss would have been prevented if Bank had complied with the Security Procedures.
- (c) Client will use and safeguard the Services, Security Devices, Security Procedures, Supporting Documents, and the Software (if applicable) in accordance with this Master Agreement. In connection with such safeguarding obligations, Client will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of any Service, Supporting Document, Security Device or Security Procedures. Without limiting the foregoing and to the extent any of the Services utilize an electronic interface, Client agrees to use and maintain at all times up-to-date antivirus software, properly configured firewalls and otherwise to use commercial "best practices" to prevent Client's computers or other electronic interfaces from being compromised, including by virus, trojan horse or other malware. Client expressly acknowledges that any wireless access to the Services initiated by Client may not be secure and, in such cases, Client assumes the risk associated with unauthorized access to the Services and any information contained therein, resulting from such wireless connectivity.
- (d) Client agrees to immediately notify Bank if Client knows or suspects that a Security Device or other information pertaining to the Security Procedures is stolen, compromised, or misused. Client acknowledges that Bank's ability to reverse fraudulent electronic transfers is extremely limited, and in many cases impossible. Client acknowledges that Bank is not an insurer of Client against losses associated with unauthorized activity associated with the Services and that Client has an independent responsibility to ensure the integrity and security of Client's systems and to determine whether Client should obtain appropriate insurance coverage to protect against unrecoverable losses.
- (e) Client assumes all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to its employees. Client agrees to limit disclosures of Security Devices to those employees or agents it will authorize to access the Services on Client's behalf, or who have a specific

need to know. Client agrees to follow all requirements and guidance that may be outlined in the Service Descriptions or Supporting Documents provided or made available to Client, including but not limited to password change policies and practices. Without limiting the foregoing, Client further agrees to require authorized persons to create new passwords at reasonably frequent periods, based on Client's assessment of the security requirements appropriate for the Services utilized by Client, or as otherwise directed by Bank. Client agrees to promptly change security codes and level of authority, as applicable, in the event of any change in personnel or when reasonably prudent to do so.

- (f) If applicable, Client may be required to select in the Acceptance, or Supporting Documents, a means of communicating with Bank in connection with a particular Service (each, a "Communication Link"). Multiple Communication Links may be selected for certain Services, as more specifically described in the Service Description and/or Supporting Documents. Information and instructions may be sent and received by Client through those Communication Links.
- (g) Bank may act on a Communication by reference to the account number only, even if the name on the account is also provided and even if the account number does not actually correspond to the name.
- (h) Bank is not obliged to act on a Communication that is not transmitted in accordance with the Security Procedures. Bank may act on an incomplete Communication at its sole discretion, including but not limited to if in Bank's reasonable opinion, it contains sufficient information. Bank has no duty to discover, and shall not be liable for, errors or omissions made by Client or the duplication of any Communication by Client.
- (i) Bank may delay or refuse to execute any Communication or process any requested Service. Bank may do so for any reason or for no reason. Bank may provide notice to Client of such delay or refusal, but is not obligated to do so. Bank may delay or refuse processing of a Communication, for example, if: (i) processing would or may exceed the available funds in Client's affected account; (ii) the Communication is not authenticated to Bank's satisfaction or Bank believes the Communication may not have been authorized by Client; (iii) the Communication contains incorrect, inconsistent, ambiguous, or missing information; (iv) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (v) processing would or may cause a violation of any laws or rules applicable to Client or to Bank; (vi) for any reason determined by Bank in its sole discretion; or (vii) for any other reason under this Master Agreement. In addition, Bank shall be excused from failing to transmit or delay a transmittal of a transaction or Communication if such transmittal would result in Bank's having exceeded any limitation upon Bank's intra-day net funds position established pursuant to present or future Federal Reserve Board ("FRB") guidelines or in Bank's reasonable judgment otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. Client agrees that Bank will have no liability to Client or to any other person for any loss, damage or other harm caused by or arising out of any such delay or refusal.
- (j) If Client informs Bank that it wishes to recall, cancel or amend a Communication after it has been received by Bank, Bank may, but will not be required to, use its reasonable efforts to assist Client to do so; however, Bank shall not be liable for any loss, cost or expense suffered by Client if Bank does not, or is unable to, amend, cancel or recall a Communication. Client hereby agrees to indemnify Bank against any loss, liability, claim or expenses (including legal fees and allocated costs of Bank's in-house counsel) it may incur in connection with assisting Client to recall, cancel or amend a Communication, and Client agrees to immediately reimburse Bank for any monies paid by Bank associated with such losses, liability, claims or expenses incurred by Bank.
- (k) Client assumes the sole responsibility for providing Bank with accurate Communications in the form and format that Bank requires. Bank is not responsible for confirming Communications or for failing to detect and reject duplicate Communications. If Client provides Bank with a Communication that is

incorrect in any way, Client agrees that Bank may charge Client's accounts for any transactions related to the Communication whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client's transfer or payment instructions or other Communications.

- (l) Any person identified by Client in the Acceptance, Supporting Documents or any subsequent written notice delivered to Bank as authorized by Client to receive from Bank information, communications and notices regarding the Services, and authorized by Client to submit to Bank any Communications, or otherwise transact business via the Services is Client's "Authorized Representative." Additionally, the person referenced to or identified by Client in the Acceptance, Supporting Documents, resolutions, or any subsequent written notice delivered to Bank, as authorized by Client to make all agreements and sign and deliver all documents in connection with the Services is Client's "Executing Representative." If the identity of such an Authorized Representative or Executing Representative changes, Client will promptly notify Bank in writing. Bank will have a reasonable time after receipt of a notice or other communication to act on such written notice.
- (m) Bank's internal compliance, fraud control and other Bank procedures are for the benefit of Bank and create no duty to Client. Bank has no duty or obligation under this Master Agreement to inform Client if Bank is suspicious of activity, including possible breach of security by Client's Authorized Representative(s) or Executing Representative(s) or unauthorized disclosure or use of Security Devices.

3. SOFTWARE AND EQUIPMENT. The service description and/or supporting documents for each service shall describe the various means by which client may communicate with bank in connection with such service. Those means may include, without limitation, the use of computer software ("software") licensed or sublicensed by bank to client ("license") or the use of an internet connection. To the extent any of the services involve bank having granted client software license usage rights, such grant shall be a non-exclusive, non-transferable right to access and use the service in connection with client's own business operations in accordance with the supporting documents. Client agrees to comply with the terms of any software license(s) provided to client in connection with the services. Client may not transfer, distribute copy, reverse engineer, decompile, modify or alter such software. Unless otherwise agreed by bank in writing, the computer programs, service guides, security procedures, equipment, software, and systems provided by bank to client in connection with the services represent bank's proprietary property, including intellectual property, and must be returned to bank upon termination of services under this master agreement, or upon request. Client acknowledges and agrees that the software and content used by bank in the operation and provision of the services, and the copyright patent, trademark, trade secret and all other rights in and to the technology, software, content, designs, graphics, and trademarks included as part of the services and bank's name and product names and the website's url (collectively, by the "intellectual property"), are owned by bank and bank's licensors. As such, client will not gain any ownership or other right, title or interest in or to such intellectual property by reason of the agreement or otherwise.

Unless otherwise provided in the master agreement, client is responsible for providing and maintaining any equipment that is necessary for the services, such as telephones, terminals, modems, computers, and software (collectively "equipment"). Client agrees to use equipment that is compatible with bank's programs, systems, and equipment, which bank may change from time to time. Bank assumes no responsibility for the defects or incompatibility of any equipment that client uses in connection with the services, even if bank has previously approved their use. Bank makes no warranty, express or implied, in law or in fact, including but not limited to any implied warranty of fitness for a particular purpose or of merchantability, with respect to the services, or any computer programs, equipment or software made available by bank to client or otherwise used by client. Client agrees to notify bank promptly if any software or equipment bank provides to client becomes inoperative. Bank's sole responsibility (if any) in such instances will be to use its best efforts to repair or replace the inoperative software or equipment that bank provided to client.

4. CLIENT CONDUCT. Client agrees not to use the services or the content or information in any way that would: (i) infringe any copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) be fraudulent including, but not limited to, use of the service to impersonate another person or entity; (iii) violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or illegal internet gambling); (iv) be false, misleading or inaccurate; (v) create liability for bank or its affiliates or service providers, or cause bank to lose (in whole or in part) the services of any of its service providers; (vi) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (vii) illegal, offensive or objectionable; (viii) interfere with or disrupt computer networks connected to the service; or (ix) use the service in such a manner as to gain unauthorized entry or access to the computer systems of others. Without limiting the generality of the foregoing, client agrees not to: (a) make the service available, or allow use of the service, in a computer bureau service business, or on a timesharing basis; or (b) otherwise disclose or allow use of the service by or for the benefit of any third party.
5. CLIENT REPRESENTATIONS. Client represents and warrants to bank that:
- (a) It is duly organized and validly existing, and is in good standing in every jurisdiction where required;
 - (b) Client's execution, delivery, and performance of this Master Agreement and the transactions contemplated herein have been duly authorized by all necessary action and do not: (A) violate any provision of any applicable law, rule or regulation (including but not limited to any licensing requirement(s) or of Client's charter or bylaws or other governing documents, as applicable), or (B) result in the breach of, constitute a default under, or require any consent under any agreement or instrument to which Client is a party or by which Client is bound;
 - (c) The Executing Representatives executing and delivering this Master Agreement and the Acceptance for and on behalf of Client, are duly authorized to do so;
 - (d) Any Communication or authorization required in connection with this Master Agreement and each Service Description has been provided by an Authorized Representative. Bank may rely upon the authority of each Authorized Representative for purposes of this Master Agreement and Service Descriptions until Bank has received written notice acceptable to Bank of any change of personnel designated by Client as an Authorized Representative, and Bank has had a reasonable time to act thereon (after which time Bank shall rely upon the change);
 - (e) Any act required by any relevant governmental or other authority in connection with this Master Agreement has been or will be done (and will be renewed if necessary);
 - (f) Client's performance under this Master Agreement and use of the Services will not violate any applicable law, regulation or other requirement;
 - (g) This Master Agreement is a legal, valid, and binding obligation of Client;
 - (h) Client is not, and agrees not to take any action that would result in Client being deemed or treated as, a money services business under any applicable state or federal law, except to the extent that Client has specifically and in writing previously informed Bank that Client is a money services business and Bank's express prior written consent to provide Services to Client;
 - (i) Unless otherwise agreed to in writing by Bank, the accounts established by Client with Bank and the Services utilized by Client in connection with the accounts will only be used for business purposes and not for personal, family or household purposes; and
 - (j) Client agrees that it shall be deemed to make and renew each representation and warranty made in this Section on and as of each day on which it uses the Services. Client will inform Bank in writing

immediately upon Client's becoming aware of facts or circumstances that cause (or with the passage of time would result in) any representation or warranty given by Client to cease to be true and correct. Client will provide such information or documentation as Bank may request from time to time to demonstrate compliance by Client with Client's representations and warranties, or other obligations of Client under this Master Agreement.

6. SERVICE LIMITATIONS. Client acknowledges that the services may be subject to system and other limitations, including bank-imposed limitations, which may include dollar, frequency, activity and other limits. Bank reserves the right, in its sole discretion, with or without prior notice, to alter any limitations established for Client. Client agrees not to exceed or otherwise violate any service limitations, including dollar, frequency, activity or other limits.
7. COMPLIANCE. Client agrees to comply with all state and federal laws, rules, and regulations, as may be amended from time to time, applicable to Client and to its use of the Services (collectively, "Laws"), including the operating rules of all systems and networks, as may be amended from time to time, used to provide Services to Client (collectively, "Rules"), and to promptly provide evidence reasonably satisfactory to Bank of the same if requested by Bank. Without limitation, Client agrees and acknowledges that the Services may not be used by Client in violation of, and must comply with, the Laws and Rules, including sanctions laws administered by the Office of Foreign Asset Controls. Client agrees that the Services will not be used to facilitate any illegal activity, including but not limited to illegal Internet gambling. Client acknowledges and agrees that the Software used to access the Services may be subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations, as may be amended from time to time (collectively, "Acts").

Nothing in this Master Agreement is intended to, nor shall it be interpreted to relieve Client of any obligation Client may have under the Laws, Rules or Acts. If this Master Agreement is in conflict with the Laws, Rules or Acts, as may be amended from time to time, then this Master Agreement is deemed modified only to the extent necessary to allow or require Client to comply with the Laws, Rules, and Acts. Client will implement and maintain procedures, including retention of legal counsel or compliance services, to ensure that Client is able to comply with all current Laws, Rules, and Acts, including any future changes to them. Bank is not obligated to provide information, updates or notice of or regarding the Laws, Rules, or Acts even if Bank is aware of the same and of the potential for material impact on Client and Client's use of the Services, and Client's indemnification and other obligations to Bank are not relieved or reduced by Bank's not providing the same to Client. If Bank does provide information, updates or notices of or regarding the Laws, Rules or Acts to Client, Bank is not responsible for the accuracy, timeliness or currency of the same and may discontinue doing so at any time and without notice.

8. DELAYED PROCESSING. In addition to any allowances provided to Bank in any other agreement Bank has with Client, Client agrees that Bank may delay posting of an inbound credit to Client's account(s) held at Bank, or delay the processing of an outbound transaction from Client's account(s) held at Bank, when the delay is due to a suspicion that the transaction may be in violation of applicable Law, Rule or Act, or the transaction is otherwise under review by Bank. Notice of such delayed processing shall be provided when required by applicable law.
9. ACCOUNT DESIGNATIONS. For certain Services, Client may be required to designate one or more accounts to facilitate the particular Service.
10. SUFFICIENT FUNDS. Client agrees to maintain sufficient available funds (as determined under Bank's funds availability policy) in Client's accounts accessible via the Services to cover all transactions requested through the Service and applicable fees, or such higher amounts as Bank may specify from time to time. Client acknowledges that Bank does not control intermediary banks or other third parties, including intermediary banks chosen by Bank, and that Bank does not control whether intermediary banks deduct fees as part of the processing of transfer requests. Client agrees that Client's funds may be held by Bank

for a period of time during the term of a Service Description and following termination of the Services, to protect Bank against any possible losses relating to the use by Client of the Services, including such reasonable time after closure of Client's account(s), if Bank deems such hold is necessary to prevent a loss. If Bank does hold funds, Bank may treat the held funds as not available for other purposes, and reject other transactions (for example, checks or other transfer instructions) in accordance with the applicable deposit account terms and conditions. If Client does not have sufficient or available funds or credit in Client's account for which a particular transaction was requested, Bank may charge any account of Client's held at Bank to cover the cost of the transaction, as well as any corresponding fees. Client's obligation to pay Bank remains immediately due and payable whether or not the rejected, returned or adjustment entry was processed in accordance with any requirement of any laws or rules applicable to any party other than Bank and notwithstanding that Bank or Client may have a claim against another third party for breach of the applicable laws or rules. Nothing in the Master Agreement shall be construed as Bank's commitment or obligation to lend Client money.

11. **FEES AND AMOUNTS DUE.** Client agrees to pay Bank the fees prescribed by Bank, including those provided in Bank's current fee schedule for each of the Services, a copy of which is available upon request (each a "Service Fees Schedule"), as well as all amounts otherwise due under the Agreement. Unless other arrangements are made for payment of such fees and other amounts due, Client agrees that Bank may without prior notice or demand automatically debit any account maintained by Client with Bank in the amount of such fees and other amounts due. Bank does not in any way extend credit to Client under this Master Agreement. Bank may amend the Service pricing from time to time and Client's continued use of the Service(s) shall be deemed acceptance of such change(s). Certain prices are subject to change without prior notice. Special or additional Services performed at Client's request will be subject to additional terms and fees. If accounts are analyzed, Client may be able to use available earnings credit to offset certain charges related to the Services. If analyzed accounts contain funds belonging to third parties, Client represents that use of any related earnings credit is not limited by law, regulation or agreement with such third parties. In addition to the fees and other amounts due for the Services, Client agrees to pay for all taxes, tariffs, and assessments levied or imposed by any government agency in connection with the Services, the Master Agreement, and any Software or equipment made available to Client (excluding any income tax payable by Bank). Client is also responsible for the costs of any communication lines and any data processing charges payable to third parties. If Client is required by the laws of any relevant jurisdiction to make any deduction or withholding from any fees, interest or other amounts, on account of tax or other charges, Client shall withhold the same and pay it to the relevant authority, and shall pay Bank such additional amount as may be necessary to ensure Bank receives an amount equal to the amount it would have received had no such deduction been made. Interest will accrue on any amount due to Bank from the date the amount becomes due until paid at the annual rate of 2.000% over an Index Rate as it may change from time to time which is the Bank Prime Rate. The Bank Prime Rate is not necessarily the lowest rate charged by Bank on its loans. Bank may designate a substitute index after a notice to Client. The interest rate change will not occur more often than each day. NOTICE: Under no circumstances will the interest rate on this Master Agreement be less than 7.00%. The annual interest rate for this Master Agreement is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.
12. **FINES OR PENALTIES.** Client will reimburse Bank for any fines or penalties (and any associated costs, including reasonable attorneys' fees, allocated costs of in-house counsel, and expenses) imposed on or assessed against Bank by any Federal Reserve Bank, any network operator, any state or federal regulatory agency or other US or foreign governmental body, or any clearinghouse or other third party having oversight or rulemaking authority over transactions facilitated using the Services, when the fine, penalty or other expense is caused by or related to Client's data or use of the Services. Such amounts are immediately due and payable by Client without demand. Client's obligation to pay Bank remains immediately due and payable whether or not the fine or penalty was imposed or assessed in accordance

with any requirements of the Rules or Laws or any laws applicable to any party other than Bank and notwithstanding Bank or Client may have a claim against another for breach of the same.

13. NOTICES. Except as otherwise provided in this Master Agreement, all notices and other communications by Client to Bank shall be in writing and, addressed to:

Tri Counties Bank
63 Constitution Drive
Chico, CA 95973

or at such other address as Bank may specify in writing. Notices and communications to Client may be mailed or sent to Client electronically at the statement, email or mailing address shown for Client in Bank's records. Any notice or communication sent by Bank to Client, whether electronic or written, will be deemed given and effective when sent or otherwise made available to Client, or as otherwise stated in the notice or communication. Client further acknowledges and agrees that certain notices and communications may be provided to Client by telephone, facsimile or electronic transmission at the telephone number, facsimile number or other location or number as shown in Bank's records. Client agrees to promptly notify Bank (in a form acceptable to Bank) whenever Client's email address, physical address, mobile phone number or other contact information changes.

Any notice, instruction, Communication or other communication sent by Client to Bank will be effective when Bank has actually received and has had a reasonable time to act on the notice, instruction, Communication or other communication. Notwithstanding anything to the contrary herein, Bank may rely on all notices, instructions, Communications, and other communications sent to Bank via facsimile or electronic transmission as though they are originals. Without limiting the foregoing, Bank is entitled to rely on any notice, instruction, Communication or other communication believed by Bank in good faith to be genuine or to have been signed or authorized by an Authorized Representative of Client.

Client agrees to access the Services from time to time, in no event less than monthly, to access notices, communications, and information made available by Bank.

14. CONTENT.

- (a) Bank reserves the right, but shall have no obligation, to reject, move, or delete content that Bank, in Bank's sole discretion, believes violates this Master Agreement, or contains content, including viruses, that may interfere with the operation of Bank's website or other systems. Bank shall have the right, but not the obligation, to disclose content to any third party if required by law or if Bank believes reasonably necessary, including but not limited to: (i) comply with legal process; (ii) enforce this Master Agreement; (iii) respond to claims that any content violates rights of third parties; or (iv) protect Bank's rights, properly, or personal safety, or those third parties.
- (b) The Services may allow Client to access content originally provided or operated by third parties acting on Client's behalf (collectively referred to as "third party content," unless otherwise provided herein). Unless Bank tells Client otherwise in writing, Bank does not operate or monitor any such content including any of the information, products or services provided or operated by third parties. Client acknowledges and agrees that: (i) Client accesses and relies on such third party content at Client's own risk; (ii) Bank makes no endorsement of, and assumes no responsibility for, third party content uploaded or inputted to the Services by third parties; (iii) although Bank may have a contractual or other relationship with the providers of third party content, Bank will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or the data they make available. Client agrees to hold Bank harmless in connection with all of the foregoing.

Without limiting the foregoing, Bank assumes no responsibility for determining the accuracy, reliability, timeliness, ownership, legality, appropriateness or completeness of any third party content that Client or others upload to the Services or otherwise provide to Bank, nor for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity associated with the same. Bank will not have a duty to interpret or evaluate any third party content transmitted to Bank or through Bank's website or the Services, except to the limited extent, if any, set forth in this Master Agreement. Bank will not be required (by means of any security procedure or otherwise) to detect errors or illegality in the transmission or content of any third party content Bank receives from Client or third parties. Bank will not have a duty to notify Client about any inaccuracy, unreliability, ownership, incompleteness or other problem that may be associated with third party content, even if Bank has reason to know of its existence.

15. LIMITATION ON LIABILITY; INDEMNIFICATION. Bank's duties and responsibilities shall be limited to those set forth in this Master Agreement. In no event shall Bank be liable for: (i) any punitive, indirect, consequential or special damages or lost profits, even if Bank has been advised of the possibility of such damages; (ii) the acts or omissions of a contractor, vendor, processor, third-party servicer or vendor used by Client or Bank, or any loss, cost, damage or expense incurred by any person or entity in connection therewith; (iii) Client negligence or breach of any agreement with Bank; (iv) any loss, including but not limited to debits from Client account(s), cost, expense, or damage to Client in connection with any Communication Link, Software, or any technical computer service, including Software installation or de-installation performed by Bank or Client or any third party designated by Bank or Client, or Client's or Bank's use thereof; (v) any ambiguity, inaccuracy or omission in any instruction or information provided to Bank; (vi) the application of any government or funds-transfer system rule, guideline, policy or regulation; (vii) the lack of available funds in Client's account to complete a transaction; (viii) Bank's inability to confirm to its satisfaction the authority of any person to act on Client's behalf; (ix) Client's failure to follow any applicable software manufacturer's recommendations or Bank's Service instructions; or (x) any Internet sites related to the Services or maintained or operated by Bank or the use thereof or the inability to use such sites by any party, or in connection with any failure or performance, error, omission, interruption, defect, delaying in operation or transmission, computer virus or line or system failure, even if Bank, or representatives thereof, are advised of the possibility of such damages, losses or expenses. There may be other exceptions to Bank's liability, as stated in Client's account or other service agreements with Bank. Without limiting the foregoing, Bank will not be responsible for determining the compatibility of any installed Software with other system components or for any failure of any technical servicing or Software installation to provide access to the particular Service which the technical servicing or Software installation was intended to make available.

Bank's liability and Client's sole remedy for any cause not otherwise excluded herein and regardless of what form of action will be limited to actual direct damages sustained by Client, but in any event only to the extent that such damages resulted from Bank's gross negligence or willful misconduct, will not exceed the lesser of: (i) the total of monthly charges for the Services in question for the twelve months immediately preceding the cost or loss; or (ii) actual damages. Any claim, action or proceeding by Client to enforce the terms of this Master Agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs (or such shorter period as may be provided by the deposit agreement and disclosures provided in connection with the account(s)). Client agrees to cooperate with Bank in any loss recovery efforts Bank undertakes to reduce any loss or liability that arises in connection with the Services. Client acknowledges that Service fees have been established in contemplation of: (A) these limitations on Bank's liability, (B) Client's agreement to review statements, confirmations, and notices promptly and to notify Bank immediately of any discrepancies or problems; and (C) Client's agreement to assist Bank in any loss recovery effort.

Subject to the foregoing limitations, Bank's liability for loss of interest, if any, resulting from Bank's error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal

Reserve Bank of New York for the period involved. At Bank's option, payment of such interest resulting from or arising out of any claim of any person that Bank is responsible for any of Client's or any third party's acts or omissions, may be made by crediting any of Client's accounts.

Client agrees to indemnify and hold Bank, its affiliates, licensors, processors, third-party contractors and vendors, and their respective directors, officers, shareholders, employees and agents, harmless from and against any and all claims, loss or damage of any nature whatsoever (including but not limited to attorneys' fees and court costs) arising directly or indirectly out of: (i) the wrongful acts or omissions of Client, or any person acting on Client's behalf in connection with Client's use of the Services, including without limitation (A) the breach by Client of any provision, representation or warranty of the Master Agreement, (B) the negligence or willful misconduct (whether by act or omission) of Client or its clients or any third party on behalf of Client, (C) any misuse of the Services by Client, or any third party within the control, or on behalf, of Client, (D) the failure by Client to comply with applicable state and federal laws and regulations, or (E) any fine, penalty or sanction imposed on Bank by any clearing house, or any governmental entity, arising out of or connected with the Services; (ii) any act or omission of Bank that is in accordance with the Master Agreement or instructions from Client; (iii) actions by third parties, such as the introduction of a virus that delays, alters or corrupts the transmission of an image or communication to Bank; (iv) any loss or corruption of data in transit from Client to Bank; (v) any claim by any third party claiming that such third party incurred a loss due to the Service; or (vi) any claims, losses or damages resulting from Client's breach of, or failure to perform in accordance with, the terms of this Master Agreement. This indemnity will survive the termination of this Master Agreement. Client agrees that it will not assert any claims against Bank based on theories of negligence, gross negligence, strict liability, misrepresentation, or fraud based on or relating to any Communication Link, Software or Client's possession or use thereof or any technical computer service including, but not limited to, Software installation or de-installation performed by Bank.

16. **EXCLUSION OF WARRANTIES.** Client acknowledges that the services are provided on an "as is" and "as available" basis. Bank is not responsible for any errors or omissions in or to any information resulting from client's use of the services. Bank makes no, and expressly disclaims all, warranties (express or implied) regarding client's use of the services and the equipment, including the warranty of title and the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Without limiting the generality of the foregoing, bank disclaims any warranties regarding any software, any communication link, the operation, performance or functionality of the services and the equipment, including any warranty that the services and the equipment will operate without interruption or be error free. Client acknowledges that there are security, transmission error, and access availability risks associated with using the services and assumes all risks relating to the foregoing.
17. **FORCE MAJEURE.** Notwithstanding any other provisions of this Master Agreement, Bank shall not have any responsibility or liability for any failure, error, malfunction or any delay in carrying out any of its obligations under this Master Agreement if such failure, error, malfunction or delay results from events due to any cause beyond its reasonable control, including, without limitation, unavailability of any communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes, stoppages of labor or industrial action of any kind, riots, insurrection, war or acts of government, power or equipment failure (including that of any common carrier, transmission line or software), emergency conditions, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in Bank's control. Bank will not be liable or responsible for the acts or omissions of any other financial institution or any third party or for any inaccuracy or omission in a notice or communication received by Bank from Client, another financial institution, or any other third party. In addition, Bank shall be excused from failing to transmit, or delaying the transmission of, any transaction, if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future FRB guidelines or in Bank's otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. Bank shall not be liable for any failure to perform any of its obligations under this Master Agreement if

such performance would result in it being in breach of any law, regulation, requirement or provision of any government, government agency, banking or taxation authority in accordance with which Bank is required to act, as shall be determined in Bank's sole discretion.

18. CUT-OFF HOURS. A number of Bank's Services are subject to processing cut-off times. Communications received after the cut-off times or on a non-business day will be deemed received as of the next business day. Alternatively, some Services may require Client to resubmit a Communication when it is received after the cut-off time or on a non-business day. Current cut-off times can be found at www.tcbk.com/business/cutoff-times.
19. RECONCILIATION. Client will inspect all information made available by Bank in connection with the Services. Client agrees to promptly, by telephone and in writing, notify Bank of any errors in such information or any discrepancies between its records and the information, statements or confirmations of transactions made available by Bank. To the extent not expressly prohibited by applicable law, if Client fails to promptly notify Bank of any such error or discrepancy, in any case no more than 30 days from the date on which such information is made available to Client, then Client agrees that Bank will not be liable for any losses resulting from Client's failure to give such notice or any resulting loss of interest relating to any transactions. Without limiting the foregoing: (i) if Client fails to notify Bank of any such error or discrepancy within one year of the date on which such information is made available to Client (or such shorter period as may be provided by the deposit agreement and disclosures applicable to the account(s)), then Client shall be precluded from asserting such error or discrepancy against Bank; and (ii) Bank reserves the right to, in its sole discretion, adjust transaction records for good cause after the expiration of said one year period.
20. PROVISIONAL CREDIT. Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.
21. DISPUTE RESOLUTION.
 - (a) **No Jury Trial**. To the extent allowed by law, if a dispute arises between Client and Bank regarding this Master Agreement or any service contemplated hereunder, Client and Bank each waive any right they may have to request a jury trial.
 - (b) *Judicial Reference*. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of Butte County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Butte County, California; and the parties hereby submit to the jurisdiction of such court. The referenced proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedures Section 638 through 645.1

inclusive (or their successor statutes). The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Butte County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceeding. The parties shall be entitled to discovery, which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceeding in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure Section 644(a). The decision of the private judge shall then be appealable as if made by the court. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph. If Client and Bank do not agree on how the payment of the private judge's fees and expenses will be shared, the court may apportion such fees and expenses between Client and Bank in a fair and reasonable manner that is consistent with the Code of Civil Procedure Section 645.1. No provision of this section shall limit the right of any party to exercise self-help remedies, to foreclose against or sell any real or personal property collateral or to obtain provisional or ancillary remedies, such as injunctive relief or appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any reference proceeding. The exercise of a remedy does not waive the right of either party to resort to reference pursuant to the Master Agreement.

22. **CONFIDENTIAL INFORMATION.** Unless otherwise provided in the service descriptions, all supporting documents and software provided pursuant to this master agreement constitute bank's, its contractors or vendors, or bank's agent's confidential information ("confidential information"). Bank, its contractors or vendors, or bank's agent (as applicable) will remain the sole owner of all such confidential information, and client will not acquire any interest in or rights to the confidential information as a result of client's use of any service except as expressly set forth in the service description. Client will maintain the confidentiality of the confidential information, and will not permit its employees or agents to, disclose, copy, transfer, sublicense or otherwise make any of it available to any person or entity, other than client's employees who have a need to use the confidential information in connection with the applicable service. Client shall notify bank immediately if client knows or suspects that there has been any unauthorized disclosure, possession, use or knowledge (each, an "unauthorized use") of any confidential information, and if client is responsible for the unauthorized use, it will, at its expense, promptly take all actions, including without limitation initiating court proceedings to recover possession or prevent further unauthorized use of the confidential information and obtain redress for any injury caused to bank as a result of such unauthorized use. In addition, client must not decompile, reverse engineer, disassemble, modify, or create derivative works of any computer program provided pursuant to the master agreement.

Client authorizes the transfer of any information relating to Client to and between the branches, subsidiaries, representative offices, affiliates, contractors, vendors and agents of Bank and third parties selected by any of them, wherever situated, for confidential use in connection with the provision of products or Services to Client (including for data processing purposes), and further acknowledges that any such branch, subsidiary, representative office, affiliate, contractor, vendor or agent or shall be entitled to transfer any such information as required by any law, court, regulator or legal process.

23. **FINANCIAL INFORMATION; AUDIT AND INSPECTION.** Bank may from time to time request information from client in order to evaluate a continuation of the services to be provided by bank hereunder and/or adjustment of any limits set by this master agreement. Client agrees to provide the requested financial

information immediately upon request by bank, in the form required by bank. Failure to provide requested information may result in a suspension or termination of services. Client authorizes bank to investigate or reinvestigate at any time any information provided by client in connection with this master agreement or the services and to request reports from credit bureaus and reporting agencies for such purpose.

Bank reserves the right, with prior notice to client, to enter upon client's premises from time to time during regular business hours to audit client's operations and procedures for compliance with the terms of this master agreement and the rules.

In connection with any such audit, Client agrees to furnish Bank with any documentation or information as is reasonably necessary to establish Client's compliance with the terms of this Master Agreement. If it is determined by Bank that additional procedures or controls need to be implemented by Client, Client agrees to implement such procedures or controls within a reasonable period of time to be agreed upon by the parties.

In connection with Bank's entry on the premises of Client for the purpose of conducting an on-site audit or inspection, or in connection with providing support to Client, Bank shall not be liable or responsible to Client or any third party for any loss, bodily harm, property damage.

24. SECURITY INTEREST. Client grants bank a security interest in client's accounts to secure the repayment of any obligation that client incurs under the master agreement. The security interest provided under this Master Agreement is in addition to any other security interest bank may have in client's accounts or other assets or as may be provided in the deposit agreement and disclosures related to the account(s). This security interest will survive termination of this master agreement.
25. RESERVE ACCOUNT. Client agrees that it will, if requested by bank at any time, establish one or more reserve accounts to be maintained with bank in type (including time deposits) and amount satisfactory to bank, to serve as collateral for and to secure client's obligations to bank under this master agreement. Bank may restrict or prohibit client's access to any reserve account(s) and the funds on deposit in them, and may hold such accounts following termination of the master agreement for a period of time sufficient to protect bank against loss. Bank may increase or decrease the required reserve account amount from time to time, upon notice to client and client agrees to provide immediately available funds to cover a reserve amount requested by bank. In addition, bank may transfer funds from another account of client's, or use funds payable to client or owed by bank to client under this master agreement or due to a service, and credit such funds to a reserve account if a deficiency exists between the available funds in client's reserve account(s) and the amounts specified by bank as the required reserve amount.
26. TERM AND TERMINATION. The term of this master agreement will commence upon full execution of this master agreement and will continue in full force and effect thereafter until terminated as follows:
- (a) Client may terminate some or all of the Services under this Master Agreement, with or without cause, upon 30 days prior written notice to Bank; and
 - (b) Bank may terminate, suspend or restrict some or all of Client's access to the Services under the Master Agreement, with or without cause, at any time immediately upon notice to Client.

Any termination will not affect any obligations arising prior to termination. Upon termination, Bank will terminate Client's access to the Services, and Client will terminate its access to and use of the Services, except to the extent necessary to process transactions that were in process prior to the termination date. Within 30 days after termination of this Master Agreement, Client will, at its expense, promptly uninstall and remove all Software provided for the Services from its computers and return to Bank any Software, hardware and equipment provided by Bank for the Services, including the Supporting Documents, procedures, documentation and any materials relating to the Services in its

possession or under its control, destroy all copies of the Supporting Documents and materials relating to the Supporting Documents that cannot be returned, and upon request from Bank certify in writing to Bank that all such copies have been returned or destroyed. Client will be responsible and liable to Bank for the replacement cost of all lost, stolen or damaged equipment that was provided by Bank to Client in connection with the Services. Upon termination of the Master Agreement, all Services and any Licenses shall automatically terminate.

27. CLIENT RECORDS; NOT BACKUP SERVICE. This master agreement and the services are not intended to relieve client of any obligation imposed by law or contract regarding the maintenance of records or from employing adequate audit, accounting, and review practices as are customarily followed by similar businesses. The services do not include, and bank does not act as, a backup, data recovery or disaster contingency service. Except as otherwise stated in this master agreement, client agrees to retain and provide to bank, upon request, all information necessary to remake or reconstruct any deposit, file, entry, transmission, transaction request or order until at least three years following receipt by bank of the deposit, file, entry, transmission, transaction request or other order affecting an account.
28. SERVICES NOT SUBSTITUTE FOR LEGAL, TAX, OR FINANCIAL ADVICE OR PLANNING. Client acknowledges that the services, bank, its employees and service providers are not providing legal, tax or financial advice or planning. The services are merely a tool for use to assist client's independent decision-making and have not been designed in contemplation of client's specific business needs or risk tolerances. Prior to making any financial decisions, communicating or taking any action with respect to information made available using the services, client represents that it will have obtained appropriate and independent legal and tax advice regarding the same.
29. BUSINESS DAYS. For the purpose of the Master Agreement, Bank's business days are Monday through Friday, excluding Saturdays, Sundays, and bank holidays.
30. ASSIGNMENT. Bank may assign its rights and delegate its duties under this Master Agreement to an affiliate or to a third party. Client may not assign any right or delegate any obligation under the Master Agreement without Bank's prior written consent.
31. RELATIONSHIP OF PARTIES. Nothing in this Master Agreement creates a joint venture, partnership, principal agent or mutual agency relationship between the parties. No party has any right or power under this Master Agreement to create any obligation, expressed or implied, on behalf of the other party.
32. THIRD PARTIES. Client acknowledges and agrees that Bank may arrange to provide Software, if required, and/or may arrange for the Services covered by this Master Agreement to be performed or provided by third parties, including its affiliates. Client further agrees that any such party is a third-party beneficiary of this Master Agreement and as such is entitled to rely on, and avail itself of, the provisions of this Master Agreement as if it was Bank, including, without limitation, the limitations on liability and the indemnities described in this Master Agreement. Bank's ability to provide certain Services may be dependent upon Bank's ability to obtain or provide access to third-party networks. In the event any third-party network is unavailable or Bank determines in its sole discretion, that Bank cannot continue providing any third-party network access, Bank may discontinue the related Service or may provide the Service through an alternate third-party network. In such situations, Bank will have no liability for the unavailability or delay of access.

Notwithstanding the limitations described above pertaining to third parties, if Client authorizes a third party to access the Services on Client's behalf, Client will be solely responsible and liable for all actions and inactions of said third party. Client expressly assumes the risks associated with providing Service access rights to its agents or third-party vendors, including but not limited to the risk of unauthorized or erroneous transactions. Bank will not be responsible, nor have any liability whatsoever for any services Client receives from Client's agents or third-party vendors. Bank reserves the right to require Client to

agree to additional terms and conditions as a condition precedent to Client's use of any agent or third-party vendor in connection with Client's access to the Services.

33. CREDIT CRITERIA. Bank, in its sole discretion, may, and Client hereby authorizes Bank to, perform credit reviews of Client in accordance with Bank's credit qualification criteria. Client shall, upon Bank's request, provide Bank with any credit-related information and assistance as Bank may require to perform any such review. Client agrees to provide Bank with financial statements or other information regarding Client's financial condition upon Bank's request. Failure to provide the requested information may result in suspension or termination of the Services.
34. WAIVER. Bank's failure or delay in exercising any right or remedy under this Master Agreement will not operate as a waiver of such right or remedy, and no single or partial exercise of any right or remedy under this Master Agreement will preclude any additional or further exercise of such right or remedy or the exercise of any other right. No waiver by either party of any breach of this Master Agreement will operate as a waiver of any prior, current or subsequent breach. No waiver, breach, right or remedy will be effective unless made in writing.
35. ELECTRONIC SIGNATURES, CONTRACTS AND RECORDS. When any payment order or other Service generates items or transactions to be charged to an account of Client, Client agrees that Bank may charge the affected account without requiring Client's signature and without prior notice to Client. Any transactions resulting from Client's instructions which Bank receives in Client's name and under Client's credentials shall be deemed to have been "a writing" and authenticated by Client "in writing" for purposes of any law in which a writing or written signature is needed or required. All records maintained by Bank of transactions under Client's credentials shall be deemed to have been "signed" and will further constitute an "original" when printed from records established and maintained by Bank or Bank's authorized agent in the normal course of business.

Client agrees that Bank may contract and communicate electronically with Client, including execution and retention of contracts, documents, and certifications. Client agrees not to contest the authorization for, or validity or enforceability of, Bank's electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon Bank's written request, Client agrees to manually sign or place Client's signature on any paper original of any record or "signed" document which Bank provides to Client containing Client's purported signature.

36. MONITORING, RECORDING AND RETAINING. Client authorizes Bank (but Bank is not obligated) to monitor, record electronically and retain telephone conversations and electronic communications between Client (including its purported Authorized Representatives) and Bank. Accordingly, Client agrees on behalf of itself, its employees and agents that Bank may monitor and record Client's telephone and electronic communications in connection with the Services at any time, without further notice. Bank and Client hereby agree that Bank may produce the telephonic or electronic recordings or computer records as evidence in any proceedings brought in connection with this Master Agreement, and Client hereby acknowledges the validity and legal admissibility of such telephonic or electronic recordings.
37. FINAL AGREEMENT; AMENDMENTS. This Master Agreement constitutes the final and complete agreement between Bank and Client with respect to the Services, and supersedes all other oral or written agreements, understandings, and representations pertaining to the subject matter hereto. Bank may amend, add, delete or change the terms of this Master Agreement, including but not limited to the terms of any Service Description, and the applicable fees. Bank may make such amendments, additions, changes or deletions, at any time and at Bank's sole discretion. If Bank deems it reasonably practicable to do so and if the change adversely affects Client's usage of the Service, Bank may notify Client of the change in advance.

Otherwise, Bank will notify Client of the change as soon as reasonably practicable after it is implemented, which notice may be given electronically. After such amendment(s), Client's continued use of the Services will evidence Client's consent to any amendments, including additions, changes or deletions.

38. AVAILABILITY. Bank may cause a Service to be temporarily unavailable to Client, either with or without prior notice, for site maintenance, security or other reasons, and Client acknowledges that factors beyond Bank's reasonable control, such as telecommunications failure or equipment failure, may also cause the Service to be unavailable to Client. In such event, Client must make (and have done so prior to such failure) alternative arrangements for scheduled and other anticipated transactions and Client will be responsible for maintaining procedures and facilities to enable Client to do so if any of the Services are unavailable to Client. Such arrangements include, for example, issuance of paper checks, manual collection of deposits and transportation of paper items to a Bank branch. Upon notice from Bank of a failure of any software, hardware or other equipment necessary for Bank to perform in accordance with a Service Description, Client will as soon as reasonably possible deliver to Bank all data in Client's possession or under its control which Bank reasonably requests in order for Bank to continue to provide the Service.
39. HEADINGS. Headings are for reference only and are not part of this Master Agreement.
40. SUCCESSORS AND ASSIGNS. This Master Agreement is binding upon and shall inure to the benefit of Bank and Client and their respective successors and assigns. However, in all cases the applicability of this Master Agreement to any of Client's successors and assigns must be approved in an advance writing by Bank.
41. INSURANCE. If requested by Bank, Client agrees to obtain and maintain fidelity and error and omission insurance coverage in an amount reasonably satisfactory to Bank, to cover (at a minimum) losses due to action or inaction by Client, its employees and agents, or any person given access to the Services by Client (including unauthorized access by the same), and to name Bank as an additional insured on such policy. Client will provide evidence reasonably satisfactory to Bank of the existence of such insurance promptly upon request by Bank.
42. APPLICABLE LAW; SEVERABILITY. This Master Agreement shall be construed and interpreted in accordance with federal law and regulations, and to the extent such law and regulations do not apply, with the laws of the state of California, without regard to its conflict of law provisions. Even if a provision of this Master Agreement is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the other provisions of this Master Agreement will not be affected or impaired by such holding.

ONLINE BANKING SERVICE DESCRIPTION



1. **ONLINE BANKING SERVICE.** Tri Counties Bank ("Bank") hereby offers its Client and Client hereby accepts the online banking service (the "Online Banking Service"). The Online Banking Service is an Internet based service that enables Client to access its accounts and to facilitate certain electronic services online, as identified in and subject to this Service Description. Bank reserves the right, without prior written notice to Client, to place, from time to time, limits on Client's right to use the Online Banking Service.

Additional Online Banking Services may be added to or removed by the Bank from time to time. Bank may allow eligible loans and lines of credit to be linked, in which case, Client agrees that the relevant loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. Bank may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. Some Online Banking Services may not be available without special application to and approval by Bank, may be limited to specific types of accounts, and may require Client to agree to additional terms and conditions.

2. **MASTER TREASURY AGREEMENT; SEPARATE SERVICE DESCRIPTIONS.** This Service Description forms part of the Master Treasury Agreement ("Master Agreement") executed by Client. In the event of conflicts between the terms of this Service Description and the terms of the Master Agreement, the terms of this Service Description shall control. To the extent Client is enrolled in any additional Services, Client's use of the Services will also be subject to the terms and conditions of each applicable separate Service Description. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description. An "account" shall mean any deposit or loan account Client maintains with Bank and can include all accounts and products Client uses with Bank. Client's "Account" shall mean the account(s) accessible through the Services.

3. **CUT-OFF TIMES.** A Communication received by Bank after the cut-off time on a business day, or on a day that is not a business day, may be treated by us as if it were received on the next business day. At Bank's option, however, Bank may treat it as received the same day as the day of receipt. There can be a delay between the time when Client sends a Communication to Bank and the time Bank receives it. All references to time in this Agreement shall refer to Pacific Time. Bank's current cut-off times are available at <https://www.tcbk.com/business/cutoff-times>:

4. **ACCOUNT DESIGNATION.** Client may need to designate certain accounts for specific purposes in connection with some of the Online Banking Services. If Client links more than one checking account to certain transactional services, Client will need to specify the account from which transfers should be made. Bank is not obligated to establish access to any or all of Client's accounts, and not all Online Banking Services are available with all accounts.

5. **ADMINISTRATOR AND USER(S).** As part of the Online Banking Service, Client will appoint an individual to act as an administrator (for the purpose of this Service Description, referred to herein as "Administrator") with the authority to determine who will be authorized to use the Online Banking Services on Client's behalf. The Administrator will be able to designate additional users ("Designated Users") and remove existing Designated Users. The Administrator will also determine what Online Banking Services will be available to particular Designated Users, when to change passwords, and any limitations on the use of the Services by individual Designated Users.

Bank will not control or oversee the Administrator function. Client agrees to all action taken by the Administrator or any Designated User designated or authorized by the Administrator, and all such persons are Client's agents for purposes of use of Online Banking Services, each authorized to act individually or in concert. The fact that Bank is, or may be made aware of, or could have discovered, any limitation on access to the Online Banking Service does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that the Administrator and each Designated User may utilize Online Banking Services (including inquiries, transfers and account verification) without regard to any restrictions otherwise applicable to an Account. For example, the Administrator and each Designated User will be able to utilize the Online Banking Services regardless of whether they are also authorized signers on the Client's signature

6. COMMUNICATIONS; SECURITY DEVICES. For the purpose of this Service Description, Communications shall have the meaning provided in the Master Agreement and shall include Communications to Bank in connection with the Online Banking Service. For the purpose of this Service Description, Security Devices shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Devices used to access Accounts and to use the Online Banking Services. Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, challenge questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client's access to some or all Online Banking Services may be limited. The term "Security Devices" will include any supplemental authentication tools that are made available by Bank and used by Client.

Client has the responsibility of ensuring that Client has the current security patches installed and configured, Client maintains up-to-date virus detection program(s), and that Client regularly scans for the existence of malware and spyware and takes appropriate action if found. Client expressly acknowledges that encryption of data transmissions does not guarantee privacy. Data transferred via the Service is encrypted in an effort to provide transmission security. Notwithstanding Bank's efforts to insure that the Services are secure, Client acknowledges that the Internet is inherently insecure. Bank cannot and does not warrant that all data transfers utilizing the Services will not be monitored or read by others.

Bank may require a higher level of review of your security procedures, at Bank's option, and to which Client agrees to submit for continued permission to use the System. Without limiting the foregoing, Bank may require one or more of the following: (a) more frequent on-site visits to verify Client's security procedures; (b) additional log in requirements implemented through different software or hardware; (c) technical review of the computer system(s) used to access the System to verify the integrity of Client's hardware, software, anti-virus and firewall protection; (d) requirement to use specific anti-virus and firewall software that Bank specifies and periodic inspection to determine that such systems are up to date; and/or (e) obtaining insurance coverage for electronic fraud losses that are beyond Bank's control.

7. COMPUTER EQUIPMENT AND SOFTWARE TO ACCESS THE ONLINE BANKING SERVICES. To use the Online Banking Services, Client must have a sufficiently powerful computer hardware and appropriate software as described in the Supporting Documents. Some Online Banking Services may require Client to download software from Bank's website; in some cases, Bank may place software on Client's computer as part of Bank's security and/or user verification tools. Bank recommends Client utilize antivirus software whenever possible. Client is ultimately responsible for maintaining and updating computer equipment used to access the Online Banking Services, including maintaining up-to-date security patches, updates, and other protective applications.

8. ACCESS TO ACCOUNT DATA. Subject to system limitations, Client can obtain balance and other Account information through the Online Banking Services. Since certain information and transactions may not be processed by Bank until after the close of Bank's business day, some transactions may not be reflected in the online banking system ("System") until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. Bank assumes no responsibility for any loss arising from incomplete information or for any temporary interruption in the System. If Client is unable to access the System for any reason, Client may contact Client's branch of Account for account information.

9. ACCOUNT TRANSFER LIMITATIONS. All transfers to and from an Account will be subject to the terms and conditions applicable to the Account as set forth in the deposit agreement governing the Account, including but not limited to transfer limitations. For example, federal regulations limit certain types of transactions/transfers from a money market or savings account. If Client exceeds these limits, Bank may impose a fee, close or convert Client's Account, limit Client's use of the Online Banking Services, or any combination of the foregoing. In addition, there may be other transfer limits addressed in the Supporting Documents.

10. LOAN ACCOUNT ADVANCES AND PAYMENTS.

Loan Advances can be processed against available lines of credit on a Tri Counties Bank loan through the transfer function. Advances made against a Tri Counties Bank line of credit are subject to Client's loan agreement with Bank.

Electronically initiated loan advances are not permitted for construction loans or loans with other advance restrictions. Frequency of advances and dollar limits of advances are limited by the terms set forth in Client's loan agreement. There are no specific transaction fees for loan advances, however, interest and advance charges set forth in the applicable loan agreement will apply.

Loan Payments can be scheduled (regular) and unscheduled that move money out of one of Client's linked checking or savings Accounts to make a payment on a linked loan Account. For each loan payment that Client creates, Client must include an effective date that tells Bank when to make the payment on the loan. This feature enables Client to submit loan payment(s) in advance of their regular due date(s). To avoid late charges, be sure that the loan payment date Client specifies is on or before its due date according to Client's loan agreement. The System cannot determine Client's loan payment due date.

11. BILL PAYMENT SERVICE.

Bill Pay Account Designation; Payment Details. When using the Bill Payment Service, Client must designate the Account ("Bill Pay Account") from which the bill payments ("Bill Payments") are to be made. For each Bill Payment, Client will also be required to provide the complete name of the payee, the account number and the payee's remittance address (as exactly as shown on the billing statement or invoice), the amount of the payment and the date Client wants the payment to be processed by Bank ("Send on Date"). If the Send on Date is not a business day, then the Bill Payment will be processed by Bank the next business day. To have a Send on Date that is the same date Client accesses the System and initiates the Bill Payment instruction, the Bill Payment instruction must be received by Bank on a business day, prior to the Bill Payment Service cut-off hour.

Setting-Up Payees. When Client signs onto the Bill Payment Service, Client must establish Client's list of payees. A payee is anyone, including Bank, that Client designates to receive a Bill Payment; provided that Bank accepts the payee for the Bill Payment Service. Bank reserves the right to reject any payee at any time, at its discretion. Bank is not responsible if a Bill Payment is not made to a payee because Client provided Bank with incomplete, incorrect or outdated information regarding the payee or Client attempted to make a payment to a payee that is not on Client's authorized list of payees. Payments to payees outside of the United States or its territories are prohibited through the Bill Payment Service.

Available Funds. Prior to the applicable cut-off hour as of the Send on Date and thereafter until the Bill Payment has been applied against Client's Bill Pay Account, Client will need to have sufficient available funds in Client's Bill Pay Account to cover the amount of the Bill Payment.

Non-Recommended Payees. Bank does not recommend that Client use the Bill Payment Service to pay Client's federal, state or local taxes, courts or other governmental entities. Bank will not be liable for penalties, interest or other damages of any kind if Client tries to use the Bill Payment Service to remit or pay money for taxes, or to courts or governmental agencies.

Scheduling Bill Payment. Client must designate a Send on Date so that it is scheduled sufficiently in advance of the due date of Client's bill ("Due Date") to allow the payee to receive it on the Due Date set by Client's payee and without taking into account any grace period that may be offered by Client's payee. Some companies Client pays through Bank's Bill Payment Service will receive a paper draft on Client's behalf, rather than receiving an electronic payment. These paper draft payments can take longer to process before the payee receives the payment. Bank is not responsible for any damages Client may suffer if Client does not allow sufficient time between the Send on Date and the Due Date of Client's bill or obligation, without counting any grace period offered by the payee.

Payment Methods. Bank reserves the right to select the method in which to remit funds on Client's behalf to Client's payees. These payment methods may include, but may not be limited to, an electronic payment, an electronic check payment (where the check is drawn off Bank's third party service provider's account), or a demand draft payment (where a negotiable instrument is created and drawn off of Client's Bill Pay Account).

Payment Changes and Cancellations; Stop Payments. Client may change or cancel a payment that has been scheduled through the Bill Payment Service but has not begun processing (“Scheduled Payment”) as long as Client logs onto the Service prior to the Send on Date for the Bill Payment instruction and Client follows the Bill Payment instructions provided by the Bill Payment Service for changes and cancellations. Client’s ability to stop payment on a processed Bill Payment will depend on the payment method and, if by check, whether or not the check has cleared. The Bill Payment Service must have a reasonable opportunity to respond to any stop request. To stop payment on any Bill Payment that has already been processed, Client must call Bank. Fees and additional documentation may be required by Bank to process a stop payment request. Bank will have no liability to Client for Bank’s refusal or failure to stop a Bill Payment that has already been processed.

Accurate Information on Payees. If the Bill Payment Service provides Client with a series of options regarding payee address or location, Client is responsible for correcting that information if such information does not agree with Client’s records or with Client’s particular bill. Bank and the others that handle Client’s Bill Payment (including the payee’s bank) are entitled to rely on information Client supplies, such as the payee’s account number or the routing number of the payee’s bank, even if the name Client gives to Bank and the number Client gives to Bank identify different persons.

Automated Clearing House Entries. Electronic payments that are made through the Automated Clearing House (“ACH”) are subject to the rules of the ACH, and Client agrees to be bound by the Operating Rules of the ACH, including the rule making payment to the payee provisional until receipt by the payee’s bank of final settlement of the credit transaction. If final settlement is not received, Client will not be deemed to have paid the payee the amount of the bill payment.

12. **CHECK STOP PAYMENT SERVICE.** Client may stop payment on a check by providing Bank with timely, complete and accurate information as required in the System, including the EXACT: number of the Account on which the check was drawn; the date of the check; the check number; the payee information and the amount of the check (dollars and cents). If any information is incomplete or incorrect, Bank will not be responsible for failing to stop payment on the item. Requests become effective when Bank has had a reasonable opportunity to confirm their receipt and have verified that the item has not been paid. Client may use the Online Banking Services to stop payment on checks that Client has written against Client’s Accounts. If Client wishes to cancel or amend any other Online Banking Service transaction (for example, Wire Transfer Requests), Client should use that Online Banking Service and Client will be subject to any limitations or inability to stop applicable to that Online Banking Service. If Client contacts Bank, Bank may at its sole discretion attempt to assist Client, but will not be liable for any failure to successfully stop payment on transactions. To confirm whether a stop payment has been placed on a check, Client agrees to communicate with Bank by telephone. System messages regarding Bank’s receipt of Client’s stop payment order, or other system communications may not be relied on by Client to confirm whether a stop payment order has been placed.

Client may not use this check stop payment service to stop payment on any electronic fund transfer (EFT) transaction, point-of-sale EFT transfer; any cashier’s check, certified check or other official institution check that have purchased from Bank or any check which Bank has guaranteed. Client understands that its stop payment request is conditional and subject to Bank’s verification that the check has not already been paid, or any Online Banking Service not already performed, or that stopping payment may subject Bank to risk of loss or damages under any law or regulation (including clearing house or other processor rules).

All Stop Payment orders, renewals and revocations of stop orders will be subject to Bank’s current policy on stop payment orders. From time-to-time, the System may be inoperable. If that occurs, Client’s request can be communicated to Bank by telephone. Telephone requests will expire unless confirmed in writing within 14 days. A check stop payment order is effective for six (6) months only and will expire automatically, at which time Client is responsible for any renewal desired by Client for another six (6) month term. There will be a fee assessed for each stop payment request processed.

13. **ACCOUNT ALERTS.** The account alerts (“Alerts”) feature is a convenience tool that permits Client to request automated notification in specific situations. Alerts do not replace standard communications Client receives from Bank concerning Client’s accounts. Receipt of Alerts may be delayed, or prevented by factor(s) affecting Client’s access, including Internet service provider(s), phone operator(s), and other relevant entities. Bank neither guarantees the

delivery or the accuracy of the contents of any Alert. Bank will not be liable for losses or damages arising from: (i) non-delivery, delayed delivery, or wrong delivery of any Alert; (ii) inaccurate content in an Alert; or (iii) Client's use or reliance on the contents of any Alert for any purposes. Bank reserves the right to terminate any request from Client for any Alert, at any time. The information in any Alert may be subject to certain time lags and/or delays. Client may stop or suspend Alerts at any time.

14. DOWNLOAD/EXPORT SERVICE. The Download/Export Service is compatible with certain financial management software programs ("Programs"). Bank will not control or oversee any administrator, user or similar function that may be made available through the Programs. The fact that Bank is, or may be made aware of, or could have discovered, any limitation on access to the Download/Export Service as imposed by Client through the Programs, or otherwise, does not make Bank obligated to enforce or attempt to enforce any limitation. Client understands that the Program(s) may be utilized without regard to any restrictions otherwise applicable to an Account. For example, the Program(s) may be utilized regardless of whether an individual user is also an authorized signer on Client's Account signature card.

ACCESS TO ACCOUNT DATA. Client can download balance and other Account information through the Download/Export Services. Since certain information and transactions are not processed by Bank until after the close of Bank's business day, some transactions may not be reflected in the System until the next banking day. Posted items may be reversed due to insufficient funds, stop payment orders, legal process, and other reasons. Certain balances also may not be subject to immediate withdrawal. Bank assumes no responsibility for any loss arising from incomplete information or for any temporary interruption in the System, or unauthorized access to information once it has been accessed by the Program(s). Client is responsible for making a backup of Client's data before using any export function.

SOFTWARE, EQUIPMENT AND THIRD PARTY CONTENT. Client is responsible for obtaining and maintaining any compatible software and equipment that is necessary for the Download/Export Service to interface with the Program(s). Through the Program(s) Client may be able to access content provided or operated by third parties, including content that was originally sourced from data downloaded from Bank's Online Banking Service ("Third Party Content"). Unless Bank tells Client otherwise in writing, Bank does not operate or control any such Third Party Content or any of the information, products or services accessed or uploaded through the same. Client acknowledges and agrees that: (i) Client accesses Third Party Content at Client's own risk; (ii) Bank makes no representation or warranty, and assumes no responsibility for, Third Party Content provided or operated by third parties, actions or omissions of third parties, operators or providers; (iii) Bank makes no endorsement of, and assumes no responsibility for, Third Party Content uploaded to Bank's system or Client's hardware, or goods or services offered on or advertising on or by any other party; (iv) by using third party services or software, Client may be exposed to material that is offensive, indecent or objectionable; and (v) although Bank may have a contractual or other relationship with the operators of a linked website or the providers of Third Party Content, Bank will not be responsible for the Third Party Content, accuracy, completeness, integrity, availability, timeliness or operation of their website or the Third Party Content provided. Client agrees to hold Bank harmless in connection with all of the foregoing.

15. EMAIL COMMUNICATIONS. While access to Bank through the secure email function of the Services is "online," messages sent to Bank through email are not reviewed by Bank personnel immediately. If immediate attention is required, Client must contact Bank by telephone or in person. The secure email function is not intended for use by Client to initiate a transaction on Client's account(s), including check stop payment orders. If Client sends Bank an email message outside of the secure logon feature within the Services, Client's communication will not be secure and Bank's receipt and response to the email may be further delayed. Client agrees not to rely on any form of email communication for any matter requiring immediate attention.

Client's secure email messages may be acted upon by Bank if received in a manner and in a time providing Bank a reasonable opportunity to act. Nevertheless, unless otherwise expressly provided herein, email messages will not serve as a substitute for any requirement imposed on Client to provide Bank with "written" notice.

16. INCONSISTENCIES. If a beneficiary of any requested Online Banking Service, including but not limited to Bill Payments, Wire Transfer Requests, ACH Transactions, payment orders or other money transactions, or any other Communication from Client (collectively, "payment order"), is identified by both name and account number, payment

may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

17. PROVISIONAL CREDIT. Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.

18. FEES. Client agrees to current fees for requested services. Refer to the Treasury Management Fee Schedule or Business Services Fee Schedule for the most current fees and charges related to Online Banking services. Bank reserves the right to change fees at any time without prior notice.

19. UPLOADED CONTENT; LINKED SITES AND ADVERTISEMENTS.

From Bank's website, Client may be able to access uploaded content provided or operated by third parties. Unless Bank tells Client otherwise in writing, Bank does not operate or control any such content or any of the information, products or services on such linked websites. Client acknowledges and agrees that: (i) Client accesses such content and linked sites at Client's own risk; (ii) Bank makes no representation or warranty, and assumes no responsibility for, content on Bank's website and any linked site or the actions or omissions of its/their owners, operators or providers (iii) Bank makes no endorsement of, and assumes no responsibility for, content uploaded to Bank's website or goods or services offered on or advertising on or by any other website; (iv) by using other websites and services, Client may be exposed to content that is offensive, indecent or objectionable; and (v) although Bank may have a contractual or other relationship with the operators of a linked website or the providers of content, Bank will not be responsible for the content, accuracy, integrity, availability, timeliness or operation of their website or content. Client agrees to hold Bank harmless in connection with all of the foregoing.

Bank reserves the right, but shall have no obligation, to reject, move, or delete content that Bank, in Bank's sole discretion, believes violates this Service Description, or contains content, including viruses, that may interfere with the operation of Bank's website. Bank may, but has no obligation to, monitor, and/or retain copies indefinitely of, uploaded content, message boards, chat rooms or other forums or review content, or messages posted at such locations, to confirm their compliance with these guidelines. Bank shall have the right, but not the obligation, to disclose content to any third party if required or permitted by law or if Bank believes reasonably necessary to: (a) comply with legal process; (b) enforce this Service Description; (c) respond to claims that any content violates rights of third parties; or (d) protect Bank's rights, properly, or personal safety, or those third parties.



WIRE TRANSFER SERVICE DESCRIPTION

- WIRE TRANSFER SERVICE.** Tri Counties Bank (“Bank”) hereby offers its Client and Client hereby accepts the funds transfer service described in this Service Description (the “Wire Transfer Service”). Client may submit funds transfer requests (“Requests”) to Bank in accordance with the terms and conditions of this Service Description. A “Request” includes a “payment order,” as defined in Division 11 of the California Commercial Code. All references to the term “Request(s)” in this Service Description will include Drawdown Request(s), as applicable. Client is responsible for all Requests to the fullest extent provided by law and as set forth in this Service Description. Bank may choose the funds transfer mechanism (for example, FedWire, correspondent bank transfer, internal transfer) to be used when acting upon Client’s REQUEST.
- MASTER TREASURY AGREEMENT; SUPPORTING DOCUMENTS.** This Service Description forms part of the Master Treasury Agreement (“Master Agreement”) agreed to by Client. In the event of conflicts between the terms of this Service Description and the terms of the Master Agreement, the terms of this Service Description shall control. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.
- TRANSMISSION; RELATED SERVICE DESCRIPTIONS FOR FUNDS TRANSFERS.** Client will communicate Requests using the Bank’s Online Banking Services; all Requests must also be consistent with the separate Business Online Banking Service Description.
- ACCOUNT DESIGNATION.** Client authorizes Bank to debit its designated account, or any other account maintained by Client at Bank, for any fees or other amounts due Bank in connection with the Services.
- ACCURACY.** Client assumes the sole responsibility for providing Bank with accurate transaction information in the form and format that Bank requires. Bank is not responsible for confirming such information, or for failing to detect and reject duplicate Requests. If Client provides Bank with a Request that is incorrect in any way, Client agrees that Bank may charge Client’s accounts for the transaction whether or not the error could have been detected by Bank. Bank is not obligated to detect errors in Client’s transfer or payment instructions.
- COMMUNICATIONS; SECURITY PROCEDURES.** For the purpose of this Service Description, Communications shall have the meaning provided in the Master Agreement and shall include Requests to Bank in connection with the Wire Transfer Service. For the purpose of this Service Description, Security Procedures shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Procedures used to access accounts and to use the Wire Transfer Services. More specifically, Client has selected the Security Procedures applicable to the Wire Transfer Service as identified in the Acceptance, or the Supporting Documents, as applicable. Bank may offer to Client or require Client to use additional authentication tools or methods from time to time (for example, challenge questions and phrases for employees). If Client chooses not to implement supplemental authentication tools, Client’s access to some or all Wire Transfer Services may be limited. Bank recommends Client utilize antivirus software whenever possible. Client is ultimately responsible for maintaining and updating computer equipment used to access the Online Banking Services and related Services, including maintaining up-to-date security patches, updates, and other protective applications.
- ACCOUNT TRANSFER LIMITATIONS.** All transfers to and from an account will be subject to the terms and conditions applicable to the account as set forth in the deposit agreement governing the account. If Client exceeds these limits, Bank may impose a fee, close or convert Client’s account, limit Client’s use of the Wire Transfer Services, or any combination of the foregoing. In addition, each Client is assigned a daily Wire Limit by the Bank, related to the total dollar amount of daily transfers; Client cannot submit transfers that exceed this limit. If Client needs to submit transfers above this limit, Client must contact the Bank.

8. **INCONSISTENCIES.** If a beneficiary of a Request is identified by both name and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

9. **PROVISIONAL CREDIT.** Client acknowledges that credit for a payment order is provisional until the receiving financial institution obtains final settlement. If final settlement does not occur, the originator of the payment order is not deemed to have made payment to the beneficiary, and the beneficiary's bank is entitled to a refund of the provisional credit. Client agrees that when Bank gives Client credit for an incoming payment order, including but not limited to, returned credited transactions or credit reversals, it is provisional until Bank receives final settlement for the payment order. Bank may delay availability of provisional funds at its discretion. If Bank does not receive final settlement, Client must return the funds previously credited to Client's account to Bank, and the person who sent the payment order will not be treated as having paid Client. Bank may refuse to permit the use of any amount credited for an incoming payment order, including but not limited to a debit entry or credit reversal if Bank believes in its sole discretion that there may not be sufficient funds in Client's account to cover chargeback or return of such transaction.

10. **FOREIGN CURRENCY TRANSACTIONS.** If a Client requests a funds transfer in United States Dollars or in a currency other than United States Dollars to a foreign country, Bank may transfer the payment in the currency of the beneficiary bank's country at any exchange rate chosen by Bank. If a funds transfer is returned, Client agrees that the exchange rate for conversion of the foreign currency into United States Dollars may differ from that used by Bank to process the initial funds transfer.

11. **CUT-OFF HOURS.** A Request is considered executed when Bank executes it. If a Request is received after the cut-off time or on a day that is not a business day, the Request will be deemed received the next business day. Current cut-off times can be found at www.tcbk.com/business/cutoff-times.

12. **FEES.** Client agrees to current fees for requested services. Refer to the Treasury Management Fee Schedule and Business Fee Schedule for the most current fees and charges related to Wire Transfer and related services. Bank reserves the right to change fees at any time without prior notice.

13. **SUBJECT RULES AND REGULATIONS.** Client acknowledges that any Request executed by Bank will be subject to rules and regulations applicable to payment orders, including recordkeeping and information transmittal requirement under federal Bank Secrecy Act and its implementing regulations. Client acknowledges and agrees that Bank may capture and transmit information regarding a Request (for example, beneficiary's name, address other beneficiary identifies and beneficiary's account number) as part of the processing of a payment order. Client agrees to assist Bank in connection with any requirements imposed on Bank fulfilling Bank's obligations in this regard.

POSITIVE PAY & ACCOUNT RECONCILIATION SERVICE DESCRIPTION



1. POSITIVE PAY, ACH POSITIVE PAY &/OR ACCOUNT RECONCILIATION SERVICE. Tri Counties Bank ("Bank") hereby offers its Client and Client hereby accepts the Positive Pay, ACH Positive Pay &/or Account Reconciliation Service (the "Service").
2. MASTER TREASURY AGREEMENT; SUPPORTING DOCUMENTS. This Service Description forms part of the Master Treasury Agreement ("Master Agreement") agreed to by Client. In the event of conflicts between the terms of this Service Description and the terms of the Master Agreement, the terms of this Service Description shall control. Defined terms in this Service Description shall have the meaning provided in the Master Agreement, unless otherwise defined in this Service Description.
3. SUPPORTING DOCUMENTS; RELATED SERVICE DESCRIPTION. Each of the Services selected by Client and approved by Bank is identified in the Supporting Documents. Each Service is effective as of a start date which will be communicated separately by Bank to Client. If the Client chooses not to select one of the Services, or if Bank in its sole discretion chooses not to approve Client for a requested Service, the terms of the unselected/unapproved Service will not apply and the applicable Services will not be performed. Client's use of each of the Services must be facilitated through Bank's Online Banking Service and Client's use of the Services will also be subject to the separate Business Online Banking Service Description.
4. ACCOUNT DESIGNATION. Throughout the term of this Service Description, Client will maintain the deposit account (the "Account") with Bank designated in the Supporting Documents, or otherwise in writing, to which the Services will be made available. Client acknowledges that this Service Description covers the Positive Pay and/or ACH Positive Pay Service to be provided by Bank and, except as specifically provided in this Service Description, does not cover the handling of the Account or the processing of checks or electronic funds transfers against the Account. As a result, the Account will be subject to, and Bank's operation of the Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Account, a copy of which Client acknowledges having received.
5. POSITIVE PAY SERVICE.
 - A. The Positive Pay Service provides certain account services through an automated check matching system. Client's lists of checks recently issued will be compared against the amounts and check numbers of the checks that actually clear against the specified Client account(s) activated for the Positive Pay Service and listed on the Supporting Documents. Client agrees that Bank will only be obligated to match the check number and dollar amount from the Check Issue File (defined below) and that Bank may in its sole discretion, but is not obligated to, match additional data provided in the Check Issue File ("Additional Data"), including but not limited to payee name. Regardless of whether Bank decides to match against Additional Data, and notwithstanding the fact that Additional Data may be included in the Check Issue File, Client further agrees that Bank will not be liable to Client and Client agrees to hold Bank harmless from loss or liability resulting from Bank's action or inaction with respect to Additional Data. Bank's determination to match Additional Data in any case will not obligate Bank to continue to do so in other instances. Notwithstanding the foregoing, Bank and Client may agree to Bank's review of Additional Data, subject to additional terms, fees and conditions.
 - B. Client must submit a file ("Check Issue File") to Bank prior to the cut-off time provided in the Supporting Documents, on the day of issuance of any checks against accounts that are subject to the Positive Pay Service. The Check Issue File must be in the format and contain the information specified by Bank.
 - C. The term "presented item(s)" shall mean checks that are presented for payment against Client's Account through the normal check collection system. Presented items that do not match an item included in a Check Issue File, pursuant to this Service Description, will be identified as "error" ("Exception Item") and will appear on a record describing the Exception Items ("Exception File") which Bank will provide to Client under this Service Description. Client must submit a "pay", or "return" decision for each item to Bank on the same Business Day by

the deadline specified in the Supporting Documents, otherwise the 'default action' (defined below) will be carried out by Bank.

- D. Client may research suspect items in the System by viewing the check image.
- E. Client grants Bank full authority to honor all checks that match the check numbers and amounts corresponding to your Check Issue File.
- F. Default Action Types include either PAY ALL or RETURN ALL. The Default Action is applied to any check transaction identified as an exception. Client shall select the Default Action for Check and ACH exceptions at the time of enrollment in the service. The default action (PAY ALL or RETURN ALL) must be the same for all accounts enrolled in Positive Pay & ACH Positive Pay service for a particular Client. In order to change Default Action, Client must submit appropriate documentation.
 - (1) RETURN ALL – Checks flagged as exceptions will be returned if customer has not submitted a request to pay through the Positive Pay system prior to the cut-off time.
 - (2) PAY ALL – Checks flagged as exceptions will be paid if customer has not submitted a request to return through the Positive Pay system prior to the cut-off time.
- G. If Client orders or prints checks from any check-printing vendor other than a Bank selected vendor, Client agrees to meet the Bank's MICR encoding specifications.
- H. The Service applies to checks that are presented for payment to Bank through normal interbank automated clearings. Client acknowledges that the Services do not cover checks which are (collectively "ineligible checks"): (i) presented by mail for collection, (ii) misencoded or duplicate items, or (iii) items which Bank has already cashed, negotiated or paid or which Bank is already committed to honor or pay under applicable laws, regulations or the ACH rules. Bank may, in its sole discretion, attempt to compare Check Issue File data, as otherwise provide in this Service Description, against ineligible checks, but Bank will not be liable for its failure or refusal to do so.
- I. Subject to funds being available pursuant to Bank's funds availability policy, Bank shall honor all checks that match the check numbers and amounts corresponding to the Check Issue File that is provided in conformance with this Service Description.

6. ACH POSITIVE PAY SERVICE.

- A. Client may use the ACH Positive Pay Service to review and confirm ACH debit transactions that post to the specified Client accounts listed on the Supporting Documents.
- B. For ACH Positive Pay Service, Client may establish (and update from time to time) through the System its ACH rules which govern permissible transactions by SEC Code, Company ID, Transaction Type, and Amount Threshold. All transactions that meet the filter criteria are processed according to the ACH rule.
- C. Default Action Types include either PAY ALL or RETURN ALL. The Default Action is applied to any ACH transaction identified as an exception. Client shall select the Default Action for Check and ACH exceptions at the time of enrollment in the service. The default action (PAY ALL or RETURN ALL) must be the same for all accounts enrolled in Positive Pay & ACH Positive Pay service for a particular Client. In order to change Default Action, Client must submit appropriate documentation.
 - (1) RETURN ALL – ACH transactions flagged as exceptions will be returned if customer has not submitted a request to pay through the Positive Pay system prior to the cut-off time.

- (2) PAY ALL – ACH transactions flagged as exceptions will be paid if customer has not submitted a request to return through the Positive Pay system prior to the cut-off time.

D. Client acknowledges that the Services do not cover ACH debit or credit items which Bank has already paid or finalized or which Bank is already committed to pay or honor under applicable laws, regulations or the ACH Operating Rules.

7. ACCOUNT RECONCILIATION SERVICE.

- A. Full Account Reconciliation Service. To utilize the full Account Reconciliation Service, Client agrees to provide Bank with required information on checks it has issued (“Issued Information”) within the timeframes and in the manner described in the Supporting Documents. At the end of each reconciliation period, Client may access the status of all checks for which Client has provided Issued Information since the last reconciliation period, including paid, outstanding, exception, stopped, voided and cancelled checks. The full Account Reconciliation Services detail will be made available to Client via the Service. The previous month’s outstanding checks will be carried forward.
- B. Check Issue File. Client acknowledges the current and complete Check Issue File must be uploaded through the Service and received by the applicable cut-off hour. Client agrees to add to its Issue Information all items identified by Bank as not matching the Issue Information provided to the Bank by Client.
- C. Partial Account Reconciliation Service. Under the Partial Account Reconciliation Service, as of the end of each reconciliation period, Bank will provide Client with an electronic file for the checks that have cleared Client’s Account since the last reconciliation period, which can be retrieved by Client online via the Service.
- D. Does Not Alter Other Obligations. Client’s enrollment in Account Reconciliation Services does not alter Client’s other obligations to keep its check stock safe and to adopt other security measures, or to review account activity and report to Bank checks paid with missing signatures or with altered information, or to check the indorsement on paid checks

8. CUT-OFF TIMES. The cut-off time applicable to Check and ACH Positive Pay exception decisions can be found at <https://www.tcbk.com/business/cutoff-times>.

9. FEES. Client agrees to current fees for requested services. Refer to the Treasury Management Fee Schedule and Business Fee Schedule for the most current fees and charges related to Positive Pay, ACH Positive Pay, Account Reconciliation and related services. Bank reserves the right to change fees at any time without prior notice.

10. SECURITY PROCEDURES. Bank recommends Client utilize antivirus software whenever possible. Client is ultimately responsible for maintaining and updating computer equipment used to access the Positive Pay and Account Reconciliation Services and related Services, including maintaining up-to-date security patches, updates, and other protective applications.

11. SYSTEM INTERRUPTION OR FAILURE. In the event of system interruption or failure, either that of Client’s or Bank’s system, resulting in Bank’s inability to receive or process Client’s Check Issue File or other communication, the Check Issue File or other Client communication will be deemed as having not been sent by Client, even if Bank has possession of the Check Issue File or other Client communication.

12. LIMITATION ON LIABILITY. In addition to any other limitation on liability in the Master Agreement, Client agrees that if Bank pays or rejects for payment checks or items in accordance with this Service Description, Client releases Bank and holds it harmless from any claim that the checks or items were not properly payable, or for wrongful dishonor, as applicable.

ACH SERVICE DESCRIPTION

1. ACH SERVICE. Tri counties bank ("Bank") hereby offers its client and client hereby accepts the ach service (the "ACH Service"). Client wishes to initiate credit and/or debit entries by means of the automated clearing house network pursuant to the terms of this service description and the rules of the national automated clearing house association ("NACHA") and the local automated clearing house association (the "Rules"), and bank is willing to act as an originating depository financial institution ("ODFI") with respect to such entries. Accordingly, client may submit ach entries to bank in accordance with the terms and conditions of this service description. Client is responsible for all entries to the fullest extent provided by law and as set forth in this service description.

2. MASTER TREASURY AGREEMENT; SUPPORTING DOCUMENTS. This Service Description forms part of the Master Treasury Agreement ("Master Agreement") agreed to by Client. In the event of conflicts between the terms of this Service Description and the terms of the Master Agreement, the terms of this Service Description shall control. Defined terms in this Service Description shall have the meaning provided in the Master Agreement and as defined in the Rules, unless otherwise defined in this Service Description. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data received from Client hereunder from which Bank prepares Entries.

3. RELATED SERVICE DESCRIPTIONS FOR ACH ENTRIES. Entries submitted by Client using Bank's Online Banking Services must be consistent with the separate Business Online Banking Service Description. Additional terms and conditions may apply to the ACH Service to the extent Client transmits Entries outside Bank's Online Banking Services. Client may not submit Entries outside Bank's Online Banking Services without Bank's prior written consent.

4. THE RULES. A copy of the Corporate Edition of the Rules can be purchased from NACHA at www.NACHA.org. Client agrees to obtain a copy, to understand and be familiar with the Rules, and to be responsible for keeping up to date with changes in the Rules. Client agrees that information or advice received by Client from Bank as to the Rules or the operation of the Rules is not legal advice and is not a substitute for Client's obligation independently to understand and comply with the Rules.

5. PROCESSING ENTRIES. Client may transmit only PPD (Prearranged Payments and Deposits), CCD (Corporate Credit or Debit) or CTX (Corporate Trade Exchange) credit or debit Entries to Bank to the location(s) and in compliance with the formatting and other requirements set forth in the Rules and the Supporting Documents. Entries may be submitted only for Client's account. No entries may be submitted on behalf of third parties unless Client has requested and Bank has agreed to allow Client to act as a Third Party Sender, and a supplemental service description has been executed and agreed upon between Client and Bank. The ACH Service will start on a date agreeable to Client and to Bank after all set up requirements have been completed.

Client will not submit individual or total monthly Entries in excess of the maximum limits established by Bank and reflected in the Supporting Documents, as amended from time to time. The parameters and variations of the limits shall be set at Bank's discretion, including but not limited to limits based on dollar amounts and/or Standard Entry Class Code types. Client will not divide a transaction into more than one Entry in order to avoid these limitations. Bank may adjust these limitations from time to time, at Bank's discretion and without prior notice. Limits are set for the Bank's protection only and Bank's processing of Entries in an amount greater than the established limit(s) shall not be deemed a waiver of this provision and any such transactions remain Client's responsibility. Bank may cease processing Entries in a greater amount at any time without prior notice.

Client may not originate Entries using Standard Entry Class Codes other than CCD, CTX or PPD without prior notice to and written approval by Bank. Bank may require Client to submit an application in form and content acceptable to Bank, and Client's execution supplemental schedules, agreements and other documents as Bank may require, as a condition precedent to Client's use of other Standard Entry Class Codes. By way of example, the foregoing restrictions and requirements may apply to Client's use of ARC, RCK, BOC, POP, WEB, IAT or TEL Standard Entry Class Codes, or if Client is

engaging in cross-border (International) transactions. Bank may block unapproved use of a Standard Entry Class Code or an unapproved cross-border transaction.

Except as provided below for On-U.S. Entries, Bank shall: (i) process Entries received from Client to conform with the file specifications set forth in Rules, (ii) transmit such Entries as an ODFI to an ACH Operator selected by Bank in its sole discretion ("ACH Operator"), and (iii) settle for such Entries as provided in the Rules. Bank shall transmit or complete the necessary authorizations for ACH Entries by the deadline of the ACH Operator, provided: (a) such Entries are received by Bank's related cut-off time on a business day and (b) the ACH Operator is open for business on such business day. Entries shall be deemed received by Bank when the transmission and compliance with any related Security Procedures is completed. If any of the requirements of this paragraph are not met, Bank may use reasonable efforts to transmit such Entries to the ACH by the next deadline of the ACH Operator which is a business day and a day on which the ACH Operator is open for business.

Any entries submitted for Same Day ACH processing that exceed the Same Day ACH limit or do not meet the guidelines for Same Day ACH will automatically processed on the next business day.

6. ON-US ENTRIES. In the case of an entry received for credit to an account maintained with bank (an "on-us entry"), bank shall credit the receiver's account in the amount of such entry on the effective entry date contained in such entry, provided the requirements set forth in this service description are met. If said requirements are not met, bank may use reasonable efforts to credit the receiver's account in the amount of such entry no later than the next business day following such effective entry date.

7. NOTICE OF RETURNED ENTRIES. Bank shall notify client by phone or electronic transmission, including email of the receipt of a returned entry from the ach no later than one business day after the business day of receipt. Except for an entry retransmitted by client in accordance with the requirements of this service description, bank shall have no obligation to retransmit a returned entry to the ach if bank complied with the terms of this service description with respect to the original entry.

8. PRENOTIFICATIONS. If Client chooses to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, it agrees not to initiate live dollar Entries until at least three (3) business days following the Settlement Date of the prenotification Entry. Prenotifications must be provided to Bank in the format provided in the Rules. If Client receives notice that a prenotification has been rejected or returned, Client will research the problem and make any necessary corrections before transmitting another Entry.

9. NOTIFICATIONS OF CHANGE. Bank shall notify Client of all Notifications Of Changes (NOC) received by Bank relating to Entries transmitted by Client by mutually agreeable means, including email, no later than one business day after the business day of receipt. Client must make the changes specified in an NOC or corrected NOC: (a) within six business days of receipt or prior to initiating another Entry to the Receiver's account, whichever is later; or (b) as otherwise required in the Rules, if the Rules specify a different time for correction.

10. PREFUNDING; PAYMENT. Bank may designate Client as "ACH Prefunding," and Bank may change Client's designation to or from ACH Prefunding at any time, with or without cause and without prior notice at Bank's sole discretion. Bank will inform Client of Client's designation as ACH Prefunding, and of any change in the designation.

Client will pay Bank or otherwise have and continue to maintain until the Effective Date in Client's Account, in immediately available funds, an amount equal to the sum of all credit Entries or debit Reversals related to Entry data delivered to Bank at such time as Bank may from time to time designate or, if not otherwise designated: (a) if Client is not designated ACH Prefunding, no later than two business days prior to the Effective Entry Date; and (b) if Client is designated ACH Prefunding, no later than the date of transmittal of the related Entry data to Bank or at such other time as Bank may have established for Client.

11. INCONSISTENCIES. If a Receiver of an Entry is identified by both name and account number, payment may be made by Bank and by any other financial institution based on the account number even if the name and the account number are not consistent or identify different parties. If an intermediary bank or a beneficiary's bank is identified on a payment

order by both name and account number, Bank and other financial institutions may rely on the account number even if the name and the account number are not consistent or identify different parties.

12. PROVISIONAL CREDIT. Client agrees that any payment by Bank to Client for any debit Entry, returned credit Entry or credit Reversal is provisional until Bank has received final settlement for such Entry. Bank may delay availability of provisional funds at its discretion. If final settlement is not received, Bank is entitled to and Client agrees to pay a refund of the amount credited; and Bank will charge Client's account for the amount due. Bank may refuse to permit the use of any amount credited for a debit Entry or credit Reversal if it believes that there may not be sufficient funds in Client account to cover chargeback or return of such Entry or Reversal.

13. CUT-OFF TIMES. An entry is considered executed when bank executes it. If entry data is received after the cut-off time or on a day that is not a business day, the entry will be deemed received the following business day. Cut-off times can be found at <https://www.tcbk.com/business/cutoff-times>.

14. Electronic Tax Payment Service. The Electronic Tax Payment Service allows Client to originate federal and state tax payments using the Service. To facilitate the Electronic Tax Payment Service, Client appoints Bank to act as Client's agent for the purpose of making tax payments and deposits on Client's behalf. Upon Bank's request, Client agrees to execute such additional enrollment forms and authorizations as Bank may request. Client authorizes Bank to release account and tax payment information to any taxing authority in performing the Electronic Tax Payment Service and to confirm payments.

Client must be pre-enrolled with the federal and/or state taxing authorities prior to using the electronic tax payment service. Client warrants that client is enrolled in the electronic federal tax payment system (EFTPS) and has selected the ACH Credit option. Client also warrants that all special requirements of the EFTPS system have been met. Client also warrants that Client has completed appropriate enrollment requirements with each state taxing authority, as applicable.

Client is solely responsible for determining the amount of any taxes due and transmitting the correct payment information in accordance with the Service requirements. Client must furnish Bank with complete and accurate tax payment information. Bank is not responsible for: (i) determining the correctness of any tax computation or payment; (ii) questioning the timing or amount of the payment; (iii) determining or questioning the correctness of any report or information submitted by Client (even if it appears incorrect on its face); or (iv) any penalty which may be imposed if Client instructs Bank to make a payment after Bank's cut-off time or the date the tax payment is due.

Bank will notify Client orally, electronically or in writing if Bank is unable to process any payment in the manner attempted by the Electronic Tax Payment Service and will do so no later than the business day following the payment date. If Client fails to maintain sufficient collected and available funds in Client's account, Bank may refuse to perform the tax payment. If any payment is rejected, it will be Client's responsibility to resubmit the payment instruction. If Client does not have sufficient or available funds, Client may be charged an insufficient funds fee and any other fees or charges applicable to the transaction.

When Bank receives Client's payment instruction to make a tax payment, Bank will charge Client's Account for the amount of the payment(s). The funds may be held by Bank as a non-interest bearing deposit liability to Client, but will not be held in trust. Until Bank makes Client's tax payment(s), Client's funds will be subject to offset for legal process, or any debts owed to Bank.

Client assumes the risk of any failure to submit payment instructions to Bank in a timely and correct manner. Payments should be submitted at least two business days prior to the due date. Any interruption of the Electronic Tax Payment Service, regardless of the reason, will not relieve Client of Client's obligation to make a tax payment or report. Client is ultimately responsible for promptly making any required tax payment or report. Client is responsible for promptly making required tax payments by another means in the event there is an interruption in the Electronic Tax Payment Service. Client agrees to be bound by the Rules, as amended from time to time, and all laws and regulations of the United States.

Client acknowledges that Bank's employees are not authorized or permitted to give tax advice to Client. Client agrees not to seek or place any reliance upon tax advice from Bank or Bank's employees. If the Electronic Tax Payment Service is not used for a period of ninety (90) days, the Electronic Tax Payment Service may be removed or disabled. To cancel an Electronic Tax Payment Service Communication and the payment instruction that Client has scheduled, Client must cancel online prior to the cut-off time on the processing date. Payments cannot be cancelled after this time. Bank may, at Bank's discretion, seek to assist Client in attempting to cancel or amend any payment but is not obligated to do so. If Bank does, Client will indemnify Bank in accordance with the Service Description for any losses Bank may suffer in connection with Bank's efforts.

15. CLIENT REPRESENTATIONS AND WARRANTIES. In addition to the representations and warranties provided by client under the master agreement, with respect to each and every entry initiated by client, client represents and warrants to bank and agrees that:

- A. Client shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire and other documents related to Entries for a period of six years. Without limiting the foregoing, each person as the Receiver of an Entry received by Bank from Client has authorized the initiation of such Entry, and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry. Client will provide Bank with a copy of such authorization whenever requested to do so within five business days. Such authorization is operative at the time of transmittal or crediting / debiting by Bank as provided herein;
- B. Entries transmitted to Bank by Client are limited to those types of credit or debit Entries set forth in this Service Description;
- C. If the amount of a debit Entry to a Receiver's account varies in amount from the previous debit Entry relating to the same authorization or preauthorized amount, Client will, at least ten days before the Effective Entry Date of such debit Entry, send the Receiver written notice of the amount of such debit Entry and its Effective Entry Date, unless the Receiver has previously been notified of Receiver's right to receive such notice and Receiver has elected to receive such notice only when the debit Entry does not fall within a specified range of amounts or varies from the most recent debit Entry by an agreed amount;
- D. If any change is made by Client in the scheduled Effective Entry Date of one or more debit Entries, Client will, at least seven days before the Effective Entry Date of the first such debit Entry to be affected by such change, send the Receiver a written notice of the new Effective Entry Date(s) of such Entry or Entries;
- E. Client shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the treatment of a payment of an Entry by the Receiving Depository Financial Institution ("RDFI") to the Receiver as provisional until receipt by the RDFI of final settlement for such Entry;
- F. Client specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Client shall not be deemed to have paid the Receiver the amount of the Entry;
- G. Client will not use the ACH Service to collect: (i) payments for goods or services sold by third parties; (ii) payments relating to adult entertainment, gambling services, or child pornography; (iii) obligations owing to third parties; or (iv) obligations related to cash advances by Client;
- H. Client hereby makes the same representations and warranties to Bank with respect to Entries sent by Bank to an ACH Operator upon the authorization of Client as Bank is deemed to make under the Rules, and Bank shall have no responsibility with respect to matters so represented and warranted by Client; and
- I. Except as previously disclosed in writing by Client to Bank: (i) Client is not a "money-services business" (as defined at 31 CFR 103.11(uu) or successor regulation) and is not subject to any state license requirements applicable to a money-services business, banks, broker-dealers or other financial institutions; and (ii) no Entry

data is submitted by Client on behalf of, or as agent, service bureau or processor for another. By way of example, Client will not submit debit Entries that result from a sale of goods or services by a third party to the Receiver.

Client agrees to indemnify Bank against any loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or agreements.

16. FEES. Client agrees to current fees for requested services. Refer to the Treasury Management Fee Schedule or Business Fee Schedule for the most current fees and charges related to ACH and related services. Bank reserves the right to change fees at any time without prior notice.

17. SECURITY PROCEDURES. Bank recommends Client utilize antivirus software whenever possible. Client is ultimately responsible for maintaining and updating computer equipment used to access the Online Banking Services, ACH Services and other related Services, including maintaining up-to-date security patches, updates, and other protective applications.

18. RETENTION. In addition to any retention obligations of Client under the Master Agreement and this Service Description, Client agrees to retain and make readily available to Bank on request all information necessary to remake any files of Entries for ten business days following the Settlement Date.

19. AUDIT. In addition to the audit commitments provided under the Master Agreement, if transactions Client conducts involve some use of the Internet, then Client agrees to conduct an internal security audit at least annually to ensure that the financial information obtained from Receivers is protected by security practices and procedures ("security audit") that include, at a minimum, adequate levels of: (i) physical security to protect against theft, tampering, or damage; (ii) personnel and access controls to protect against unauthorized access and use; (iii) network security to ensure secure capture, storage, and distribution of financial information; and (iv) any other items identified in the Operating Guidelines of the Rules. Upon Bank's request, Client agrees to have an external security audit conducted within sixty (60) days of the request. The external security audit will include the same items described in this paragraph for an internal security audit. Client agrees to provide Bank with a copy of each internal and external audit report, as applicable, in a format acceptable to Bank within (30) days from the completion of the audit.

Without limiting the foregoing, Client specifically agrees to establish data security policies, procedures and systems as required by the Rules. This requires Client to:

- (i) Protect the confidentiality and integrity of Protected Information
- (ii) Protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and
- (iii) Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person

Such policies, procedures, and systems must include controls that comply with applicable regulatory guidance on access to all systems used by Client to initiate, process and store Entries. NACHA defines Protected Information as the nonpublic personal information, including financial information, of a natural person used to create or contained within an Entry and any related Addenda record.



REMOTE DEPOSIT CAPTURE SERVICE DESCRIPTION

Introduction. Tri Counties Bank (“Bank”) hereby offers its Client and Client hereby accepts the remote deposit capture service (“Remote Deposit Capture Service,” “RDC Service” or “RDC”) described in this Service Description. The Remote Deposit Capture Service allows for the conversion of Checks to Substitute Checks or Image Exchange Items, which would enable Client to transmit paper checks converted to Imaged Items to Bank for processing and deposit into the designated account of Client maintained at Bank. Client desires to use the Remote Deposit Capture Service to facilitate the services as identified in and subject to this Service Description. Bank reserves the right, with prior written notice to Client, to place, from time to time, limits on Client's right to use the Remote Deposit Capture Service.

I. MASTER TREASURY AGREEMENT. Bank will provide to client the remote deposit capture services described in this service description to enable client to transmit imaged items to bank or bank’s designated processor to be cleared as substitute checks or image exchange items. This service description forms part of the master treasury agreement (“master agreement”) agreed to by client. In the event of conflicts between the terms of this service description and the terms of the master agreement, the terms of this service description shall control. To the extent client accesses the remote deposit capture services using bank’s online services, client’s use of the remote deposit capture services must also be facilitated pursuant to the separate business online banking service description.

II. PRIMARY ACCOUNT DESIGNATION. Provided Bank has approved Client for the Remote Deposit Capture Service, Client may use the Remote Deposit Capture Services to facilitate a deposit to Bank approved deposit account(s) Client has with Bank (other than those with deposit restrictions, such as certificate of deposits). The account to which Client designates a deposit shall be referred to as the “RDC Account” for the purpose of this Service Description and the deposit transaction. Client authorizes Bank to debit the RDC Account (or any other account maintained by Client at Bank) for any fees or other amounts due Bank in connection with the Remote Deposit Capture Services. If the RDC Account is closed for any reason, Client's Remote Deposit Capture Services will be stopped along with any unprocessed Remote Deposit Capture Services transfers. To reinstate its Remote Deposit Capture Services, Client must designate a new RDC Account.

III. CLIENT RIGHTS. Subject to the terms of this Service Description, Bank hereby grants Client a non-exclusive, non-transferable right to access and use the Remote Deposit Capture Service in connection with Client's own business operations in accordance with the Supporting Documents.

IV. DEFINITIONS. Unless otherwise defined below or in this Service Description, terms in this Service Description shall have the meaning provided in the Master Agreement. For the purpose of this Service Description, the term “Communications” shall have the meaning provided in the Master Agreement and shall include Communications to Bank in connection with the Remote Deposit Capture Service, including transmission of output files from Client to Bank; the terms “Security Procedures” and “Security Devices” shall have the meaning provided in the Master Agreement and shall include but not be limited to any Security Procedures and Security Devices used to access the RDC Account and to use the Remote Deposit Capture Service.

A. “Check” means an Original Check, as defined in Regulation CC.

- B. "Endpoint" means any Federal Reserve Bank, financial institution, local clearing house, courier or other entity or location for the delivery of cash letters or other presentment of Electronic Items or Substitute Checks.
- C. "Image Exchange Item" means a digitized image of an Item cleared and settled directly with a Paying Bank without conversion to a Substitute Check.
- D. "Imaged Item" means the digitized image of a Check that is created by Client and transmitted to Bank using the Remote Deposit Capture Service.
- E. "Item" means a Check that is payable on demand, drawn on or payable through or at an office of a United States Financial Institution and payable or endorsed to Client, and includes Original Checks, Substitute Checks and Image Exchange Items.
- F. "Non-cash Item" means an Item that would otherwise be an Item, except that: (i) a passbook, certificate or other document is attached; (ii) it is accompanied by special instructions, such as a request for special advice of payment or dishonor; (iii) it consists of more than a single thickness of paper, except an Item that qualifies for handling by automated check processing equipment; or (iv) it has not been preprinted or post-encoded in magnetic ink with the routing number of the Paying Bank.
- G. "Non-qualifying Item" means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), demand drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or postdated, savings bonds, Items payable to "cash," Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds Client's transaction limitations as established by Bank from time to time.
- H. "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.
- I. "Paying Bank" means the United States financial institution ordered in an Item to make payment to the payee(s) named on the Item.
- J. "Remote Deposit Capture Services" means the services described in this Service Description, to be provided by Bank to Client to enable the processing of Items digitally as Image Exchange Items through image exchange networks or through creation of Substitute Checks and presentment to established Endpoints, including collectively the procedures, protocols, and software used by Bank and its licensors and contractors in connection with the electronic processing of Items.
- K. "Software" means any software which may be offered or required by Bank for use in receiving, validating and packaging images and data from a bulk file to be forwarded to Bank for additional processing.
- L. "Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC.
- M. "UCC" means the Uniform Commercial Code as enacted and amended in the state whose law governs interpretation of this Service Description.
- N. "United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Service, or a State or local government.

V. REMOTE DEPOSIT SERVICE.

- A. Client will create images of Checks at Client's location by use of scanning hardware and software, if any, approved or provided by Bank (as applicable). Client will enter all amounts and any other required information correctly and as provided in the Supporting Documents.
- B. The electronic images of Checks will be transmitted by Client to Bank, or Bank's authorized processor, over the Internet through a secure web-based interface.
- C. Client's RDC Account will be provisionally credited upon Bank's acceptance of the Imaged Items for deposit which are received by Bank from Client through the Remote Deposit Capture Service.
- D. Client will maintain the RDC Account for Client to receive credit and provide other specific information required by Bank related to the Remote Deposit Capture Service. As set forth in this Service Description, all deposits received by Bank are accepted subject to Bank's verification and final inspection and may be rejected by Bank in Bank's sole discretion. All deposits are subject to the terms of the deposit account agreement governing Client's accounts.

VI. CLIENT RESPONSIBILITIES. IN CONNECTION WITH THE REMOTE DEPOSIT CAPTURE SERVICES, CLIENT SHALL COMPLY WITH THE FOLLOWING:

- A. Client shall maintain the RDC Account at Bank for the receipt of deposits of Items.
- B. Client will create images of Checks at Client's location by use of scanning hardware and Software approved or provided by Bank. Client will enter all amounts and any other required information correctly.
- C. Client will only submit Checks for processing to Bank that meet the definition of "Item" as provided in this Service Description and will ensure that the Items scanned meet the standards for image quality established by the American National Standard Institute (ANSI) required by Regulation CC, or other standards established or required by Bank or applicable law, as amended from time to time. Client will not process any Non-qualifying Items. Bank's processing of any Non-qualifying Items shall not constitute a waiver by Bank or obligate it to process such Non-qualifying Items in the future. Bank may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.
- D. Unless prior approval by Bank is obtained in writing, Client will not attempt to scan and transmit to Bank any Item which is drawn on a deposit account of Client at Bank or any other financial institution, or a deposit account of any business entity of which Client is a principal, officer or authorized signer. Client will only use the Remote Deposit Capture Service for its own purposes and in accordance with this Service Description.
- E. Client will not attempt to scan and transmit to Bank any checks made out to parties other than Client ("third-party checks").
- F. Client will not attempt to scan and transmit to Bank any previously truncated and reconverted Substitute Check. Any previously truncated and reconverted Substituted Check must be physically deposited with the Bank. Notwithstanding the foregoing, Bank may redeposit any returned Substitute Check or Image Exchange Item consistent with the terms of the deposit account agreement governing Client's accounts.
- G. Client will (i) ensure that Items are restrictively endorsed or otherwise processed to permit only financial institutions to acquire rights of a holder in due course in the collection process of Items, (ii) handle, process, maintain and destroy Original Checks as set forth in this Service Description

and in the Supporting Documents, and (iii) ensure that no financial institution (depository, collecting or payor), drawee, drawer or endorser receives presentment or return of, or otherwise is charged for an Item more than once in any form.

- H. Except to the extent otherwise remotely agreed by Bank, Client will provide, at its own expense, a broadband Internet connection, such as via a digital subscriber line (DSL) or other connectivity having equivalent or greater bandwidth and all other computer hardware, software, including but not limited to a compatible Web browser, and other equipment and supplies required to use the Remote Deposit Capture Service, all of which must satisfy any minimum requirements or as otherwise may be acceptable to Bank. Except to the extent otherwise provided in this Service Description, Client will provide, or obtain from another party selected by Client at Client's expense, support and maintenance of such Internet connection and all other computer hardware, software, and equipment required to use the Remote Deposit Capture Service, including without limitation troubleshooting Internet connectivity issues with Client's internet service provider (ISP).
- I. Client will balance the dollar amount of each deposit to the sum of Checks prior to transmitting to Bank.
- J. Client will: (i) maintain a daily control record of all Checks, including transaction counts and dollar amounts; and (ii) balance transactions transmitted from the previous business day and immediately notify Bank of any error or discrepancy discovered.
- K. Unless Bank specifically agrees otherwise in writing, Client will not use the Service to deposit any Check or Checks that exceed the transaction limits established by Bank from time to time. Bank may communicate the transaction limits, including changes to the same, by written or electronic notice to Client.
- L. Client will be responsible for verifying Bank's receipt of Client's transmission(s) by verifying that deposits have been posted to the RDC Account, in addition to cooperating in any investigation and resolving any unsuccessful or lost transmission with the Bank.
- M. Client will maintain fully qualified, properly trained and experienced administrative staff and employees sufficient to perform its obligations under this Service Description.
- N. Client shall exercise due care in preserving the confidentiality of any user identification, password, test key, or other code or authentication method provided by the Bank or otherwise required for use of the Remote Deposit Capture Service and shall further prevent the use of the same by unauthorized persons. Client assumes full responsibility for the consequences of any missing or unauthorized use of or access to the Remote Deposit Capture Service or disclosure of any confidential information or instructions by Client, its employees and agents (as applicable).
- O. Client will immediately stamp or otherwise mark Original Checks "Processed," once the Check has been scanned and transmitted. The purpose of this marking on the Original Check is to indicate that the Item has been electronically presented and is thereafter void for re-presentment. Client agrees that it will not present an Item through the Remote Deposit Capture Services to Bank or any other bank for payment once the Item has already been scanned and transmitted for RDC processing.
- P. Client will, upon request, make scanner location available for on-site inspection by Bank, to ensure Client is complying with Terms and Conditions of Remote Deposit Capture Service.

VII. EQUIPMENT.

- A. Client agrees to use only scanner equipment and software that meet Bank's service specifications, and shall not use any scanner equipment purchased or provided by a third parties without Bank's prior written consent. Client will ensure that the equipment is clean and operating properly, and will inspect and verify the quality of images and ensure that the digitized images of Original Checks are legible for all posting and clearing purposes. If Client utilizes a scanner not provided by Bank, Client will be solely responsible for verifying the compatibility of any equipment used with the Remote Deposit Capture Service.
- B. To the extent Bank provides access to equipment for Client's use of the Remote Deposit Capture Service ("Bank-Provided Equipment"), Client is responsible for the maintenance of the Bank-Provided Equipment and Bank may require Client's use of the same to be subject to separate terms. If any Bank-Provided Equipment is lost, stolen, or damaged in such a manner that Client cannot comply with the capture, transmission, processing, and other applicable procedures and requirements of this Service Description, Client agrees to inform Bank and to then obtain and substitute new equipment that is acceptable to Bank, before Client continues using the equipment and the Remote Deposit Capture Services. If Client's use or maintenance resulted in damage to any Bank-Provided Equipment, Client agrees to reimburse Bank on demand for Bank's costs to repair the equipment, or to replace the equipment if repair is not reasonably feasible. Upon termination of this Service Description, Client's right to use the Bank-Provided Equipment shall terminate and Client agrees to return the scanner and all program materials within ten (10) calendar days (or Bank shall charge Client the replacement cost of the scanner).
- C. Bank recommends Client utilize antivirus software whenever possible. Client is ultimately responsible for maintaining and updating computer equipment used to access the Remote Deposit Capture Service, Online Banking Service or related Services, including maintaining up-to-date security patches, updates, and other protective applications. Bank assumes no liability for any computer virus or related problems arising in connection with Client's use of equipment, including Bank-Provided Equipment, and Client shall indemnify, defend and hold harmless the Bank for any losses, damages, costs and expenses resulting directly from any computer virus or related problems the Bank may suffer or incur from any computer virus or related problem caused by Client.

VIII. SOFTWARE. At any time during the term of this service description, bank may require in its sole discretion the use of software in connection with the RDC Services.

- A. To the extent Bank requires the use of Software in connection with the Remote Deposit Capture Service, Client will implement and use the Software, as set forth in the Supporting Documents and any applicable materials relating to the Supporting Documents to transmit output files to Bank.
- B. Client acknowledges that (i) its license to any Software that may be required for the Remote Deposit Capture Service is directly from the Software provider, pursuant to the license agreement that appears when any such Software is electronically accessed by Client or otherwise provided to Client, (ii) Bank may provide certain "first level" support to Client with respect to the Software, but that Bank will have no responsibility, for maintenance, support, infringement protection, or otherwise, to Client with respect to the Software, and (iii) Client will look strictly to the Software provider, or its successors, with respect to any issues concerning the Software that cannot be satisfactorily resolved with Bank's assistance.
- C. Client will use the Software solely for the purpose of transmitting output files to Bank consistent with this Service Description and not for communications with any other party. Client will not allow access to the Software or the use of the Remote Deposit Capture Service by any person other than Client, and will only process Items arising from a transaction or obligation between Client and its direct payor. Without limiting the foregoing, Client agrees to implement and maintain separation

of duties and dual control procedures at Client's location(s) to ensure compliance with the limitation on access commitments provided under this Service Description.

- D. To ensure Client's retention obligations under this Service Description, Client agrees to implement and maintain business continuity procedures, including but not limited to those needed to ensure proper backup of data and periodic testing of the same.

IX. RETENTION AND DESTRUCTION OF ORIGINAL CHECK. Client will retain and store original checks in a safe and secure environment for a period of 30 days after such item has been digitized and processed. Client shall take appropriate security measures to ensure that: (i) only authorized personnel shall have access to original checks, and (ii) that the information contained on such original checks or on any corresponding imaged items are not disclosed to third parties. Client will promptly (but in any event within 5 business days) provide any retained original check (or, if the original check is no longer in existence, a sufficient copy of the front and back of the original check) to bank as requested to aid in the clearing and collection process to resolve claims by third parties with respect to any item or as bank otherwise deems necessary. Client will use a commercially reasonable method which is consistent with any requirements of regulation cc and approved by bank to securely and permanently destroy original checks after client's retention period has expired.

X. PROCESSING TIMES.

- A. Notwithstanding any provisional credit that may be applied to the RDC Account in connection with Client's transmitted Imaged Items, Imaged Items processed for deposit through the Remote Deposit Capture Service will be deemed to have been received by Bank for deposit at the time the Imaged Items are actually received and accepted at the location where Bank or its designated agent posts the credit to the RDC Account. A deposit of Imaged Items will be deemed to have been received and accepted by Bank for deposit when all of the following have occurred: (i) Bank has preliminarily verified that the image quality of the Imaged Items is acceptable to Bank in its discretion, all Item information is complete and the deposit totals are balanced to the Item information provided for the deposit; and (ii) Bank has successfully performed all further validation routines with respect to the deposit. Notwithstanding the foregoing, Imaged Items received by Bank for deposit may be rejected by Bank in Bank's sole discretion.
- B. Items will be processed and ready for presentment by Bank after Bank receives all good digitized images and associated data for any given transmission from Client. Client agrees to view the images of each scanned Item that is sent to Bank. If Item information received by Bank is not complete or cannot be processed by Bank for any reason, Bank may reject the Imaged Item, notwithstanding any transmission confirmation and charge the amount back against any provisional credit to Client's RDC Account. Client will be responsible for verifying Bank's receipt of Client's transmissions by verifying that deposits have been posted to Client's RDC Account. Bank will use commercially reasonable efforts to present Items for payment to the applicable Endpoint within a reasonable period of time following such receipt.
- C. If an Imaged Item is not accepted for deposit, Client may then submit the Original Check to Bank for processing or contact the maker to reissue the Check. If Client submits the Original Check for processing, Bank reserves the right to refuse to process the Check for deposit and presentment to the Paying Bank and may instead require Client to have the maker reissue the Check.
- D. It is Client's responsibility to understand and build into its transmission schedules the appropriate deadlines necessary to meet the availability schedules of Bank as set forth in the Master Agreement or as otherwise established by Bank. Client is further responsible for understanding

and building into its transmission schedule the changes in transmission windows required by time changes associated with Daylight Savings Time.

- E. The cut-off time for deposits to be made through the RDC Service can be found at <https://www.tcbk.com/business/cutoff-times>. Any deposits made after the cut-off time will be considered made the following business day.

XI. RETURNED ITEMS. Client understands and agrees that an item that is not paid by a paying bank, or is otherwise returned for any reason, will in bank's discretion be: (i) re-presented to the paying bank; or (ii) returned to client and client's RDC account charged for the amount of the item plus any associated fees as disclosed in bank's applicable fee schedule, which may be changed from time to time in bank's discretion. Client agrees that items may be returned as image exchange items, rather than substitute checks. Bank's right to charge the RDC account of client will apply without regard to whether the item is timely returned to bank or whether there is any other claim or defense that the item has been improperly returned to bank.

XII. BANK RIGHTS AND RESPONSIBILITIES.

- A. For all Imaged Items processed by Client pursuant to this Service Description, either (i) digitized images will be converted to Substitute Checks and presented for payment to established Endpoints, or (ii) Imaged Exchange Items will be presented for payment through image exchange networks. Bank may in its sole discretion determine the manner of processing. All such processing and presentment shall be done in accordance with timeframes and deadlines established by the Bank from time to time.
- B. Unless otherwise agreed by Client and Bank, Bank will process any returned Items in accordance with applicable law and the Master Agreement.
- C. Subject to the terms of this Service Description, availability of credit from Items processed under this Service Description will be subject to the availability schedule of Bank, which may be amended from time to time.
- D. Bank may at its sole option, with or without cause, at any time and from time to time, refuse to process any Imaged Items. Bank may from time to time establish transaction limitations and assign them to Client.
- E. Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Item for presentment if such transmittal would result in Bank's having exceeded any limitation upon its intraday net funds position established pursuant to Federal Reserve guidelines or if Bank's otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority. In the event of any failure or delay, Client acknowledges that it may instead deposit directly with Bank any Original Items for processing and presentment, provided such Original Items have not been previously imaged and processed in connection with the Remote Deposit Capture Services.
- F. In addition to any other rights Bank may have with regards to the accounts of Client, Bank may hold and use funds in any Client account following termination of this Service Description for such time as Bank reasonably determines that any Item processed by Bank prior to termination may be returned, charged back or otherwise a cause for any loss, liability, cost, exposure or other action for which Bank may be responsible. Without limitation, you recognize that under the UCC, Regulation

CC, the Electronic Check Clearing House Organization™ (“ECCHO”) Rules (as applicable), and the rules of any image exchange network, our representations and warranties with regards to Image Exchange Items and Substitute Checks may expose us to claims for several years following processing of the Image Exchange Item or Substitute Check.

XIII. CLIENT REPRESENTATIONS AND WARRANTIES. Client makes the following representations and warranties with respect to each item, including non-qualifying items, processed by client pursuant to this service description:

- A. The Imaged Item is a digitized image of the front and back of the Original Check and accurately represents all of the information on the front and back of the Original Check as of the time Client converted the Original Check to an Imaged Item;
- B. The Imaged Item contains all endorsements applied by parties that previously handled the Original Check in any form for forward collection or return;
- C. Except as otherwise specifically disclosed in writing to Bank, Client is not now engaged, and will not during the term of this Service Description engage, in any business that would result in Client being or becoming a "money service business" as defined in the Federal Bank Secrecy Act and its implementing regulations;
- D. All encoding, transfer, presentment and other warranties made under applicable law as Bank is deemed to make under applicable law, including without limitation those under the UCC, Regulation CC and the rules of any image exchange network;
- E. There will be no duplicate presentment of a Check in any form, including as a digitized image, as a paper negotiable instrument or otherwise and Client will be liable for and otherwise assume responsibility for any such duplicate presentment of any Check. Client agrees to indemnify and defend Bank against any and all claims, causes of action or demands arising out of or directly or indirectly related to the duplicate presentment of any Check; and
- F. Client will not engage in any activity directly or indirectly related to the use of the Remote Deposit Capture Service that is illegal or fraudulent.

XIV. FEES. Client agrees to current fees for requested services. Refer to the Treasury Management Fee Schedule and Business Fee Schedule for the most current fees and charges related to RDC Service and related services. Bank reserves the right to change fees at any time without prior notice.

XV. BANK'S LIABILITY. In addition to any limitations in the Master Agreement, Bank will not be liable to Client for any refusal of a Paying Bank to pay an Image Exchange Item or Substitute Check for any reason (other than the gross negligence or willful misconduct of Bank), including without limitation, that the Original Check, Image Exchange Item or Substitute Check was allegedly unauthorized, was a counterfeit, had been altered, or had a forged signature.

ACCEPTANCE OF TREASURY MANAGEMENT SERVICES

Part I – Certification

New Acceptance

Amendment No. _____

to existing Acceptance of Treasury Management Services, original dated: _____

Name of Primary Entity _____

Each amendment to this Acceptance will effectively supersede all prior versions of this Acceptance. Defined terms will have the meaning provided in the Tri Counties Bank Master Treasury Agreement, and applicable Service Description(s), unless otherwise defined herein.

The person(s) signing (“Executing Representative(s)”) this Acceptance of Treasury Management Services (“Acceptance”) on behalf of the company identified in the signature block of this Acceptance (“Client”), certifies on behalf of Client that:

(i) Client agrees to be bound by the Tri Counties Bank Master Treasury Agreement, together with each applicable Service Description, including any Supporting Documents, corresponding exhibits, schedules, enrollments, or attachments to the same, which apply to the services designated by Client in Part II of this Acceptance, and Client’s use of any Service, including without limitation each Service that Client commences using after the Effective Date of this Acceptance, confirms Client’s agreement to be bound by each Service Description relating to that Service;

(ii) The Client has received a copy of the Master Agreement together with each Service Description for which a Service has been selected by Client below; and

(iii) The Executing Representative has full authority to execute this Acceptance on behalf of Client, and to enter into other agreements and Supporting Documents for the Services now or hereafter offered by Bank, and to amend, terminate or otherwise act on behalf of Client with respect to each Service used by Client.

Part II – Service Options

DESIGNATION OF MASTER TREASURY SERVICE OPTIONS.

Client designates the following Service options, and acknowledges receipt of the following Service Descriptions (check all that apply):

Online Banking

Lockbox

Wire Transfer

Business Associate Supplement to Lockbox Service Description

Positive Pay & Account Recon

Smart Safe

ACH

Courier and Cash Vault

Supplement to ACH Service Description:
Third Party Service Provider (Sender)

Multiple Party Access

Remote Deposit Capture

Integrated Payables

Secure File Transfer

Virtual Card

Part III – Additional Terms and Signatures

Any Client initiated addition, deletion or change to the Acceptance for any Service must be submitted in a form acceptable to Bank, and no such requested addition, deletion or change will become operative or effective until Bank confirms to Client that such addition, deletion or change has been approved by Bank and implemented. Notwithstanding the foregoing, Bank reserves the right to add to, delete or change this Acceptance upon notice to Client.

The Acceptance may be signed in counterparts and transmitted by facsimile. If signed in two or more counterparts, each will be deemed an original, but such counterparts will constitute one instrument. The effectiveness of the Acceptance (or any related document) and any signatures shall, to the extent permitted by applicable law, have the same force and effect as manually-signed originals and shall be binding on all parties hereto. Bank may also require that the Acceptance (or any related document) be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

Agreed To and Accepted _____(Effective Date”)

CLIENT: _____

By: _____

Name: _____

Title: _____

CLIENT: _____

By: _____

Name: _____

Title: _____

CLIENT: _____

By: _____

Name: _____

Title: _____

CLIENT: _____

By: _____

Name: _____

Title: _____

TRI COUNTIES BANK

By: _____

Name: _____

Title: _____

Business Deposit Account Agreement and Disclosures

Effective February 1, 2021



tri counties bank

Service With Solutions®

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THIS BUSINESS DEPOSIT ACCOUNT AGREEMENT AND DISCLOSURES (“AGREEMENT”) EXPLAINS IMPORTANT TERMS AND CONDITIONS WHICH GOVERN YOUR ACCOUNT(S) WITH US. PLEASE READ THIS AGREEMENT CAREFULLY AND KEEP IT WITH YOUR BANKING RECORDS FOR FUTURE REFERENCE.

You agree that your accounts will only be established and used for business and/or commercial purposes, and not for personal, family or household purposes. When you sign our signature card and/or continue to have an account with us, you and each authorized signer on your account(s) effectively agree to this Agreement, together with the Business Fee Schedule and applicable Product and Business Overdraft Privilege disclosures which will be delivered separately.

As used in this Agreement, the words “we,” “our,” “us,” and “Bank” mean Tri Counties Bank and the words “you” and “your” mean the owner(s) of the account(s) and any “agent” appointed by or on behalf of the owner(s) to sign on the account(s) in a representative capacity. Except to the extent otherwise defined herein, the term “business account” shall mean an account that is not primarily established for personal, family or household purposes. The term “consumer account” shall mean an account that is primarily established for personal, family or household purposes. The word “items” as used in this Agreement includes but is not limited to a check, draft, demand draft, preauthorized draft, or other order or instruction for the payment, transfer or withdrawal of funds including a withdrawal slip, deposit slip/adjustment, automatic transfers, electronic transactions, and miscellaneous charges to your Account. An item also means any other document created or authorized in your name that would be a check or draft but for the fact that it has not been signed. Except to the extent otherwise indicated in this Agreement, the term “may” shall mean that you authorize us to take action or not to take action, at our sole discretion without resulting liability to you. Unless it would be inconsistent to do so, words and phrases used in this Agreement should be construed so that the singular includes the plural and the plural includes the singular.

This Agreement applies to all business deposit account(s) you have with us. This Agreement supersedes any previous business deposit account agreement and applicable disclosures with us.

ACCOUNT OWNERSHIP AND BENEFICIARY DESIGNATION

Depending on the form of ownership and beneficiary designation, if any, specified in our account records, we reserve the right to refuse some forms of ownership on any or all accounts. You agree, upon request by us, to provide us with documentation acceptable to us designating each authorized signer with respect to your account(s) and related services.

Please note: Because decisions concerning whether an account should be held in a particular capacity may have significant legal, tax, and estate planning consequences, consultation with your attorney or tax advisor is recommended.

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Business accounts may be available to both profit or non-profit businesses and associations.

Corporate, partnership, limited liability or other statutory business entity account – These business accounts are established pursuant to statutory organizational requirements.

Fictitious Business Name Account - If the name in which the account is held is fictitious, the account holder represents he or she has the right to use that name and has fulfilled all legal requirements for using and or doing business under that name.

Organization Account - Such an account is issued in the name of a legal entity, such as a club or league. We reserve the right to require the governing body of the legal entity to give us a separate authorization telling us who is authorized to act on its behalf. We may honor such an authorization until we actually receive written notice of a change from the governing body.

ACCOUNT STRUCTURE

We may structure your account to consist of two sub-accounts to take advantage of an interpretation of federal regulations. The sub-accounts, a checking account, and money market account, will be used to allow for the transfer of funds between the accounts, subject to federal regulations. This structure will occur solely on our books and will not be visible to you, nor will it affect your account in any way. Also, this will not affect the FDIC coverage of your account.

ACH AND WIRES

We offer automated clearing house (ACH) origination and wire transfer services subject to the additional terms of our separate service agreements. From time to time, you may be a party to an ACH entry or a wholesale (wire) funds transfer, which may be credited or debited to your account. Division 11 of the California Commercial Code governs wholesale (wire) funds transfers, as well as non-consumer ACH credit entries and those consumer ACH credit and debit entries that may be excluded from the Electronic Fund Transfer Act and its implementing Regulation E (collectively referred to herein as “payment orders”). The term “payment order(s)” includes payment orders, as defined in Division 11 of the California Commercial Code. We reserve the right to choose any wire transfer system to affect your payment orders.

Provisional Credit. Credit given by us to you with respect to a payment order is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to your account in connection with the payment order, and the party (the originator of the entry) making payment to you will not be deemed to have paid you the amount of the payment order. Further, we will notify you of the receipt of payments in the periodic account statements we provide you. You acknowledge that we will not give next day notice to you of receipt of a

ent order.

Form and Accuracy. All payment orders must be provided to us, which may be required to be in a form prescribed by us, presented either in-person, by facsimile to the number approved by Bank, or secure e-mail to the address approved by Bank. If you will communicate payment orders using our online banking services, all payment orders must also be consistent with the separate agreement.

Accurate Transaction Information. You assume the sole responsibility for providing us with accurate transaction information in the form and format that we require. We are not responsible for confirming such information, or for failing to detect and reject duplicate payment orders. If you provide us with a payment order that is incorrect in any way, you agree that we may charge your account(s) for the transaction whether or not the error could have been detected by us. We are not obligated to detect errors in your transfer or payment instructions. If you fail to include an execution date or a payment date in your payment order, we may treat the payment order as if it called for execution or payment at any time and at our convenience.

Inconsistent Information. We advise you that any receiving financial institution (including us) of a payment order is entitled to rely on any account or bank number you have provided even though that account or bank number may identify a party different from the person or entity you have described by name in any transfer order.

Security Procedures. Notwithstanding anything to the contrary in the Bank's terms and conditions for specific services, including but not limited to, the BusinessVue Users Terms and Conditions, you agree with us to the use of certain procedures and security devices (referred to individually and collectively, "Security Device(s)") designed to verify the authenticity of payment orders. In this regard, application of the procedures and Security Devices to authenticate a payment order will be collectively referred to as the "Security Procedures" in this Agreement. If we take any action not provided in the Security Procedures in connection with any payment order, such additional action shall not be deemed to become a mandatory part of the continuing Security Procedures. You understand and agree that we will use the Security Procedures to verify the authenticity of payment orders and that the Security Procedures are not designed to, and are not used for the purpose of, detecting errors in transmission or content of payment orders, including discrepancies between account names and numbers.

Before requesting a payment order to the Bank, you will review the Security Procedures and determine whether the Security Procedures will provide a commercially reasonable method for verifying whether a payment order is yours. As part of the review, you will consider the size, type, and frequency of payment orders you normally make or anticipate making, along with such other factors as you may deem relevant or appropriate.

Commercially Reasonable Procedures. If the size, type or frequency of payment orders made by you change such that the Security Procedures in use by you no longer provide a commercially reasonable method of providing security against unauthorized payment orders, you shall immediately notify us.

Supplemental Security Devices. The Bank may offer to you or require you to use additional authentication tools or methods from time to time. If you choose not

to implement supplemental authentication tools, your access to some or all of the services may be limited. The term "Security Devices" will include any supplemental authentication tools that are used by you. Your continued use of any modified Security Procedures will evidence your agreement that the modified Security Procedures are commercially reasonable for you.

You Are Responsible for Verified Payment Orders, Even if Unauthorized. If we act on a payment order in compliance with the Security Procedures, then you will be obligated on the payment order, and it will be treated as your payment order, whether or not authorized by you.

You Are Responsible for Payment Orders Actually Authorized. Regardless of whether or not we complied with the Security Procedures, any payment order received by us will be treated as yours and will bind you if the payment order is delivered to us directly or indirectly by any Authorized Representative (as defined below), or if you would otherwise be legally bound by the payment order, regardless of whether the payment order was erroneous in any respect or that any loss would have been prevented if we had complied with the Security Procedures.

Safeguarding. You will use and safeguard the Security Devices and Security Procedures. In connection with such safeguarding obligations, you will implement and maintain physical, technical, and administrative controls and procedures sufficient to prevent impermissible or unauthorized access to or use of the ACH and Wire Service, Security Device or Security Procedures. You assume all risks associated with disclosure of any part of the Security Procedures, including a Security Device, to third parties, including employees. You agree to limit disclosures of Security Devices to those third parties, employees or agents you will authorize to access the services on your behalf, or who have a specific need to know.

Sufficient Funds. You agree to maintain sufficient available funds (as determined under our funds availability policy) in your accounts to cover all payment orders and applicable fees, or such higher amounts as we may specify from time to time. You acknowledge that we do not control intermediary financial institutions, including those chosen by us, and that we do not control whether intermediary institutions deduct fees as part of the processing of a wire transfer. If you do not have sufficient or available funds or credit in the payment account, we may charge any account you maintain with us.

Cutoff Time. Same-day payment orders must be received by the Bank's Wire Department by the cutoff time of 1:00 p.m. Pacific Time, or as described in the Outgoing Wire Transfer Request. A payment order is considered executed when we execute it. If a payment order is received after the cutoff time or on a day that is not a business day, we may process the payment order the following business day.

Delay or Refusal. We may delay or refuse to execute any payment order. We may do so for any reason or for no reason. We may provide notice to you of such delay or refusal, but are not obligated to do so. We may delay or refuse processing of a payment order, for example, if: (A) processing would or may exceed the available funds in your affected account; (B) the payment order is not authenticated to our

satisfaction or we believe the payment order may not have been authorized by you; (C) the payment order contains incorrect, inconsistent, ambiguous, or missing information; (D) processing would or may involve funds which are subject to lien, security interest, claim, hold, dispute, or legal process prohibiting withdrawal; (E) processing would or may cause a violation of any laws or rules applicable to you or to us; (F) for any reason determined by us in our sole discretion; or (G) for any other reason under the Agreement.

Recall, Cancel or Amend. If you inform us that you wish to recall, cancel or amend a payment order after it has been received by us, we may, but will not be required to, use reasonable efforts to assist you to do so; however, we shall not be liable for any loss, cost or expense suffered by you if we do not, or are unable to, amend, cancel or recall a payment order. You hereby agree to indemnify us against any loss, liability, claim or expenses (including legal fees) we may incur in connection with assisting you to recall, cancel or amend a payment order, and you agree to immediately reimburse us for any monies paid by us associated with such losses, liability, claims or expenses incurred.

Foreign Currency Transactions. If you request a payment order in United States Dollars or in a currency other than United States Dollars to a foreign country, we may transfer the payment in the currency of the beneficiary bank's country at any exchange rate chosen by us. If a payment order is returned, you agree that the exchange rate for conversion of the foreign currency into United States Dollars may differ from that used by us to process the initial payment order.

Confirmation; Duty to Review and Report. We may provide payment order confirmation of advice based on your request and, in any case, we will include the payment orders as part of the account statements provided to you. In addition to any other duties you have in connection with your review of account statements and information from us, you agree to examine the payment order confirmations and monthly account statements promptly upon receipt or availability, whichever occurs first, and to notify us immediately and in no event later than fourteen (14) days after receipt or availability, whichever occurs first, of the advice or statement of the existence of any unauthorized payment orders or payment order errors. Failure to notify us within 14 days shall relieve us of responsibility for unauthorized payment orders or errors that may arise after the 14th day. Failure to notify us within one year shall preclude you asserting the error or unauthorized transactions against us. Notwithstanding the foregoing, we reserve the right to, in our sole discretion, adjust transaction records for good cause after the expiration of said one year period.

Screening. We may screen payment orders that would result in debits or credits to your account for compliance with applicable laws, rules, and regulations. Where we believe a credit to your account may be subject to being blocked or frozen under the Office of Foreign Assets Control (OFAC)-administered sanctions laws of the United States or of sanctions laws of another country, or may be otherwise suspicious or illegal, we may block (or "freeze") the funds and deny you access to them for a reasonable time sufficient to allow us to resolve the matter.

ADJUSTMENTS

We may make adjustments to your account from time to time. This may be due, for example, to the return of an item you deposited which was unpaid or if a deposit is posted in the wrong amount.

AMENDMENTS AND TERMINATION

We reserve the right to amend, modify, add to, or delete (collectively referred to herein as “change(s)”) the terms or conditions of this Agreement without prior notice to you, except as required by law. Your continued use of a service or an account constitutes your acceptance of the change. Changes may include a deletion, modification, or amendment of an existing term or the addition of a new term not otherwise contemplated when you entered into this Agreement or opened your account(s). Any change will take effect immediately, unless stated otherwise in any notice we make available to you.

When applicable law or regulations require the Bank to notify you of a change, addition or deletion to this Agreement, in which case the Bank may do so by written or electronic means.

APPROPRIATE ACCOUNT USAGE

Do not use a business account as a consumer (personal) account. If you do, it may be reclassified as a consumer account, and we reserve the right to change your business deposit account type to a consumer deposit account type.

ARBITRATION

This provision contains the terms of how a dispute between you and the Bank will be resolved. Please read this provision carefully since it specifically limits your rights in the event of such dispute. By this provision, at the request of you or the Bank, disputes must be resolved by arbitration. Arbitration is a means of having an independent third party resolve a dispute without using the court system. With arbitration, there is no right to appeal the decision of the arbitrator as there is normally in the court system. **BY THIS AGREEMENT YOU UNDERSTAND THAT EACH OF US IS WAIVING THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.**

Either of us may submit a dispute concerning this Agreement to binding arbitration at any reasonable time, notwithstanding that a lawsuit or other proceeding has been commenced. If either of us fails to submit to binding arbitration following a lawful demand, the one who fails to submit bears all costs and expenses incurred by the other compelling arbitration.

Any controversy or claim arising out of or relating to this Agreement, or the account(s) covered by this Agreement, will be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its arbitration rules when the amount in controversy exceeds the amount subject to jurisdiction in small claims court.

Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. All statutes of limitation and rules of law that would otherwise be applicable to this Agreement, including those provided in the California Commercial Code, shall apply to any arbitration proceeding.

To the extent that there is any variance between the AAA Rules and this Agreement, this Agreement shall control. Arbitrators must have expertise in the substantive laws applicable to the subject matter of the dispute.

You agree to take all steps, and execute all documents, necessary for the implementation of arbitration proceedings.

This arbitration provision supersedes all prior arrangements and other communications concerning dispute resolution as to this Agreement. In the event more than one arbitration agreement entered into by us is potentially applicable to a dispute, the one most directly related to the account or transaction that is the subject of the dispute shall control.

Nothing in this "Arbitration" Section shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The arbitrator shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

AUTHORIZED SIGNERS

An authorized signer is someone to whom you give all rights you have now or in the future to make withdrawals and deposits, and to otherwise transact on your account and receive account information. Merely by designating an authorized signer you do not give any ownership rights in the account. Any one of the authorized signers may sign checks or withdrawal orders and give us instructions regarding the account, including an instruction to close the account. However, if there is a conflict, we reserve the right to require all authorized signers to sign an item, withdrawal order, or other instruction on the account.

Even if the authorized signers on an account change, we may continue to honor checks, withdrawal orders, and other instructions by authorized signers until we are notified in writing not to do so.

BUSINESS DAYS

For the purpose of this Agreement, our business days are Monday through Friday, excluding Saturdays, Sundays, and federal holidays.

CASH REPORTING REQUIREMENT

The Bank Secrecy Act ("BSA"), a federal law, requires all financial institutions to report currency transactions of more than \$10,000 to the Financial Crimes Enforcement Network ("FinCEN"). In addition, we may report to FinCEN multiple cash transactions which together total more than \$10,000 in any one day. In order to better comply with the law, we may maintain a log of all sales of Bank checks or drafts, Cashier's Checks, money orders, gift cards or traveler's checks for \$3,000-\$10,000 in currency. We may also report to FinCEN or other government agency transactions that may be structured to avoid the reporting requirement and other transactions that appear to involve illegal activity. In order to satisfy the BSA's requirement, we may, and, in many cases, must request certain information about the individual presenting the transaction, as well as the organization or individual for whom the transaction is being conducted. This includes the individual's/organization's full name, permanent street address, social security number, identification number (such as a driver's license or passport), date of birth (if applicable), and business, occupation or professions.

CHANGE OF ADDRESS OR NAME

You agree to notify the Bank in writing of any change of address, including your email address (if provided), or change of name, which will be effective after we have had a reasonable time to react. We may also change the mailing address of record we have for you if we receive an address change notice from the U.S. Postal Service. Each account holder is responsible for submitting their own signed change of address request. The address is changed only for the accounts you specify and does not affect your other account relationships with us unless you specify that you want the address changed for those accounts as well. The Bank is only required to attempt to communicate with you using the address you have provided to the Bank. If you fail to notify us of a change of address, an undeliverable statement fee may be assessed (see Business Fee Schedule for details). If sent statements or other Bank documents are returned indicating an incorrect address, and we are not notified of the new address after 90 days, you authorize us, at our discretion, to block your account until we can verify your correct address.

CHECK PRINTING

We offer checks in a number of styles and at various prices. The cost of any checks purchased through us will be automatically charged to your account. See the Business Fee Schedule. If you create your own checks, or obtain them from someone else, and we cannot accurately verify your signature on an item by comparing it with an item that posted to your account, you are responsible for any losses that may result from our inability to use that check to verify your signature. You agree not to print special limitations on checks, withdrawal orders or other items drawn on your account, such as "void over \$100" or "paid in full" or "void after 90 days." If you do print any special limitations, you agree that we are not bound by such limitations. You authorize us to pay such items without regard to the stated limitation(s). You further agree to indemnify us and hold us harmless for any claims or losses arising out of our refusal to honor said restrictions.

CHECK PROCESSING

We have automated collection and payment procedures. These automated procedures rely primarily on information encoded on each check or item in magnetic ink. In paying or processing an item, we may rely on the information encoded on the check's magnetic ink character recognition (MICR) line, according to general banking standards, whether or not that information is consistent with the other information on the check. You will reimburse us for any loss or expense we incur because you issue or deposit an item containing altered or extra information in the MICR line. You agree that automated check processing is reasonable and that you have responsibility for preventing and reporting forgeries, alterations, and other unauthorized use of your account. We do not fail to exercise ordinary care by posting or paying checks without sight examination of checks.

We will not be obligated to monitor items deposited to, or drawn against, accounts held by a trustee or other fiduciary to determine whether a trustee or fiduciary is acting consistently with or in breach of any fiduciary duty. When we take an item for processing by automated means, "ordinary care" does not require that we examine each item. "Ordinary care" requires only that we follow standards prevailing in the area in which we are located and that do not vary unreasonably from the general standards followed by similarly-situated financial institutions. A mere clerical error, or an honest mistake, is not considered a failure of the Bank to perform any of our obligations. The Bank's own policies and procedures are used solely for our internal reasons and do not establish a higher standard of care for the Bank other than that which is provided by law or regulation.

The Bank is not responsible for the neglect, mistake or fault of another financial institution or person, including for the loss or destruction of an item or misrouting of an item in transit or in the possession of others. If a deposited item is lost or misrouted and we gave you provisional credit for that item, you agree that we may charge back the amount of the item to your account if we do not receive payment for the item, even if the item is not timely returned.

CHECKS PRESENTED IN PERSON FOR PAYMENT BY A NON-ACCOUNT HOLDER

If an item drawn against your account is presented for payment in person for payment by a payee who is not an account holder of the Bank, the Bank may charge a fee to the person presenting the check as a condition for cashing the check. See the Business Fee Schedule. The Bank may also require identification acceptable to the Bank and not prohibited by law, including a fingerprint of the person presenting the check or other fraud prevention methods. You agree that the Bank may refuse to honor payment for checks presented for payment in person by a non-account holder, if the person refuses to pay the fee or provide the identification requested by the Bank. You agree that none of the foregoing will be deemed to be wrongful dishonor by us.

CHOICE OF LAW

Except as stated herein or as otherwise may be required by applicable law, the provisions of this Agreement are governed by the bylaws of the Bank, federal laws and regulations, the laws and regulations of the State of California (excluding choice of law rules), and applicable local clearinghouse rules, as amended from time to time. In addition, our rights under this Agreement may be limited by laws, rules or regulations; to the extent this is so, this Agreement is modified to the extent needed to prevent representing that a transaction confers or involves rights, remedies, or obligations which we do not have or which are prohibited by law.

CLOSING OR SUSPENDING ACCOUNTS

The Bank may, at any time and in our sole discretion, close or suspend your account or any service we are providing to you. We may do so for cause or without cause. We may deliver the balance after an account is closed by any means chosen by us, including mailing a check for the balance by U.S. Postal Service, sent postage prepaid, to your last address as shown on our records. We may remit the balance by check payable to the name on the account as shown on our records, even if contrary evidence of account ownership has been given to us. We will provide you with notice before or after taking this action, unless prior notice is required by law, in which case we will provide you with such notice as is required by law. For example, we may close your account if your balance falls to zero, without advance notice.

Except to the extent otherwise agreed with us, you may close your account at any time upon notice to us, unless your account has a scheduled maturity date, subject to any applicable early withdrawal penalty. You will remain liable for the payment of accrued fees on the account and for checks in the process of collection, as well as any other obligations relating to actions or inaction prior to account closure. If you close an account, it may be subject to accrued or prorated fees or charges.

You agree to reimburse us immediately upon request for any overdrafts that arise after an account is closed, whether closed by you or by us.

We may honor any account holder's or authorized signer's request to close or suspend an account or transaction. At our discretion, we may require the signatures of all account holders and/or authorized signers before permitting the withdrawal of funds or the closing or suspension of an account.

Without limiting any of the foregoing, you authorize us, in our sole discretion, to "freeze" or place a hold on the balance in your account(s) at the Bank if we suspect that there is irregular activity or we receive conflicting instructions involving your account(s). Should the Bank place a "freeze" on your account(s) to reasonably investigate our concerns, you agree that we shall not be liable to you for any claims you might have, including but not limited to claims of wrongful dishonor.

We may dishonor any check, withdrawal order, item or transaction presented for payment after an account is closed or frozen by you or by us. At our option, we may

honor checks, withdrawal orders, items or transactions after an account is closed or frozen if the transaction was guaranteed by us under any check guarantee program or was part of an electronic fund transfer system, if you fail to place a stop payment order for any outstanding checks or other items or if we otherwise elect to honor the transaction in our discretion. You shall remain responsible and liable for such checks, items, and transactions.

If an interestbearing account is closed for any reason before accrued interest is actually paid, interest may not be paid for the last interest period.

COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

You agree to comply with all laws, rules, and regulations applicable to you, to your activities and to your use of our services. This includes your agreement to comply with (to the extent applicable to you and your actions) federal anti-money laundering laws, sanctions laws administered by the Office of Foreign Assets Control, currency transaction or Bank Secrecy Act reporting and recordkeeping requirements, and any state counterpart of the same. You must inform us about and disclose to us the identity of all persons who have a beneficial interest in you (if you are a non-natural person) and in your transactions.

You represent and warrant that you will not use, and agree not to use, your account or any service we provide to you for any unlawful purpose. For example, you represent, warrant and agree not to accept or make payments in connection with the participation of any person (including yourself) in unlawful Internet gambling. You acknowledge that “restricted transactions” (as defined in the Unlawful Internet Gambling Enforcement Act and its implementing regulations) are prohibited from being processed through your accounts or your relationships with us. We reserve the right to deny transactions or authorization from merchants apparently engaging in the Internet gambling business or identifying themselves through card transaction records or otherwise as engaged in that or any other illegal or improper business. Further, we reserve the right to block or close any account which we believe may be involved in any such restricted transactions.

You represent and warrant that you are not, and you agree to take no action that would result in your being deemed or treated as, a money service business under any applicable state or federal law, except to the extent that you have specifically and in writing previously informed us that you are a money service business.

You covenant, and represent and warrant that the foregoing is true and correct, as of the opening of your account and again each time you make a deposit or withdrawal or otherwise use a service offered by us. You agree to provide us with evidence showing that you are in compliance with the above, reasonably satisfactory to us, upon our request.

CONVERTING ACCOUNT AND REVOKING PRIVILEGES

Without limiting our ability to close your account, we may alternatively convert account to another type of account or revoke privileges when we consider it

appropriate or necessary to do so. For example, we may revoke privileges, or convert your account to another account type if you make frequent transactions on a money market or savings account, if your account frequently has debits against uncollected funds, if your account has excessive deposit activity or if you use a business account for consumer purposes.

CREDIT VERIFICATION

From time to time we may obtain credit information about you from check or credit reporting agencies and/or other means. We may do so at the time you open an account, request a service, at any time while your account is open, or the service is available, or after your account or service is closed, or as otherwise permitted by law. For example, new accounts are subject to verification through ChexSystems (the "Reporting Agency") and may be declined based in whole or in part on information obtained in a report from the Reporting Agency. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at ChexSystems. If we decline to open an account or otherwise provide deposit services, the Reporting Agency will have played no part in our decision and would be unable to supply specific reasons why we would have denied the account or services. You have a right to a free copy of your report from the Reporting Agency, if you request it no later than 60 days after you receive notice of a declined account or service. In addition, if you find that any information contained in a report received by you is inaccurate or incomplete, you have the right to dispute the matter with the Reporting Agency. The Reporting Agency's full name, address, and phone number is as follows:

ChexSystems
Attn: Consumer Relations
7805 Hudson Road, Suite 100
Woodbury, MN 55125
Telephone: 1-800-513-7125

As required by law, you are also hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your obligations, including credit obligations. We may report information about your account to credit bureaus, including ChexSystems. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

CUSTOMER IDENTIFICATION NOTICE UNDER THE USA PATRIOT ACT

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means to you: When you open an account, we will ask for your name, address, date of birth, tax identification number (TIN) and other information that will allow us to identify you. We may also ask to see a driver's license or other identifying documents for account owners (and possibly authorized signers).

We may further ask you for specific information regarding the nature of anticipated activity, the sources of your funds, the purposes of transactions, the relationship you have with persons to whom you send funds and persons who send funds to you, the anticipated frequency of such transactions, the ultimate beneficiaries of funds you send and receive, and other questions that may help us clarify the nature and purpose of transactions. We may close accounts if we are unable to understand the purpose of the account, the structure of the organization, the authority of the signers, the documentation provided or the general risk associated with the establishment of the account. We may elect not to disclose the specific reason for our action.

Owners for fiduciaries, partnerships, corporations, and fictitious business names or other business names may also be asked at account opening and from time to time to provide us with valid documentation of trust agreements (or certification of trust), court orders, partnership agreements, certificates of limited partnership, articles of incorporation, and filed fictitious business name statements, in addition to any other documents deemed necessary by us.

CUTOFF TIMES

A number of our services are subject to processing cutoff hours. Communications received after the cutoff time or on a non-business day may, in our discretion, be deemed received as of the next business day. Alternatively, some services may require you to resubmit a communication when it is received after the cutoff hour or on a non-business day. Refer to separate service agreements for applicable cutoff hours, including the BusinessVue Users Terms and Conditions, the Outgoing Wire Transfer Request and ATM service notices. The cutoff time for transactions presented at our branches will vary, based on their hours of operation. The cutoff time is 9:30 p.m. Pacific Time for transfers between accounts initiated through the Bank's telephone automated customer service system.

DEATH OR INCAPACITY

You agree to immediately notify us about the death or incapacity of any owner or authorized signer on your account. Until we receive such notice in writing, and have a reasonable opportunity to act on it, we may continue to honor items drawn on your account by the authorized signer(s). We may suspend, refuse, and reverse any transactions or deposits (for example, automatic federal direct deposits of benefit payments belonging to the decedent) if any owner or authorized signer dies or is declared by a court to be incompetent. However, even with knowledge, we may pay checks drawn on the account for ten (10) calendar days after the date of death. Refer to the discussion below regarding the treatment of "Direct Deposits."

DEPOSITS AND CREDITS TO ACCOUNTS

Deposits and Credits Generally - You authorize us to accept an item for deposit to your account from anyone. We are not required to question the authority of the person making the deposit. Joint accounts include accounts held as joint tenancy, tenancy-in-common or as community property. A joint account holder authorizes the other account holder(s) to indorse items in that person's name and to cash the items or deposit them into the joint account, with or without an indorsement. You will be responsible for any loss because of your failure to identify your account properly by name and number on any deposit item. We may accept for deposit to your account all items made payable or indorsed by you as an individual payee or joint payee, regardless of whether those items bear your indorsement, subject to our verification and final inspection. You guarantee to us the payment of all such deposited items. All deposits are subject to later verification, adjustment, and collection by us. We may refuse any deposit (whether in cash or by item or other charge) to an account, limit the amount of any deposit, or return all or any part of a deposit to you without prior notice, whether the deposit is attempted to be made by you or anyone else on your behalf. We reserve the right to return to you any item or other charge that we receive for deposit to your account, if we decide not to handle that item or other charge. If we make this decision, we will send a notice by the next business day after we receive it.

You authorize us to present an item again for payment, after it has been returned or dishonored, without telling you that the item was returned unpaid or that we are presenting it again. If we present a returned item again, there is a fee. See the Business Fee Schedule. You also authorize us to process and deliver to you a photocopy or other image of a returned item or other returned item, in lieu of the original, whether it is charged back to your account or automatically presented again, and whether or not the original item is available.

Deposits received at unstaffed facilities will be credited on the day funds are removed, verified, and processed by us. We may delay the verification of large currency and coin deposits until such time as armored transportation to a secure facility is completed, and delay the posting of the deposit to your account until verification and processing is complete. We may pass-through the costs or otherwise charge you a fee for the additional secure logistics that we require. We are not responsible for transactions initiated by mail until we actually receive them. Deposit receipts do not necessarily indicate the correct balance in the account or the amount being deposited. Any credit to an account is subject to final verification, payment, and adjustment by us from time to time. This may be due, for example, to the return of an item you deposited which was unpaid or if a deposit is posted in the wrong amount.

Provisional Credit; Returned and Unpaid Items and Other Credits - Any item or other charge posted for credit to your account, including an item we cash for you, is subject to final payment by the payor or receiving bank (as applicable). If we credit your account for an item or other charge, we may charge back that item or other charge at any time, if we do not receive payment for the item or other charge or if we receive notice that the item or other charge will not be paid. We act as a collection agent for you when we receive an item for deposit or when we cash an item for you, and are not responsible for the negligent actions or inactions of other financial institutions during

the collection process. You assume all risk of loss of an item in transit. You authorize us to reverse any credit given and any interest accrued for an item that is lost in transit or otherwise not paid, and we may recover from any account you maintain with us the funds given to you for a cashed item that is lost in transit or otherwise not paid. You agree that we can notify you of the return as part of the account statement or other communication method (including electronic communication). We reserve the right to charge the applicable account if an item credited to the account is dishonored, returned or not paid even if we have not sent you notice of the dishonor, return or nonpayment. We also reserve the right to charge a dishonored, returned or unpaid item or other charge against the applicable account even if the item or other charge is dishonored or returned late, the dishonor or return does not comply with applicable laws, rules or regulations (including any clearinghouse rules), or we could have made a claim for reimbursement on the item or other charge from the bank on which the item was drawn or from another bank. We may charge a dishonored, returned or unpaid item or other charge against the applicable account even if the charge results in an overdraft. You authorize us to charge your account for the amount of the item and for any returned item fee for each item returned unpaid, even if there is a delay in notifying you or in returning the unpaid item (or photocopy or other image) to you.

You authorize us without notice to you to charge an item back to your account even if you have already used the funds, if we receive an affidavit of forged indorsement or alteration, or similar document, and we have no obligation to investigate the accuracy of such affidavit or similar document. You acknowledge that we may not return an item to you if we cannot recover its full amount from your accounts.

Daily Cutoff Time - All transactions received after our daily cutoff time on a business day, or received on a non-business day, may be treated and recorded as if initiated on the next business day that we are open. The Bank's daily cutoff times may vary by location. Check with your branch for that branch's daily cutoff time. If the daily cutoff time is not stated, the cutoff time will be at close of business day of the branch.

Collection Items - Handling an item as a "collection item" means that instead of accepting an item for deposit, we send the item directly to the item issuer's financial institution for payment. If the item is returned unpaid, we will return the item to you. The fee for this service is disclosed on the Business Fee Schedule. We are obligated only to use ordinary care in collecting items on your behalf. You agree that the Bank has sole discretion to determine whether to accept an item for deposit or collection. If we do credit your account for a collection item, but do not receive final payment for an item or if the item is later returned, we may charge your account for the item plus any interest earned and associated fees. You agree to be responsible for all fees and charges assessed in the collection process as outlined on the Business Fee Schedule. We may notify you that an item is not eligible for a deposit, but rather a collection item, as soon as practicable after we determine to handle the item as a collection item. This may include after you have left a branch, for example. Items drawn on an institution located outside the United States are handled on a collection basis only. Collection items may be credited to your account, however you agree that availability of these funds may be delayed by us until we receive final payment. You waive any notice of nonpayment, dishonor, or protest regarding any items purchased or received by us for credit to your account or for collection. An item or item accepted for collection will not be deemed accepted for deposit for purposes of Regulation CC and is not governed by the Bank's Funds Availability Policy.

DIRECT DEPOSITS

If, in connection with a direct deposit plan, we deposit or credit any amount in your account which should have been returned to the state or federal government or any other third party for any reason, you authorize us to deduct the amount from your account or from any other account you have with us without prior notice and at any time, except as prohibited by law or regulation. You also authorize us to use any other legal remedy to recover the amount of our liability.

DISPUTED OWNERSHIP

If a dispute arises over control of or access to your account, or if we receive conflicting instructions from you (including any owner, joint account holder, contracting officer and/or other authorized signer on your account), or in the case of a corporate or partnership or association/LLC account, conflicting board resolutions or partnership authorizations or member instructions, we may require, but are not obligated to require, the signatures of all authorized signers on items, withdrawals, or other transactions. We may also, but are not obligated to, “freeze” the account until we get evidence satisfactory to us that either the dispute is resolved or there is general agreement on payment of the funds in the account.

During the time that we require additional signatures or freeze the account, you authorize us to do one or more of the following:

- (1) We may ignore any instructions (such as an instruction by one account holder not to honor items or other withdrawal orders by another account holder) that conflict with the terms of the signature card for the account unless all account holders sign the instructions;
- (2) We may reverse any debits or credits to the account in dispute, or other accounts with us, to correct what we believe in our sole discretion resulted from action taken to the disadvantage of one account owner, over another;
- (3) We may return items unpaid, marked “Refer to Maker” or otherwise at our discretion;
- (4) We can close the account and issue a single Cashier’s Check for the available account balance jointly payable to all account owners, or to all signatories to the account and we may mail or deliver that check to any one of the account holders or signatories, or to the address of record;
- (5) We may commence an action in interpleader, which is giving the disputed funds to a court so that it can decide who has the right to control the funds. We will not be liable to you for any costs, claims, damages, or other expenses that result from the payment or non-payment of items or other request for payment of the deposited funds. We will charge the account for our costs and expenses (including attorneys’ fees) in commencing an action in interpleader or may seek recovery of such costs and expenses from the funds deposited in the interpleader action;

- (6) Continue to pay items and other withdrawals when the instructions to do so are given to us by an owner of the account according to our records; and/or
- (7) We can take any other action we believe to be reasonable under the circumstances even if the action is not listed here. These actions include but are not limited to any specific procedures that may be applicable under a law or regulation.

You agree to assume all liability for, and you agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us as a result of any dispute that arises under this Section. In addition to the foregoing rights, you authorize us in our sole discretion to elect to close your accounts pursuant to this Agreement.

ELECTRONIC COMMUNICATIONS

You agree that we may use electronic communication to enter into agreements and contracts between ourselves and you and otherwise to establish terms and conditions for products and services you receive from or through us. Electronic agreements may be provided to you through such things as hyperlinks or "click-through" agreements on our web site. Your consent to or agreement with the electronic communication in these circumstances may occur by your clicking "agreed" or similar terms, or by your subsequent use of a product or service, or otherwise as may be specified in the communication or as provided by law (subject to any limitations set forth in the communication). Your signature and agreement may be obtained by us electronically and includes mouse clicks, key strokes, your use of passwords or other authentication systems, or as is otherwise set forth in the particular electronic communication.

You agree not to contest the authorization for, or validity or enforceability of, our electronic records and documents, or the admissibility of copies thereof, under any applicable law relating to whether certain agreements, files or records are to be in writing or signed by the party to be bound thereby. Records and "signed" documents, if introduced as evidence on paper in any judicial or other proceedings, will be admissible to the same extent and under the same conditions as other documentary business records. Upon our request, you agree to manually sign or place your signature on any paper original of any record or "signed" document which we provide to you containing your purported signature.

ESCHEAT NOTICE; DORMANT ACCOUNTS

The funds in your account may be transferred to the appropriate State if no activity occurs in the account within the time period specified by state law.

We may consider accounts with no activity for a requisite period to be dormant. We may, but are not obligated to, try to contact you before we classify the account as dormant. A dormant account will continue to be charged a normal Monthly Maintenance Fee or service charge. We may, but are not required to, hold statements

dormant status. You authorize us to, at our discretion, refuse to permit withdrawals from an account that has become dormant until we are satisfied that we are dealing with the true owner or authorized signer of the account.

If an account or other property is inactive for more than three (3) years (or other escheat period or as required by escheat law as may apply to the account or property), we may comply with what we in good faith believe to be any legal requirement to turn the balance over to the State of California or to another jurisdiction. To the extent required by law, we will send a notice to your last known address before we turn your account or other property over to the state. A dormant account escheatment fee may be imposed against your account for this notice. Refer to the Business Fee Schedule. If your mail has been returned to us as undeliverable, we may not send you any notice. If you discover that an account of yours has been turned over to the State, you may reclaim your funds by submitting proof of ownership to the State Controller's office in Sacramento or to such other comparable authority as may be responsible for escheated funds.

FACSIMILE OR MECHANICAL SIGNATURES

Many customers use a facsimile or other mechanical signature, including a stamp, referred to herein as ("facsimile signature") to authorize transactions, provide and authorize instructions and to indorse or otherwise complete other documents. If you use any form of facsimile signature in connection with any account, you agree to deliver a sample to us before you begin using it, and to execute and deliver agreements in a suitable form, if we so require. If you use a facsimile signature for any of these purposes, you are responsible for any such transactions, instructions or indorsements that appear to us to bear a signature that resembles the signature of a person authorized to sign on your account. When you use a facsimile signature in connection with any account, you agree you shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and you shall bear the entire risk for unauthorized use thereof, whether or not you are negligent, except as may be required by law. You agree that we may rely on facsimile signatures that resemble the appropriate original or any signature specimen given to us and that appears to have been made through an authorized medium, regardless of how the facsimile signature came to be placed on the item. We may rely on facsimile signatures, even if they were placed on items without your knowledge or consent. We may pay items bearing facsimile signature, regardless of the persons to whom they are drawn or paid. A facsimile signature that resembles an authorized signer's signature or any facsimile signature specimen is not considered a forgery or an unauthorized signature, and such a facsimile or automated signature shall be effective as your signature or indorsement, without regard to color variation, whether or not you have been negligent. You further agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile signature or the device by which it is affixed. This means that we are not responsible for any misuse of a facsimile signature we believe you authorized.

FDIC INSURANCE

We are a member of the Federal Deposit Insurance Corporation (FDIC). At this time, the standard deposit insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category.

For current information relating to deposit insurance coverage, you may contact the FDIC toll-free at 1-877-275-3342 or visit the FDIC website at www.fdic.gov.

FEES

The fees associated with our business deposit accounts are provided in our Business Fee Schedule. You agree to pay the fees we charge, and you give us the right to collect any fees, as earned, directly from any of your account balances. All fees are subject to change by us at any time. You can get current information about services and fees that apply at any of our branches, by phone through the Customer Service Department at 1-800-922-8742, or on line at www.tricountiesbank.com.

FORCE MAJEURE

Notwithstanding any other provisions of the Agreement, the Bank shall not have any responsibility or liability for any failure, error, malfunction or any delay in carrying out any of its obligations under the Agreement if such failure, error, malfunction or delay results from events due to any cause beyond its reasonable control, including, without limitation, unavailability of any communications system, sabotage, fire, flood, explosion, acts of God, civil commotion, strikes, stoppages of labor or industrial action of any kind, riots, insurrection, war or acts of government, power or equipment failure (including that of any common carrier, transmission line or software), emergency conditions, adverse weather conditions or any other factor, medium, instrumentality, condition or cause not in the Bank's control. We will not be liable or responsible for the acts or omissions of any other financial institution or any third party or for any inaccuracy or omission in a notice or communication received by the Bank from you, your agents, your authorized signers, other financial institutions, or any other third party. In addition, we shall be excused from failing to transmit, or delaying the transmission of, any transaction, if such transmittal would result in our having exceeded any limitation upon its intra-day net funds position established pursuant to present or future FRB guidelines or in our otherwise violating any provision of any present or future risk control program of the FRB or any rule or regulation of any other U.S. governmental regulatory authority. The Bank shall not be liable for any failure to perform any of its obligations under the Agreement if such performance would result in it being in breach of any law, regulation, requirement or provision of any government, government agency, banking or taxation authority in accordance with which the Bank is required to act, as shall be determined in our sole discretion.

FOREIGN CURRENCY AND INSTRUMENTS

You may not write items or other withdrawal orders on your account which order payment in a foreign currency.

The processing and collection of foreign instruments are not subject to United States laws and regulations. We may refuse to accept for deposit or collection an item that is payable in a currency other than United States Dollars or that is drawn on a bank or a branch of a bank located outside of the United States (a "foreign instrument"). If we accept a foreign instrument for deposit or collection, you bear all the risks associated with the collection process and foreign currency fluctuation (exchange rate risk). A foreign instrument may be returned unpaid much later (sometimes several months after we process the foreign instrument) than instruments that are drawn on banks located in the United States. You bear all the risks of a late return. We may decide not to credit a foreign instrument to your account until we receive the proceeds in cleared funds from the paying bank. If we do provide credit, such credit is provisional and we may reverse the credit at any time if the foreign instrument is returned unpaid or is initially paid but then subsequently returned for fraud or any other reason. You agree that we may use the current exchange rate and we may charge your account for the full value of the foreign instruments, including any applicable fees, which may result in a loss to you. You are responsible for all fees incurred including exchange rate, our collection fee, and other charges assessed by the payor bank. You understand that foreign instruments sent for collection are sent solely for you and at your risk and that we are not liable for any event in the collection process which is beyond our control including a default by any banks or agents involved in the collection process or for loss of the foreign instrument in transit.

FUNDS AVAILABILITY POLICY

Your Ability To Withdraw Funds

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash, and we will use the funds to pay checks that you have written.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before the closing time for the branch on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after the closing time of the branch, through or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

Longer Delays May Apply

In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of

check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$225 of your deposits, however, may be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will send you the notice by the next business day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available;

In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

- We believe a check you deposit will not be paid;
- You deposit checks totaling more than \$5,525 on any one day;
- You redeposit a check that has been returned unpaid;
- You have overdrawn your account repeatedly in the last six months; or
- There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,525 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state, and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,525 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,525 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the ninth business day after the day of your deposit.

Holds on Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

Holds on Other Funds (Other Account)

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

HEADINGS/TERMS

The headings in this Agreement are for convenience only and are not part of these terms.

INDORSEMENTS

You warrant that all indorsements on items deposited to your account are genuine and further warrant that you are authorized to negotiate and/or deposit any items that contain no indorsements. We are authorized to supply your indorsement to any item taken for collection, payment, or deposit to your account. Also, we are authorized to collect any unindorsed item made payable to you without first supplying your indorsement, provided the item was deposited to your account, but may, at our option, require your personal indorsement prior to accepting an item for deposit.

We may require that each payee personally indorse any items, including government checks, insurance company items, or other special types of items. You agree to indemnify, defend, and hold us harmless from and against any and all losses, damages, claims, costs or expenses (including attorneys' fees and costs) incurred by us in connection with your failure to indorse an item exactly as it is drawn or for any item that is alleged to have a forged, missing or unauthorized indorsement.

We are not bound by any restrictions you make on the face of an item or in the indorsement of any items unless we agree in writing to them.

We reserve the right to refuse items that bear or require more than one indorsement, including the indorsements of individuals who are not known to us. If you wish to deposit or cash an item which has been previously indorsed by one or more individuals, we reserve the right to require all indorsers to be present before we accept the item or to require that their indorsements be guaranteed by their financial institution.

To the extent legally permitted, each co-owner of an account appoints the other co-owner as his or her attorney-in-fact with full power to indorse the name of any co-owner

on any item for deposit, or to deposit without indorsement any such item, into the account or cash the item.

JOINT ACCOUNT LIABILITY

If your account is a joint account, any one of the account holders may, without notice to the other account holders, initiate withdrawals or close the account, and, in the case of checking accounts, write items against the account or request stop payment. Each joint account holder is jointly and severally liable to us for any and all overdrafts to the account.

LARGE CASH WITHDRAWALS

We may require reasonable advance notice for large cash withdrawals. We may also refuse to honor a request to withdraw funds in cash from your account or to cash an item (including a Cashier's Check or other official item) at a branch if we believe that the amount is unreasonably large or that honoring the request would cause us an undue hardship or security risk. We may require that such withdrawals be made at one of our cash vault facilities by an armored courier, acceptable to us and at your sole risk and expense. We are not responsible for providing for your security in such transactions. Rather than permitting a large cash withdrawal, we reserve the right instead to provide you with a Cashier's Check for the amount requested.

LEGAL PROCESS

You authorize us to accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person, by mail, by facsimile transmission or electronic communication, and whether at locations other than the branch or office at which the account, property, or records are held or in one state for property or records held in another state. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, or other legal order relating to you or your account. If we are permitted, we will use good faith efforts to send you notice of any legal process received by us, but this Agreement does not require us to do so.

If we receive legal process against your account which requires us to attach, garnish or turn over your funds, and you do not have enough funds in the account to cover the legal process, we may return items or other items presented against your account the previous business day and apply the funds to satisfy the conditions of the legal process. If any legal process directs us to attach, garnish or turn over funds or other property, then, depending on the type of order, we either immediately deliver the funds or property or hold them for a legally permitted period. We do not pay interest on the funds during the period we hold them. If we use funds from a time deposit account, we may impose an early withdrawal penalty.

You authorize us to charge your account a legal process fee for each order. See the Business Fee Schedule. You agree to pay our fees and expenses for research and

copying of documents and all other expenses, including administrative expenses, we incur in responding to any legal process related to your account. These may include attorneys' fees. You authorize us to deduct these fees and expenses from any of your account(s) without prior notice to you.

Any legal process requiring us to attach, garnish or turn over your funds shall be subject to the Bank's right of setoff and security interest in the account. We are not liable to you for not paying items because we have withdrawn funds from your account or in any way restricted your access to funds because of a legal process or our setoff.

LIMITATION ON LIABILITY; HOLD HARMLESS AND INDEMNITY

Except as otherwise stated in this Agreement or as specified by applicable law, we will be liable to you only for damages arising directly from our intentional misconduct or gross negligence. "Ordinary care" requires only that we follow standards that do not vary unreasonably from the general standards followed by similarly situated banks. Our policies and procedures are general internal guidelines for our use and do not establish a higher standard of care for us that is otherwise established by the laws governing your account. A mere clerical error or an honest mistake will not be considered a failure by us to perform any of our obligations.

Except to the extent limited by applicable law, we are not liable for loss, damage, harm or expense ("Loss") from: (a) any inaccuracy, act or failure to act of any person not within our reasonable control; (b) the failure of other financial institutions to accept or perform in connection with items or other charges; or (c) your negligence or breach of this Agreement.

Our liability for any act or failure to act is limited to your direct Loss (and interest on that loss, if required by law, at the average Federal Funds rate at the Federal Reserve Bank of New York for the period). Except if specifically imposed by statute that cannot be waived between parties, WE ARE NOT LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, such as loss or damage from subsequent wrongful dishonor from our acts or omissions, even if we are aware of the possibility of the same.

In addition to any other rights we may have under this Agreement or any related agreement, or at law or in equity, and except as expressly limited by applicable law or regulation, you agree that you will indemnify, defend, and hold harmless the Bank and our directors, officers, shareholders, employees and agents, against any and all third party suits, proceedings, claims, demands, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses ("Indemnified Losses") that result from or arise out of: (a) the wrongful acts or omissions of you, or any person acting on your behalf (including without limitation your processor, if any), in connection with your use of your accounts or services we offer to you, including, without limitation: (i) the breach by you of any provision, representation or warranty; (ii) the negligence or willful misconduct (whether by act or omission) of you, your customers, your processor (if any) or any third party on behalf of you; (iii) any misuse of the account or services by you, or any third party within the control or acting on behalf of you; or (iv) the failure by you to comply with applicable

state and federal laws and regulations applicable to you; (b) any act or omission of ours that is in accordance with this Agreement or instructions from you; (c) actions by third parties, such as the introduction of a virus that delay, alter or corrupt the transmission of information to us; or (d) any loss or corruption of data in transit from you or your processor to us.

LIMITATION ON TIME TO SUE

Unless a shorter time is prescribed in another provision of this Agreement, an action or proceeding by you to enforce an obligation, duty, or right arising under this Agreement or under applicable law with respect to your account must be commenced within one year after the cause of action accrues.

LOST/STOLEN/DESTROYED CASHIER'S CHECKS

You do not automatically have the right to stop payment on Cashier's Checks you purchase from us. If a Cashier's Check is lost, stolen or destroyed, please contact us for the procedures to obtain reimbursement or have the Cashier's Check reissued. In general, you must complete a declaration of loss form describing the Cashier's Checks and how it was lost, stolen or destroyed. We will then wait ninety (90) days from the date the check was issued before we pay your claim. If ninety (90) days has already passed, we will act on your claim within a reasonable time. If the check is presented during the ninety (90) day waiting period, we may pay the item to a person entitled to enforce the check. If this happens, we will not pay your claim.

If we determine that any such instrument is presented by or on behalf of a person who may be a holder in due course or who may otherwise have the right to obtain payment of the Cashier's Check from the Bank, we may, without notice to you, pay the Cashier's Check, even though you may have paid us a fee to not honor the Cashier's Check.

LOST ITEMS AND DELAYED RETURNS

We act only as a collection agent for you when we receive an item for deposit or which we cash for you. If that item is lost, stolen or destroyed in the process of collection, we may reverse the credit for any deposit or charge your account for the cashed item.

You are responsible for the condition of an item when you issue it, or present it for deposit to your account. If an item is returned or payment is delayed as a result of any writing or marking that you or a third party placed on the front or back of the item, you will be responsible for any costs or liabilities incurred as a result.

MONITORING, RECORDING AND RETAINING

You authorize us (but we are not obligated) to monitor, record electronically and retain telephone conversations and electronic communications between you (including your purported authorized representatives) and us. Accordingly, you agree on behalf of yourself, and your employees and agents that we may monitor and record your

telephone and electronic communications in connection with your account at any time, without further notice. You agree that we may produce the telephonic or electronic recordings or computer records as evidence in any proceedings brought in connection with the Agreement, and you hereby acknowledge the validity and enforceability of such telephonic or electronic recordings.

NOTICES

Except as otherwise provided in this Agreement, all notices and other communications by you to us shall be in writing and, addressed to:

**Tri Counties Bank
PO Box 909
Chico, California 95927**

or at such other address as we may specify in writing. Notices and communications to you may be mailed or made available to you electronically at the statement, email or mailing address shown for you in our records, or at our website. Any notice or communication sent or made available by us to you will be deemed given and effective when sent or otherwise made available to you, or as otherwise stated in the notice or communication. Certain notices and communications may be provided to you by telephone, facsimile or other electronic transmission at the telephone number, facsimile number or other location or number as shown in our records.

Any notice, instruction, or other communication sent by you to us will be effective when we have actually received and have had a reasonable time to act on the notice, instruction, or other communication. Notwithstanding anything to the contrary herein, we may rely on all notices, instructions, and other communications sent to us via facsimile or electronic transmission as though they are originals. Without limiting the foregoing, we are entitled to rely on any notice, instruction, or other communication believed by us in good faith to be genuine or to have been signed or authorized by your authorized representative.

If there are multiple authorized signers, we may send or make available communications to any one or more of them (unless otherwise agreed by us). You assume the risk of loss in the mail or in electronic transit.

If we hold Bank mail for you and a statement or other communication is not picked up within 30 days, we may send it to you at the address shown in our account records or destroy it. If a statement and/or notice is returned to us by the Postal Service for any reason, we may hold subsequent statements and notices of every kind until we receive forwarding information from you.

ORDER OF PAYMENTS

The order in which we pay your checks and any other transactions is important if there is not enough money in your account to pay all of the transactions presented on one day. In the normal course of business, we generally post transactions presented on a single banking day in the following order:

- 1) All credits/deposits
- 2) Cash paid items--checks you have written that are cashed in person at a Bank branch.
- 3) Debit card point-of-sale transactions and ATM withdrawals will be debited in the order received.
- 4) Electronic debits through Online Banking, Mobile Banking, Cash Management or the 24 hour automated customer service.
- 5) Electronically-converted checks and Automated Clearing House (ACH) transactions including electronic BillPay payments.
- 6) Checks (including paper BillPay payments) will be debited in check number sequence. This means that the check with the LOWEST check number will be paid FIRST and then the remaining checks will be paid in sequence to the highest check number.

We reserve the right to change the payment order of items without notice to you if we suspect fraud or possible illegal activity affecting your account. Also, please be aware that the order in which we pay transactions may create multiple overdrafts during a single banking day. For more information on overdrafts, refer to the section below, "Overdraft Practices."

There is no particular order of payment that is favorable to you in every instance. There are advantages and disadvantages for any order of payment. In some cases your more important transactions (which may be those with higher dollar amounts) may get paid later in this sequence or may not be paid at all depending upon your account balance and the available Overdraft Privilege limit assigned to your account, (if applicable). Using this sequencing method is our way of trying to be neutral.

OTHER AGREEMENTS

You may have other written agreements with us which, by their terms, supersede this Agreement in whole or in part.

OVERDRAFT LIABILITY AND RELATED FEES

We have no liability to you for rejecting some checks or other charges and paying others, or otherwise processing a transaction when your account is overdrawn, even if:

- The check or other charge that we choose to pay is payable to us; or
- Your account is overdrawn due to Bank charges.

Each account owner is jointly and severally responsible for paying all overdraft amounts created by any authorized signers, regardless of whether the account owner authorized the check or other charge or received any benefit from the check or other charge. If you receive from the federal government or a state government, electronic deposits to your checking account of statutorily protected federal or state benefits and you do not want us to deduct from those funds the amount your account is overdrawn and any related overdraft fees, please contact us at 1-800-922-8742. If you wish to pay the amount your account is overdrawn and the related overdraft fees separately, you may do so at one of our branches.

If we pay an item or other charge, cash a check for you, or process a transaction, and the amount we pay or process is more than the available balance in the account on which it is drawn, we may hold balances in other accounts of yours, up to the amount we have paid until we have received final payment for the check we paid or the transaction we processed.

Unless otherwise agreed between you and us, if we pay checks or other charges by overdrawing your account, we are not obligated to continue paying your overdrafts in the future. We may stop paying overdrafts without notice to you. If we pay your check or other charge against nonsufficient funds, you must deposit enough to cover your overdraft and any Bank fees or charges. You will be required to pay for any costs of collection (including attorneys' fees) that we incur in recovering from you.

Non-Sufficient Funds (NSF) or Uncollected Funds (UCF) Fee - Without limiting any other provision of this Agreement, if you have no overdraft coverage (meaning you are not enrolled in one or more of the overdraft products or services described below), typically your overdraft transactions will be returned, rejected or declined rather than paid. Subject to the "Force Pay Transactions" described below, if you have no overdraft coverage, typically the following will happen:

- Your everyday debit card transactions or ATM transactions will be declined rather than paid. We do not charge a fee for declining your debit card or ATM transactions. Typically, merchants also do not charge a fee for declined ATM or everyday debit card transactions. You will simply need to arrange for an alternative form of payment.
- Your checks, ACH transactions, recurring debit card transactions and other transactions made using your checking account number will be returned or rejected rather than paid. Please see the Business Fee Schedule for the current fee for returned checks or ACH transactions. Some merchants may also assess a returned check fee, of which we have no control, but you should see a warning from the merchants on their returned check policy.

Force Pay Transactions. There may be instances where we will pay a transaction even if you do not have sufficient funds in your account to cover the transaction and no overdraft coverage. These transactions can occur, for example, when an ATM transaction or everyday debit card transaction is approved but later other transactions reduce the balance in your account before your ATM transaction or everyday debit card transaction is posted to your account. Under these circumstances, we will still pay (or “force pay”) the transaction and you will NOT be charged a fee.

There may also be instances where the Bank will force pay a recurring debit card transaction. This would also occur if, for example, the recurring debit card transaction is approved, but later other transactions reduce the balance in your account before your recurring debit card transaction is posted to your account. Under these circumstances, we will force pay the transaction and you will NOT be charged a fee.

Although this represents the Bank’s policy with respect to Force Pay Transactions, it is more likely than not that if you have no overdraft coverage, your transactions will be returned, rejected or declined as described above rather than force paid.

OVERDRAFT PRACTICES

We offer different overdraft protection options: Linked Deposit Account, Automatic Cash Reserve and Overdraft Privilege.

- (1) Linked Deposit Account allows you to link your Tri Counties Bank accounts as a form of overdraft protection. For the fees and other terms that apply to Linked Deposit Account, please refer to the Linked Deposit Account and Automatic Cash Reserve Disclosure and the Linked Deposit Accounts Authorization.
- (2) Automatic Cash Reserve (ACR). We also offer ACR as an overdraft protection option. This is a line of credit for which you must apply and is subject to credit approval. This is not a commitment to lend. Other restrictions apply. Call us at 1-800-922-8742 for more information and to obtain an application.
- (3) Overdraft Privilege is our automated discretionary overdraft service. For the fees and other terms that apply to Overdraft Privilege, please refer to the Business Overdraft Privilege Disclosure.

POSTDATED, STALE-DATED AND OTHER CHECKS

Processing checks is a highly automated service, and we use commercially reasonable efforts to process them. We may pay checks drawn on an account even if one or more of the following are true: the check is dated after the date we pay it; the check is presented to us for payment more than six months after the date on the check; a stop payment previously requested has expired; the check contains language that purports to make it void before the time it was paid; or the check contains other language that purports to establish conditions under which it may be paid.

We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment that is postdated. A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. If you do not want us to pay a postdated check, you must place a stop payment order on the check in the manner we have described elsewhere.

Upon presentment of an item for payment more than six (6) months after its date, you agree that we may, in our sole discretion and without notice or inquiry to you, charge your account for the item. However, we are not obligated to do so. You agree that our obligation of good faith does not require us to make any inquiry of you or require us to give you notice prior to the payment of an item more than six (6) months after its date. Our payment of the item will be in good faith absent written notice from you in the form of a timely received stop payment order. If you want to ensure that we do not pay a stale-dated item, you should place a stop payment order on the item.

POWER OF ATTORNEY

Under certain types of account ownership, you may authorize another person as your agent and attorney-in-fact to act on the account (“agent”). You shall be bound by and responsible for the actions of your agent, even if the agency relationship is not indicated on the item, withdrawal order or other instruction. Prior to accepting the authority of your agent, we may require the appointment to be in a form satisfactory to us. Unless prohibited by law, we may reasonably refuse to honor a power of attorney or agency that you grant to others for any reason. We may require you or your agent to present the original form. In some cases, we may require that the agent confirm in an affidavit that the powers have not been revoked or terminated. We may continue to rely on the instructions and actions of your agent until we receive written notice in accordance with applicable law and this Agreement that the agent’s authority has been terminated, and we have had time to act upon it. You must tell us of any changes involving the power of attorney. We will not be liable to you or anyone else if we, in good faith and without actual knowledge that the power of attorney is deficient or has terminated for any reason, act on the written instructions of your attorney-in fact. We may charge you a Legal Document Review fee to cover our costs to review any power of attorney document other than the form we provide.

PREVENTING FRAUD

To help you protect your account, you should consider using some or all of the following preventative measures: reconciling your statements as you receive them, watching for out-of-sequence checks and checks made payable to cash, and reviewing your transaction activity for unexpected fluctuations. Business customers should consider assigning responsibilities for opening mail, reconciling bank statements, and issuing checks to different individuals. Do a thorough background check on agents, bookkeepers, accountants or other employees who may be handling any part of your banking and/or who have access to your confidential records. You must contact us immediately if you discover any irregularities.

You should be cautious about giving someone your account number. If you give your account number to a third person and authorize that third person to initiate one or more transactions on your account, you may be liable for all transactions initiated by the third person even if you did not intend to authorize a particular transaction.

Positive Pay is an additional fraud prevention service offered by the Bank for an additional fee. See the Business Fee Schedule. This service allows the business customer to transmit a list of checks that are written on their account to the Bank. The bank, in turn, compares the list to incoming items presented for payment.

RELATIONSHIP

Our relationship with you concerning your account(s) is that of debtor and creditor. No fiduciary, quasi-fiduciary or similar special relationship exists between yourselves and us.

RELEASING ACCOUNT INFORMATION

You authorize us to release information regarding the current status and history of your account to others. For example, we may release information: (1) where it is necessary or helpful to complete a transaction; (2) to verify the existence and condition of your account for a third party, such as a merchant or another financial institution; (3) to comply with the law or a court order; (4) when an inquiry is made regarding whether your account has sufficient funds to cover an item drawn on your account; (5) with your authorization; (6) for other legitimate business purposes; (7) as otherwise permitted by law.

The Bank, from time to time, enters into agreements with third parties to provide bank-related services for the Bank. The services provided by the third parties may include check processing services, data processing services or other bank-related services. You authorize us to release information regarding your account to such third party service providers in connection with the service providers providing bank-related services for the Bank.

REMOTELY CREATED CHECK AND ELECTRONIC ITEMS

A remotely created check is a document not signed by the customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a financial institution. A remotely created check is also known as a demand draft. A remotely created check must contain the customer's account number and may contain the customer's printed or typewritten name, a notation that the customer authorized the draft, or the statement "no signature required" or words to that effect.

If you voluntarily give information about your account (such as our routing number and your account number) to someone and authorize them to draw against your account, we may charge your account and pay any items, including remotely created checks initiated by the person to whom you gave the information. You also agree that we pay an electronically created item even though the item was not created from an

original paper check, whether presented in the form of a remotely created check or an electronic item. You authorize us to continue to honor items or debits from a payee previously authorized by you, until you instruct us to cease to do so, whether or not the payee is acting within the scope of your initial authorization, subject only to such liability as may be imposed upon us by law. If you want us to stop honoring items from a payee previously authorized by you, you must tell us in writing. Until you notify us that such items are not authorized, we can continue to pay them and will not be liable to you even though the items are not in accordance with any authorization you may have given.

This does not, however, obligate us to honor remotely created checks or similar items or entries. We may refuse to honor remotely created checks or similar items or entries without cause or prior notice, whether or not we have honored or dishonored similar items or entries previously.

You agree that we are under no obligation to verify whether the name and account number shown on the remotely created checks are accurate. If any information on a remotely created check is incomplete, inaccurate, or in error, you agree that we may, at our sole discretion, either pay the remotely created checks and charge your account for the item as drawn or refuse to honor the remotely created checks and, without prior notice to you, return the item unpaid. You further agree to indemnify and hold the Bank harmless for losses resulting from our honoring or dishonoring any such debit.

RESERVE ACCOUNT

You agree that you will, if requested by us at any time, establish one or more reserve accounts to be maintained with us in type (including time deposits) and amount satisfactory to us, to serve as collateral for and to secure your obligations to us under the Agreement. We may restrict or prohibit your access to any reserve account(s) and the funds on deposit in them, and we may hold such accounts following termination of the Agreement for a period of time sufficient to protect us against loss. We may increase or decrease the required reserve account amount from time to time, upon notice to you and you agree to provide immediately available funds to cover a reserve amount requested by us. In addition, we may transfer funds from another account of yours, or use funds payable to you or owed by us to you under the Agreement, and credit such funds to a reserve account if a deficiency exists between the available funds in your reserve account(s) and the amounts specified by us as the required reserve amount.

RIGHT TO SETOFF

Subject to applicable law, we may, but are not obligated to, use the funds in your accounts to pay any due and payable debt(s) and obligation(s) that you owe us which are not paid when due. This is referred to as a "setoff." If we exercise this right of setoff, we shall comply with all applicable laws. We will notify you promptly of the action taken. Generally, you agree that all sums in deposit accounts will be subject to our right of setoff for liabilities owed to us by any one or more of the account owners, including any other person who is a joint account owner; or any partnership of which you are a general partner; or any other person or entity with whom you are obligor, or have agreed to act as surety or guarantor, or for whose debts you are

liable or may be contingently liable. You authorize us to use account funds to pay your debts and obligations to us even if the setoff results in an early withdrawal penalty or the dishonor of items. If your account is a checking or money market account and if we exercise our right of setoff, our duty to pay any items presented for payment on your account during the business day preceding the day on which the setoff occurs may be terminated, and you agree that we may return those items unpaid. If we do return items, we also will charge you a non-sufficient funds fee for each returned item. See the Business Fee Schedule.

If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we charge the account, including any balances for which we properly accelerated the due date under the note.

We will not be liable for the dishonor of any item or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment.

This right of setoff does not apply to this account if: (a) it is an IRA or a tax-deferred retirement account; (b) the debt is created by a consumer credit transaction under a credit card plan; or (c) the debtor's right of withdrawal only arises in a representative capacity.

SAFEGUARDING BLANK AND CANCELLED CHECKS

You agree to safeguard your blank and cancelled checks and to take reasonable steps to prevent unauthorized access to or use of your checks. This means that you will store them under proper control in a secured, locked location accessible only to authorized signers. You further agree to notify us immediately if one or more of your blank checks are lost or stolen. You agree to accept all responsibility for any failure to safeguard your blank checks.

SAMPLE SIGNATURES

To determine the authenticity of your signature, we may refer to the signature card or to an item or other document upon which your signature appears. We may use an automated process to reproduce and retain your signature from an item based on the format and other attributes of checks we offer to customers.

SECURITY INTEREST

You grant us a security interest in your accounts to secure the repayment of any obligation that you incur under the Agreement. The security interest provided under the Agreement is in addition to any other security interest we may have in your accounts or other assets. This security interest will survive termination of the Agreement.

SEVERABILITY

If any provision of this Agreement is determined to be void or invalid, the remainder of the Agreement shall remain in full force and effect. No provision of this Agreement shall be deemed to deny (and any term to the contrary is modified so as not to deny) protections, rights or privileges that under state or federal law are required to be made available to consumers or to consumer accounts, except that any modification of your protections, rights and privileges under this Agreement will be effective to the extent (but only to the extent) that the relevant state or federal law allows us and you to agree to modify them.

SIGNATURES GENERALLY, FORGERIES, MISSING SIGNATURES AND ALTERATIONS

The authorized signatures for an account are noted on the account signature card. Any one of the authorized signers may sign items or withdrawal orders and give us instructions regarding the account. We do not offer accounts on which two or more signatures are required for a withdrawal or other instruction on an item or other charge. If you indicate on your signature card or other account opening documents that more than one signature is required, this indication is for your own internal procedures. It is not binding on us. We may attempt on occasion to enforce any multiple signature requirement, but we may cease to do so at any time without prior notice to you. We may act on the instruction or pay out funds from your account if the item or other charge is signed or authorized by (or otherwise authenticated as being the act of) any owner or by any authorized signer (including when acting alone). We have no liability to you if we do this. However, if there is a conflict, the Bank reserves the right to require all authorized signers to sign an item or withdrawal order.

If your negligence contributes to a check being altered, changed or forged, we will not be responsible if we pay the check in good faith and in accordance with the reasonable commercial standards of our business. If anyone disputes the payment of a check because it was altered, changed, forged, bore an unauthorized signature or was otherwise improper, we may not credit the amount to your account until the dispute has been resolved.

We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless a law, rule or regulation provide otherwise, such a claim is deemed not to have been made until submitted in writing to us. You agree to fully cooperate in our investigation of such a claim. Your cooperation may include among other things, at the Bank's discretion: (1) a requirement that you submit a declaration under penalty of perjury describing your claim; (2) a report filed with the appropriate police and/or investigatory authority; (3) promptly providing documentation in support of your claim, if the Bank requests it from you; and (4) if your claim arises from employee fraud or embezzlement, the Bank may require you to make a claim against any insurance coverage that you might carry for such a claim. Our liability to you will be reduced by the amount your insurance company pays you for any claim you tendered to it. Any failure to cooperate in the Bank's investigation may result in our decision not to honor your claim. We may, although we are not required to do so, provisionally credit your account pending the final outcome of the investigation. If we

determine, in our sole discretion, that the debit to your account was not improper, then we may reverse any provisional credit made to your account.

We will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you to recover your loss against the person responsible and you agree to indemnify and hold us harmless from any such losses. In the event that we reimburse your loss, you agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources, including insurance coverage. At our request, you will provide us with all reasonable information about your insurance coverage, including the name of your insurance carrier, policy number, policy limits, and applicable deductibles.

STATEMENTS

With certain exceptions, we make account statements available to account holders. You agree to promptly examine your statements as soon as we make them available to you. If items are not returned with your statement, upon your request, the Bank will make a reasonable effort to promptly provide you with a copy or image of any item in our possession. Unless otherwise agreed, you waive any right to receive any original item after it is paid.

A "statement cycle" means the period covered by your account statement. If you receive a statement monthly, the monthly statement cycle may or may not be a calendar month, but in most cases it won't be more than 32 days or less than 28. The specific dates covered for your statement cycle will appear on your periodic statement. Savings accounts typically cycle on a quarterly basis.

You assume full responsibility for monitoring and reviewing the activity of your account, including the work of your employees, agents, and accountants (as applicable). You agree to notify us immediately if you think there is an error or an unauthorized transaction shown on your statement, including, forgeries, alteration or unauthorized items. If you fail to notify us promptly, but no later than 30 calendar days following the statement mailing date or the date we make the statement available to you, then you agree that you cannot assert any error, problem or unauthorized transaction or forged, altered or unauthorized item against us. You further agree that if you fail to notify us within a 30 calendar day period, then you are precluded from asserting against us the error, problem, unauthorized transaction or forged, altered or unauthorized item and any subsequent forged, altered or unauthorized item from the same wrongdoer. This 30 calendar day limitation is without regard to whether we did or did not use ordinary care and does not otherwise restrict any right we have under law or other agreements with you.

If you do not receive your scheduled statement, it is your obligation to notify the Bank of that fact.

STOP PAYMENTS

If you want to stop payment on a check you have written, you may place a written stop payment order at a branch or contact Customer Service at 1-800-922-8742 to stop payment before it is finally paid by us. Any authorized signer on the account may furnish a stop payment order.

You must furnish us with the date, the check number, and the exact amount of the check and the name of the payee in order for us to stop payment on the item. If you provide us with any incorrect information, we will not be responsible for our failure to stop payment on the check. We will not be responsible for a stop payment order if we do not have a reasonable opportunity to act on it before final payment of the item. You may not stop payment on a check guaranteed by us.

You may furnish the stop payment order orally or in writing. If you give us an oral stop payment order, then it will be effective for fourteen (14) days. The stop payment order will expire at the end of fourteen (14) days unless you give us written notice of the stop payment order. We have a special form for this purpose. Upon confirming the order in writing, the order will remain in effect for six (6) months and must be renewed by you every six (6) months to remain in effect. If you do not renew the stop payment order when it expires and the item is presented for payment, we may pay the item and charge it to your account. There is a fee for each stop payment order and renewal order requested. See Business Fee Schedule.

In some cases, we may pay an item even if a stop payment request is in effect. If we, or another person or entity, is determined by us to be a "holder in due course" of the item, we may pay the item. If we pay a check which has a valid stop payment order on it with correct information, we may be responsible to you for up to the face amount of the item if you establish that you have suffered a loss because we paid the item. You agree to assign to us all of your rights against the payee and/or any other holder of your check. You also agree to cooperate fully with us in any legal actions that we subsequently take against such persons.

Anyone holding the check, including the Bank, may be entitled to enforce payment against you despite the stop payment order. You agree to indemnify, defend, and hold us harmless from all costs (including attorneys' fees), actions, damages, claims, and demands related to or arising from our action in stopping payment on the check.

TAXPAYER IDENTIFICATION NUMBER

We are required to obtain a taxpayer identification number ("TIN") for each account you open or maintain with us. The taxpayer identification number for a business is usually an employer identification number (EIN). The taxpayer identification number for a sole proprietorship may be either a social security number (SSN) or an EIN. We must obtain this number even if you are not required to file tax returns. This number is included on reports we must file with state and federal tax authorities about interest we pay you.

U.S. persons, including resident aliens may be required to complete a Form W-9 to certify their TIN and backup withholding status. To establish that you are not a U.S. citizen or other U.S. person (including a resident alien individual), we may require you to (among other things) complete a Form W-8. We may report interest in cases where it is not mandated for us to do so. We are not responsible for your action or inaction in selecting or completing a form, and no information in these matters that may be supplied by us to you should be relied upon by you. In all tax matters, you should consult your own tax advisor. You agree to notify us and submit a new Form W-9 or W-8, as applicable, within 30 days if any certification made on the form becomes incorrect.

If you fail to provide your TIN and certify that it is correct, or if you fail to certify that you are not subject to backup withholding or if the IRS notifies us that you have furnished an incorrect taxpayer identification number, then federal tax rules may require us to re-solicit your TIN and/or withhold a percentage of interest paid to you. We forward amounts withheld to the IRS. If there are any fines, penalties, or charges assessed upon us due to any incorrect name/TIN mismatch or error not caused by us, you agree to reimburse us for the fine, penalty, or charge, and we may charge your account for the same.

When an account earns interest, we may report the interest paid and the amount withheld to the IRS (and to the California Franchise Tax Board). You will receive a copy of the information reported to the tax authorities.

TRANSFER AND ASSIGNMENT

This account may not be negotiated, transferred or assigned without our prior written consent.

WAIVERS

We may delay enforcing our rights under this Agreement without losing them. Any waiver by us shall not be deemed a waiver of other rights or of the same right at another time. You waive diligence, demand, presentment, protest and notice of every kind, except as otherwise set forth in this Agreement.

WITHDRAWALS

Unless otherwise clearly indicated to the contrary, any one of you who signs in the space designed for signatures on the signature card, including any authorized signers and agents, may withdraw or transfer all or any part of the account balance at any time. Withdrawals will first be made from collected funds, and we may, unless prohibited by law or our written policy, refuse any withdrawal request against uncollected funds, even if our general practice is to the contrary. We reserve the right to refuse any withdrawal or transfer request, which is attempted by any method not specifically permitted, which is for an amount less than any minimum withdrawal requirement. We may limit the amount of cash that can be withdrawn each day. Even if we honor a nonconforming request, repeated abuse of the stated limitation may eventually force us to close this account. Additional withdrawal limitations may be disclosed elsewhere.

TRI COUNTIES BANK

For additional information about any
Tri Counties Bank product or service, please visit one of our
branches or call us at: **1-800-922-8742**
or online at **TriCountiesBank.com**



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We're Here For You.

Whether you need help with a transaction, have questions about your current accounts or have interest in learning about new products and services, we're here with real bankers ready to serve you.

Speak with a Banker1-800-922-8742

(Hablamos Español)

24 hours a day, seven days a week

24-Hour Automated Telephone Banking

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(1-844-822-2447)

Treasury Management Support1-877-895-7580

Monday – Friday: 7:30am – 5:30pm

Branches Throughout Northern and Central California

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Tri Counties Bank Mobile & Online Banking User Agreement

This Agreement sets forth the terms and conditions under which Tri Counties Bank will provide electronic access to your accounts through the Bank's Mobile & Online Banking service ("Service"). By using the Service, whether accessed by computer or mobile device, you accept all the terms and conditions of this Agreement, and as they may be periodically revised. Please read it carefully. This Agreement is in addition to other agreements between Tri Counties Bank and you, including but not limited to the Consumer Deposit Account Agreement and Disclosures, and as those may be periodically revised. We recommend that you print or store a copy of this Agreement for your records. You may also review this Agreement on our website at www.TriCountiesBank.com.

Definitions - As used in this Agreement, the words "we", "our", "us", "Bank" mean Tri Counties Bank. "You" and "your" refer to the accountholder authorized to use the Service and anyone else authorized by the accountholder to have access to the Service. "Account" or "Accounts" means your account(s) at Tri Counties Bank. "Electronic funds transfers" means ATM withdrawals, preauthorized transactions, point of sale transactions, transfers to and from your internal Tri Counties Bank accounts, transfers to external accounts you have at other financial institutions, as well as Bill Pay. "Mobile & Online Banking services" or the "Service" means the services provided pursuant to this Agreement, including Bill Payment Service, External Transfers Service, Debit Card Manager and Mobile Deposit. "Business days" means Monday through Friday. Federal holidays are not included. Additional definitions applicable only to Mobile Deposit are set forth below.

Access – To use the Service, you must have at least one eligible account, Internet access, and a phone number or email address. Your browser must have encryption capabilities that meet current acceptable industry security standards. Your browser can be used on a desktop computer, laptop, tablet and/or mobile device. You can enroll at www.TriCountiesBank.com, through our Mobile App, or by visiting a branch or calling Customer Service. Mobile & Online Banking can be used to access only the accounts on which you are an authorized signer. Transactions made within Mobile & Online Banking will be treated as authorized. We do not monitor transactions through Mobile & Online Banking (other than verification of login credentials) to determine that they are made on your behalf. Take care to keep your login credentials secret.

Eligible Accounts – The Service provides access to checking, money market, savings, and time deposits. In some cases, we may allow loans to be linked, in which case you agree that your loan agreement, note or other document is modified to the extent necessary to allow the transfers or other Services that may be utilized. We may process transactions from loan Accounts without regard to access limitations in any loan documentation or agreements. No online transactional activity is allowed on certificates of deposit, which are view only. Accessibility to Accounts may vary based on the Service(s) you use.

Mobile & Online Banking – You can use the Service to check the balance of your accounts, view account histories, transfer funds between your accounts, order checks, make stop payment

requests, view checks, and pay bills from your accounts (Bill Pay terms and conditions can be found in the Bill Pay section of the Bank's website at www.TriCountiesBank.com). Other functions may also be available.

Account balance and activity information is real time. Mobile banking allows you to use a mobile device to access the Service, e.g., a smart phone or tablet that has text messaging capabilities and Internet access. We will provide access to an app for Android, iOS and iPadOS devices.

Your wireless provider's standard rates apply to Internet access, including messaging rates that apply to SMS usage. We do not charge for content; however, downloadable content may incur additional charges from your wireless provider. Please contact your wireless provider for information about your Internet access and messaging plans. Your wireless provider may charge you for Internet access, message and/or charge limitations that are your responsibility. You agree that we may send messages through your wireless provider and that we may use the mobile phone number, email address or other delivery location we have in our records to contact you.

Your wireless provider and other service providers may also collect data from your mobile banking usage according to their policies. We are not responsible or liable for the acts or policies of such service providers. We will only use the information you provide to us from your mobile banking usage in connection with the Service, except that we reserve the right to disclose any information necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect our rights or property.

Our Mobile & Online Banking service, as well as the content and materials you may receive or access through your use of our service, are proprietary to us and our licensors, and are for your personal, noncommercial use only. You agree that if you are using the Service outside the United States, you are responsible for obtaining network access and are responsible for applicable fees and charges. You understand that you may not be able to access Mobile & Online Banking from certain countries and that the access can change at any time. You agree to indemnify, defend, and hold us harmless from and against any and all claims, losses, liability, cost and expenses (including reasonable attorney's fees) arising from your use of mobile banking.

Hours of Access – The Service is available 24/7, although some functions may be occasionally unavailable due to scheduled maintenance. We will post advance notice of downtime whenever possible. We reserve the right to modify, suspend, or terminate access to Mobile & Online Banking at any time and for any reason without notice. *We will terminate access to Mobile & Online Banking after 180-days of inactivity unless you have scheduled transfers or bill payments pending.*

Your Username and Password – For security purposes, you are required to select a unique username and password during your initial login to Mobile or Online Banking ("login credentials"). You determine what password you will use, although it must meet certain minimum security standards. We cannot recover a lost or forgotten password. We can only reset your password to allow you to select a new one. You accept responsibility for the confidentiality and security of your login credentials and agree to change your password regularly. Upon three unsuccessful attempts to use your password, your access to the Service will be suspended. To re-

establish your authorization to use the Service, you must contact us in-person or by phone to have your password reset and obtain a new temporary password. *Neither Tri Counties Bank nor any of its service providers will ever ask you for your password and you should never give it to anyone else.*

For security purposes, we require that you create a password that meets minimum security requirements, including the use of upper- and lower-case alpha, numbers and special characters. Your password should not be associated with any commonly known personal identification, e.g., social security number, address, date of birth, or names of children, and should be memorized rather than written down. You agree that the use of passwords constitute a reasonable security procedure for the verification of the authenticity and accuracy of transactions initiated through the Service. You authorize Tri Counties Bank and our service providers to rely and act upon any transactions or inquiries initiated through Mobile or Online Banking using your login credentials and agree to be responsible for all transactions that processed using those credentials except as disclosed in the Bill Pay Terms and Conditions.

Security – You understand the importance of your role in preventing misuse of your Accounts through the Service and you agree to promptly examine the periodic statements for each of your Tri Counties Bank accounts as soon as they are made available (either by eStatements or mail). You agree to protect the confidentiality of your account and account number, and your personal identification information, such as your driver's license number and social security number. You understand that personal identification information by itself, or together with information related to your account, may allow unauthorized access to your Account(s). Your password and username, plus the One-Time Passcode sent to you by text or automated call and/or security questions presented as challenges when Mobile or Online Banking doesn't recognize your login behavior as fitting your normal pattern, are intended to provide security against unauthorized entry and access to your accounts. You acknowledge that the Internet is inherently insecure and that all data transfers, including electronic mail (email), occur openly on the Internet and potentially can be monitored and read by others. We cannot and do not warrant that all data transfers utilizing the Service will not be monitored or read by others.

You agree that we are not responsible for any electronic virus that you may encounter using the Service. We encourage you to routinely update your computer and mobile device operating systems, together with browser software and mobile apps, scan your computer using any reliable virus protection product to detect and remove any viruses found. Undetected or unrepaired, a virus may corrupt and destroy your programs, files and even your hardware.

If you choose to request Mobile & Online Banking access for individuals using the Mobile & Online Banking feature called *Family Banking*, you agree to be solely responsible for the activities of those individuals according to the access entitlements you request for them. You are responsible for instructing these individuals on the importance of Security. You are responsible for any fees or charges incurred by these individuals in their use of the Service. To request *Family Banking*, please contact your local Branch or call us at 1-800-922-8742.

Fees and Charges – Currently, the Service is offered without charge, excepting certain features (e.g. stop payments, checking supplies). These fees are set forth in our Consumer Fee Schedule,

which is available within Mobile & Online Banking, and listed under the Help function. You agree that all such fees and charges will be deducted from the Tri Counties Bank checking account designated as the "Primary Checking Account". If you close your Primary Checking Account, you must contact us immediately to designate another account as your Primary Checking Account. You agree to pay any additional reasonable charges for services you request which are not covered by this Agreement. You are also responsible for your mobile phone and Internet service fees you incur in connection with your use of the Service. We recommend you review the agreement with your mobile phone carrier and internet service provider before enrolling in the Services.

Account Transfers – Transfers are subject to limitations in your Consumer Deposit Account Agreement and Disclosures. Tri Counties Bank reserves the right to refuse or cancel a transfer. We will notify you promptly if we decide to refuse or cancel any transfer. However, we are not obligated to provide notification of your transfer being refused or cancelled if you attempt to make transfers that are prohibited under this Agreement, any additional agreement affecting your terms of your account(s), or federal and state law. You will also be held responsible for any applicable fees charged in accordance with our Consumer Fee Schedule.

Internal Transfers – Internal Transfers are transfers between accounts at Tri Counties Bank on which you are an account owner or an authorized signer. Not all accounts may be eligible for Internal Transfers within Mobile & Online Banking. You may make one-time, recurring or future-dated Internal Transfers between eligible accounts. Internal transfers are processed in real-time as they are submitted. Funds for recurring and/or future-dated Internal Transfers should be in the account no later than midnight on the morning of the scheduled transfer to ensure the transfer can be completed.

External Transfers - External Transfers are transfers between a Tri Counties Bank account and an account at an external Financial Institution; you must be an account owner or an authorized signer on the external account and the Tri Counties Bank account in order to initiate an External Transfer. Not all accounts may be eligible for External Transfers within Mobile & Online Banking. External Transfers to or from another Financial Institution require us to validate your access to such external accounts through micro deposits or through a 3rd-party application. We reserve the right to impose a limit to the dollar amount of External Transfers and/or a limit to the total number of transfers that may be requested. We reserve the right to place a hold on any funds prior to debiting your funding account for the transfer amount. You are required to have sufficient funds available in the funding account of any transfer request(s) by the opening of the business day the transfer is to be processed. In the event that any External Transfer results in a deficiency to your account(s) with us, you authorize us to collect such deficiency from any other account(s) you have with us, or to collect same from the external account to which a debit or credit was posted. All other rights stated in the Consumer Deposit Account Agreement and Disclosures will also apply.

An External Transfer request submitted before the cutoff time will be deemed as received that day ("Transfer On date"). Any External Transfer requests submitted after designated cutoff time will be deemed as received the following Business Day ("Transfer On date"). External Transfers will post to your account, loan or line of credit no later than two business days after the "Transfer

On” date, otherwise the transfer will be processed on the following Business Day and post not later than three (3) business days. For External Transfers, we reserve the right to wait a period of no more than three (3) business days after debiting your account prior to submitting a credit to the destination account of the transfer, and/or place a hold on a credit to the destination account of the transfer.

When you schedule any type of External Transfer or recurring External Transfer for a future date using the Service, it must be submitted at least one (1) calendar day prior to the desired processing date. All scheduled or recurring External Transfers for a future date will only be processed on Business Days. If the future date for processing is not a Business Day, the External Transfer will be processed on the following Business Day.

External transfers completed as ACH debits and credits are governed by the rules of the National Automated Clearing House Association (NACHA) to which you and we agree to be bound.

If your account has insufficient funds to perform any transfer(s) you have requested for a given business day, then:

- a. We reserve the right to determine posting order of items presented for payment;
- b. Electronic fund transfers which would result in an overdraft of your account may, at our discretion, be cancelled; and
- c. In the event the electronic fund transfer which would result in an overdraft of your account is not cancelled, overdraft charges may be assessed pursuant to the terms of the Consumer Deposit Account Agreement and Disclosures.

Limits on Amounts and Frequency of Transfers - The number and amounts of transfers from your accounts may be limited by the terms of the Consumer Deposit Account Agreement and Disclosures. If a hold has been placed on deposits made to an account from which you wish to transfer funds, you cannot transfer the held portion of the funds until the hold expires.

Our Liability for Failure to Make a Transfer - If we do not complete a transfer to or from your account, including a bill payment, on time or in the correct amount, according to our agreement with you when you have properly instructed us to do so, we will be liable to you for your losses or damages caused as a result. However, there are some exceptions. We will NOT be liable, for instance:

- (1) If, through no fault of ours, you do not have enough money in your account to make a transfer.
- (2) If a legal order directs us to prohibit withdrawals from the account.
- (3) If your account is closed, or if it has been frozen.
- (4) If the transfer would cause your balance to go over the credit limit of an established line of credit or the credit limit for any credit arrangement set up to cover overdrafts.

- (5) If you, or anyone authorized by you, commits fraud or violates any law or regulation.
- (6) If any electronic terminal, telecommunication device, or any part of Mobile & Online Banking. electronic fund transfer system is not working properly and you knew about the problem when you started the transfer.
- (7) If you have not provided us with complete and correct payment information for the Bill Payment Service, including, without limitation, the name, address, your payee-assigned account number, payment date, and payment amount for the payee on a bill payment.
- (8) If you have not properly followed the on-screen instructions for using Mobile & Online Banking.
- (9) If circumstances beyond our control (such as fire, flood, interruption in telephone/internet service) prevent the transfer, despite our taking reasonable precautions.

Your Liability for Unauthorized Transfers - CONTACT US AT ONCE if you believe your Mobile & Online Banking password or your mobile device has been lost, stolen, used without your authorization, or otherwise compromised, or if someone has transferred or may transfer money from your accounts without your permission. An immediate telephone call to us is the best way to reduce any possible losses. You could lose all the money in your accounts (plus your maximum overdraft line of credit, if any). You assume full responsibility for the security and confidentiality of your username and password, mobile phone number and personal identification numbers used to access the Service.

Bill Payment Service – Refer to the applicable Terms and Conditions for Bill Payment services prior to enrollment for Bill Payment. You can review the Terms and Conditions for Bill Payment at any time by going to www.TriCountiesBank.com.

Stop-Payment Requests – Stopping the payment of a check is different from the cancellation of a bill payment. Once the bill payment has been debited from your account, you CANNOT cancel or stop an electronic bill payment. You may be able to stop a bill payment paid by paper check by contacting us by telephone before the check has cleared. You will have to contact us by telephone to determine if the bill pay check has cleared, and if not, we will process your stop-payment request. You may also initiate stop- payment requests through the Service for paper checks you have written (non-electronically) on your Tri Counties Bank account(s). Stop-payment requests submitted through Mobile & Online Banking are processed in real-time as they are submitted. To be effective, this type of stop-payment request must precisely identify the name of the payee, the check number, the dollar amount, and the check date. If you make your stop-payment request via Mobile or Online Banking, or by telephone, we may also require you to put your request in writing and get it to us within 14 days after you call. You will incur stop-payment charges as disclosed in our Consumer Fee Schedule for the applicable account. Stop-payment charges are the same for both checks you write, and bill payment checks.

eStatements – You will not receive a separate Mobile & Online Banking statement. Transactions on your accounts using the Service will appear on the periodic account statements

made available for your Tri Counties Bank accounts. You can use the Service to enroll in eStatements for your accounts. This is your authorization to us to stop delivering paper statements for the accounts you designate. You will be able to view and print your eStatements through the service. Use the *Services* menu option within Mobile & Online Banking to enroll in eStatements. You will be presented with a separate eStatement Agreement that outlines details of this service.

Debit Card Manager – Debit Card Manager service (“Debit Card Manager”) is designed to allow you to temporarily disable your Debit Card in the event it is misplaced, lost, or stolen, OR for other purposes, such as extended travel. Debit Card holders who are enrolled in Mobile & Online Banking are automatically enrolled in Debit Card Manager. Debit Card Manager may also send transaction alerts, authentication requests, or other communications via push notification, text message, or email. Access to Debit Card Manager is limited to Mobile & Online Banking. Debit Card Manager does not allow for the cancellation of authorized or pre-authorized Debit Card transactions. It is not intended as a method for stopping payment on authorized or pre-authorized transactions. All transactions for which there is a prior authorization will be paid by Tri Counties Bank. This applies to authorizations made in both card present and card not present situations, and in cases of pre-authorized recurring transactions. Pre-authorized recurring transactions must be stopped in accordance with the agreement made with the merchant involved in the pre-authorizations. The *Card on File* and *Recurring Payment* features are provided for informational purposes only and may not identify all businesses, individuals or entities that may have a card number on file and/or recurring payments. *Recent Activity* displayed in Debit Card Manager is based on the specific card selected, not a comprehensive list of all account transactions.

Lost or Stolen Card. Reporting a card lost or stolen within Debit Card Manager will disable the card, but is not intended to replace direct contact with the Bank. You are required to contact the Bank to report a card lost or stolen and/or to report unauthorized transactions.

Disabling Cards. Disabling a card within Debit Card Manager will NOT reorder a new card. You are required to contact the Bank to report a card lost or stolen and/or to report unauthorized transactions. Toggling a card “ON” or “OFF” within Debit Card Manager does not permanently disable a card. To permanently disable a card, you must contact the Bank. Upon deactivation of a card, it will automatically be removed from Debit Card Manager.

Unauthorized Transactions. Transactions cannot be disputed within Debit Card Manager. Any unauthorized transactions must be reported to the Bank in accordance with existing agreements. For additional information on unauthorized transactions, refer to the Consumer Debit Card Agreement and Disclosure.

Alerts, Controls & Travel Plans. Following your registration to receive Transaction Alerts sent to your mobile device, alerts may be sent in real-time; however, the actual time between a transaction made with your Debit Card that triggers a Transaction Alert and the time you receive such Transaction Alert may be dependent on a number of factors including but not limited to the method the transaction is billed by the merchant, the time at which the transaction is processed by the merchant, how a merchant is classified by their card processor, the location of the

merchant's card processor, your wireless carrier's service and coverage within the area in which you are physically located at that time, and other potential variables that may or may not be known by the Bank. Your receipt of Transaction Alerts may not be available in all areas. Transaction Alerts are intended as "for your information" only and are not intended to identify transactions as fraudulent. Placing controls or alerts based on locations, regions, merchant types, transaction types or spending limits is not a guarantee to prevent transactions from clearing through your account and may be honored at the Bank's discretion. Travel Plans established through Debit Card Manager are only valid for the time specified in Debit Card Manager, and only a limited number of Travel Plans can be established for each card. You will need to contact the Bank to accommodate longer periods of travel, or more comprehensive itineraries.

Eligibility. Debit Card Manager is only available to individuals who are: (i) of legal age of majority in their jurisdiction of residence (and at least 18 years of age); and (ii) own a Tri Counties Bank Debit Card that is in good standing and eligible for Debit Card Manager ("Card"). Note: Eligibility of a Card will be determined by us in our sole and absolute discretion. Our decisions with respect to your eligibility are final and binding. We reserve the right to terminate your participation in Debit Card Manager at any time or for any reason. The user must qualify for Mobile & Online Banking in order to use Debit Card Manager. The user must adhere to the terms and conditions of all existing agreements with Tri Counties Bank.

No Amendment of Existing Terms and Conditions For Cards. THE TRANSACTION ALERTS THAT ARE PROVIDED TO YOU THROUGH THIS SERVICE DO NOT AMEND, SUPPLEMENT, CHANGE OR REPLACE ANY OTHER NOTICE OR INFORMATION THAT YOU MAY RECEIVE IN CONNECTION WITH YOUR CARD ACCOUNT, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION PROVIDED TO YOU ON YOUR PERIODIC STATEMENT.

Availability. Debit Card Manager may not be available for all Debit Card Types. You may need to consent to location services to access all the features of Debit Card Manager. While we will make every effort to decline transactions while your card is in a deactivated state, we cannot guarantee that all such transactions will be declined due to circumstances beyond our control. You acknowledge that the deactivation function is reliant on computer and/or telecommunication systems. Disruptions to these systems may result in the authorization of transactions, even when the card is in a deactivated state. Reactivation of cards may be unavailable during certain times of the day. We will attempt to notify you of these times. You are responsible for monitoring your account activity, whether electronically or by checking your statements. Use of Debit Card Manager does not override the user's responsibility to report unauthorized transactions in a timely manner as described in the Deposit Account Agreement and Disclosures. We assume no responsibility for failure of Debit Card Manager to work in the expected manner, aside from the responsibilities put forth in said agreement.

Termination. We may terminate or suspend Debit Card Manager, or your use of Debit Card Manager, at any time or for any reason. Without limiting the foregoing, this Agreement may be terminated if you breach any term of the Agreement, if you use Debit Card Manager for any unauthorized or illegal purposes or you use the Services in a manner inconsistent with the terms

of your Deposit Account Agreement and Disclosures or any other Agreement with us. If you wish to no longer use Debit Card Manager, it is your responsibility to ensure all card controls and alerts are set to OFF.

Mobile Deposit – Mobile Deposit service (“Mobile Deposit”) enables you use your smart phone in conjunction with our mobile app to make check deposits into your account. We reserve the right to modify or terminate Mobile Deposit at any time, with or without notice to you.

(a) Definitions. The following definitions apply to Mobile Deposit:

"Check" or “check” means an Original Check, as defined in Regulation CC.

"Agreement" means this Agreement and all instructions (including online instructions) relating to Mobile Deposit which we may provide to you from time-to-time.

"Imaged Item" means the digitized image of a Check transmitted to us that is drawn on a U.S. Financial Institution, payable to you and properly endorsed and is otherwise eligible for Mobile Deposit. This excludes items payable in currency other than US Dollars, or which has other special instructions and/or limitations on its deposit.

"Mobile Deposit" means the Mobile Deposit services described in this Agreement to enable the processing of Items digitally through image exchange networks or through creation of Substitute Checks.

“Non-qualifying Item” means Non-cash Items, Items payable in a medium other than United States money, currency, warrants, Items payable to third parties, Items payable to joint payees (unless payable to the payees alternatively and deposited into an account in the name of all payees), drafts or remotely created checks as defined by the UCC and Regulation CC, respectively, Items that are stale dated by six months or more or post-dated, savings bonds, Items payable to “cash,” Substitute Checks, non-negotiable Items, Items that have been returned unpaid for any reason and any Item that exceeds your transaction limitations as established by us from time to time. "Original" with respect to a Check means the first paper Item issued with respect to a particular payment transaction.

"Payor Financial Institution" means the United States Financial Institution ordered in an Item to make payment to the payee(s) named on the Item. "Regulation CC" means 12 C.F.R. Part 229, as it may be amended from time to time.

"Substitute Check" means a paper reproduction of an Item that satisfies the requirements and definition of "substitute check" set forth in Regulation CC. "UCC" means the Uniform Commercial Code as enacted and amended in California.

"United States Financial Institution" means (i) any person, located in the United States, engaged in the business of banking; (ii) a Federal Reserve Bank; (iii) a Federal Home Loan Bank; and (iv) to the extent it acts as a payor, the U.S. Treasury, the U.S. Postal Mobile Deposit Service, or a State or local government.

(b) Limitations. We may impose limits on the dollar amount of each Mobile Deposit, including limits on the aggregate dollar amount of multiple deposits in one day. We may change any one or more of these limits at any time at our sole discretion, and without prior notice.

(c) Your Responsibilities. Your use of Mobile Deposit is subject to the following requirements: (1) Each Imaged Item must be transmitted in compliance with the terms and conditions of this Agreement; (2) You will not deposit a duplicate Imaged Item and you agree to indemnify and defend us against any and all claims related to the duplicate deposit of any Check; (3) You will not use Mobile Deposit to operate a “money services business” as defined in the Federal Bank Secrecy Act; (4) You will: (i) ensure that Imaged Items are properly endorsed, (ii) destroy Original Checks as required by this Agreement, and (iii) endorse Checks as follows “[your signature] For Mobile Deposit Only to Tri Counties Bank [account #]” before you photograph the Check (otherwise they may be returned); (5) You will notify us of any errors or Mobile Deposit discrepancies within 14 days of your receipt of the statement on which such error is disclosed and absent notice from you, such transactions will be deemed correct, and you will be precluded from asserting any error or discrepancy against us; (6) You shall ensure that: (i) only authorized persons shall have access to Original Checks, (ii) such Checks will not be duplicated or scanned (photographed) more than once; and (iii) Checks will not be re-deposited or renegotiated in any manner. You will promptly provide any retained Original Check (or copy) to us when requested to resolve claims by third parties with respect to any Item. You will secure Original Checks until you establish that they have been accurately posted and then permanently destroy them so they may not be redeposited.

(d) Your Representations and Warranties. Without limiting any other provision of this Agreement, each time you submit an Original Check through Mobile Deposit, you represent and warrant that: (1) each Imaged Item is a complete and accurate representation of the front and back of a negotiable Check; (2) the Imaged Item is not prohibited or non-qualifying pursuant to this Agreement or applicable law; and (3) the Original Check used to create the image has not been previously deposited, duplicated, or used to create another image or electronic fund transfer.

(e) Prohibited Checks. We have no obligation to accept any Imaged Item which you attempt to submit for deposit through Mobile Deposit, in our sole discretion. You agree that you will only submit Checks for processing to us that meet the definition of “Item” as provided in these Mobile Deposit Terms and will ensure that the Items scanned meet the required standards for image quality. You agree that you will not photograph and attempt to deposit any of the following: (1) Any third-party Checks, or checks drawn on any deposit account of yours, or a deposit account of any business in which you are a principal, officer or authorized signer; (2) Checks payable to multiple persons or entities or a business, or a combination thereof; (3) Altered checks; (4) Fraudulent checks; (5) Previously deposited checks; (6) checks drawn on foreign banks.; (7) Checks not payable in U.S. dollars; (8) Checks that are postdated or more than six (6) months old or beyond any expiration date printed on the check; (9) Substitute checks (i.e., previously imaged item for which you only have the image); (10) Remotely created checks; (11) Unsigned or improperly signed checks; (12) Travelers checks.

(f) Processing. (1) We will process any returned Items in accordance with applicable law and your Consumer Deposit Account Agreement and Disclosures. Availability of credit from mobile deposits will be subject to our then current availability schedule, which may be amended by us from time to time; (2) Notwithstanding any provisional credit, Imaged Items processed through Mobile Deposit will be deemed received for deposit at the time the Imaged Items are actually received and accepted by us; (3) You agree to view the images of each scanned Item that is sent to us. If Item information received by us is not complete or cannot be processed by us for any reason, we may reject the Imaged Item (notwithstanding any transmission confirmation) and thereafter charge the amount back against any provisional credit to your Account. You will be responsible for verifying our receipt of your transmissions by verifying that deposits have been posted to your Account; (4) If an Imaged Item is not accepted for deposit, you may submit the Original Check to us at a Branch; and (5) Our processing of any Non-qualifying Items shall not constitute a waiver by us or obligate us to process such Non-qualifying Items in the future. You agree that we may discontinue processing of Non-qualifying Items at any time, without cause or prior notice.

(g) Receipt of Imaged Item. We are not responsible for Imaged Items we do not receive or that are dropped during transmission. An Imaged Item will be deemed received by us only when we provide an online confirmation receipt. When we confirm receipt, the Imaged Item will still be subject to review before we submit it for collection and may still be rejected for any reason in our sole discretion. If we reject an Imaged Item received through Mobile Deposit, then you may submit the Original Check to us through Branch deposit unless we instruct you otherwise, or you may want to contact the maker and have them reissue the Check.

(h) General Terms and Conditions.

Technical Requirements. You must meet the current technical requirements we specify, including regular updates to our Mobile App, as well as your mobile operating system software. We may change these technical requirements at any time without notice to you. Each Imaged Item you transmit using Mobile Deposit must be legible, as determined by us. If your mobile device produces Imaged Items of unacceptable quality, we may reject your deposit or terminate your access to the Mobile Deposit service. We are not responsible for problems arising out of your equipment or internet connection even if you are using equipment that meets our technical requirements.

Funds Availability. We generally apply the Funds Availability Schedule to Imaged Items received through Mobile Deposit as if we had received the Original Check. However, in addition to the rules in the Consumer Deposit Account Agreement and Disclosures, we may delay availability of funds from any deposit you make through the Mobile Deposit Service for additional periods, and at any time in our sole discretion.

Cutoff Hour. The cutoff time for Mobile Deposits is displayed within the Mobile Banking App when making a Mobile Deposit. The cutoff time can also be found at www.TriCountiesBank.com. Any items received after the designated cutoff time will be considered received the next business day.

Acceptable Use of the Mobile Deposit Service. The Mobile Deposit Service may be used only for personal, family and household services, and is not intended for business purposes.

Mobile Deposit Fees. There is no charge for Mobile Deposit, but other fees, such as for returned items (chargeback items), and overdrafts, may apply. Please refer to our Consumer Fee Schedule for a current listing of fees.

Security Interest; Held Funds. To secure all your obligations arising from Mobile Deposit, you grant to us a security interest in all your accounts with us, whether current or opened later, and all proceeds of same. Our security interest will survive after termination of the Mobile Deposit Terms. This security interest is supplemental to and not in lieu of the security interest granted by you to us under any other agreement including your Consumer Deposit Account Agreement and Disclosures. This security agreement allows us to recover any loss or shortfall by debiting any other account you have with us. We will give you notice of such action after the debit has been made. In addition, we may hold funds in any account following termination of your use of Mobile Deposit for such time as we reasonably determine that any Item processed by us prior to termination may be returned, charged back or otherwise a cause for any loss, liability, or cost.

Indemnification. Without limiting the other indemnification provisions set forth in this Agreement and your Consumer Deposit Account Agreement and Disclosures, you agree to indemnify, defend and hold us harmless from and against any and all claims, demands, damages, liabilities, expenses (including reasonable attorneys' fees) or other loss that arises from or relates to your use of Mobile Deposit, including without limitation your attempt to deposit a duplicate check image and any liability that we may incur for processing an Imaged Item or Substitute Check rather than the Original Check.

Compliance with Law. You are responsible to meet all compliance requirements or obligations that we and/or you may have with respect to Mobile Deposit under all applicable U.S. federal and state laws, regulations.

Change in Terms – We may change any term of this Agreement at any time. If the change would result in increased fees for any Mobile or Online Banking service, increased liability for you, and except as provided in this Agreement fewer types or stricter limitations on the frequency or dollar amount of electronic fund transfers, we agree to give you notice at least 30 days before the effective date of any such change, unless an immediate change is necessary to maintain the security of an account or our system. We will post any required notice of the change in terms within the Tri Counties Bank Mobile & Online Banking platform or send a notice to you via email. If advance notice of the change is not required, and disclosure does not jeopardize the security of the account or our electronic fund transfer system, we will notify you of the change in terms within 30 days after the change becomes effective.

Your continued use of Mobile & Online Banking Services indicates your acceptance of the change in terms. We reserve the right to waive, reduce or reverse charges or fees in individual situations. You acknowledge and agree that changes to fees applicable to specific accounts are governed by the Consumer Deposit Account Agreement and Disclosures.

Disclaimer of Warranty and Limitation of Liability – We make no warranty of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, in connection with Mobile & Online Banking Services provided to you under this Agreement. We do not and cannot warrant that Mobile & Online Banking will operate without errors, or that any or all Mobile & Online Banking Services will be available and operational at all times. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, OR OTHERWISE REQUIRED BY LAW, YOU AGREE THAT OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS ARE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR BY REASON OF ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT OR BY REASON OF YOUR USE OF OR ACCESS TO MOBILE & ONLINE BANKING, INCLUDING LOSS OF PROFITS, REVENUE, DATA OR USE BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY. FURTHER, IN NO EVENT SHALL THE LIABILITY OF TRI COUNTIES BANK AND ITS AFFILIATES EXCEED THE AMOUNTS PAID BY YOU FOR THE SERVICES PROVIDED TO YOU THROUGH MOBILE & ONLINE BANKING.

Your Right to Terminate – You may cancel your Mobile & Online Banking service at any time by providing us with written notice by mail or by submitting a secure message through the Mobile & Online Banking service. Your access to Mobile & Online Banking will be suspended within 3 business days of our receipt of your instructions to cancel the service. You will remain responsible for all outstanding fees and charges incurred prior to the date of cancellation.

Our Right to Terminate – You agree that we can terminate or limit your access to Mobile & Online Banking Services for any of the following reasons: 1. Without prior notice, if you have insufficient funds in any one of your Tri Counties Bank accounts. Mobile & Online Banking service may be reinstated, in our sole discretion, once sufficient funds are available to cover any fees, pending transfers, and debits.

2. Upon 3 business days' notice if you do not contact us to designate a new Primary Checking Account immediately after you close your Primary Checking Account. 3. Upon reasonable notice, for any other reason in our sole discretion.

Communications between Tri Counties Bank and You – Unless this Agreement provides otherwise, you can communicate with us in any one of the following ways:

Secure message via Mobile & Online Banking. "Mobile" or "Online" messages sent to us through Secure Messages function are not reviewed by our personnel immediately after they are sent. If immediate attention is required, you must contact us by telephone or in person.

Telephone - You can call us at 1-800-922-8742

Mail - You can write to us at:

TRI COUNTIES BANK
Attn: Electronic Banking
63 Constitution Drive
Chico, CA 95973

In Person - You may visit us in person at any Tri Counties Bank Branch. Visit www.TriCountiesBank.com for a complete list of our locations.

Consent to Electronic Delivery of Notices – You agree that any notice or other type of communication provided to you pursuant to the terms of this Agreement, and any future disclosures required by law, including electronic fund transfer disclosures, may be made electronically by posting the notice within the Tri Counties Bank Mobile & Online Banking platform or by email. You agree to notify us immediately of any change in your email address. This consent to electronic notices only applies to this Agreement. If after consent, you would like a paper copy of this Agreement, please call us and we will mail one to you at no charge. You may withdraw this consent by contacting us or closing your account.

Electronic Records and Signatures – You agree that we may charge your Account(s) without requiring your signature on an item. Any transactions resulting from your instructions which we receive in your name and under your credentials shall be deemed authorized by you. All records maintained by us of transactions under your credentials shall be deemed to have been “signed” and to constitute an “original” when printed from our records maintained in the ordinary course of business.

Privacy and Confidentiality – All information gathered from you in connection with using the Service will be governed by the provisions of our consumer privacy policies, including our online privacy policy, which you agree to review by accessing them on our website, and to which you have agreed by utilizing the Services. In addition, we will disclose information to third parties about your account or the transfers you make: (a) Where it is necessary for completing transfers; (b) to verify the existence and condition of your account for a third-party, such as a credit bureau or merchant; (c) to comply with government agency or court orders; and/or (d) If you give us your permission.

Ownership of Software – You acknowledge that a third party provider to Tri Counties Bank ("Licensor") is the owner of all right, title and interest in and to the software used for access to Mobile & Online Banking Services from Tri Counties Bank and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

1. License. Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software directly from its owner. All support must be received through Tri Counties Bank. This Agreement may be terminated at any time, for any reason or no reason.
2. Restrictions. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code

for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.

Your Liability – Tell us IMMEDIATELY if you believe any part of your login credentials, including your password, has been lost or stolen, or if you believe that an electronic funds transfer has been made without your permission using information from your check.

Telephoning is the best way of keeping your possible losses to a minimum. You could lose all the money in your account (plus your maximum overdraft line of credit, as applicable). If you tell us within two (2) business days after you learn of the loss or theft of any part of your login credentials, including your password, you can lose no more than \$50 if someone used your credentials without your permission.

If you do NOT tell us within two (2) business days after you learn of the loss or theft of any part of your login credentials, including your password, and we can prove that we could have stopped someone from using the login credentials without your permission if you had told us, you could lose as much as \$500. Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us IMMEDIATELY. If you do not tell us within 60 days after the statement was mailed or first made available to you, you may not get back any funds you lost after the 60 days if we can prove that we could have stopped someone from taking those funds if you informed us in time. If a good reason (such as a long trip or a hospital stay), kept you from telling us, we will extend the time periods.

Errors and Questions - In case of errors or questions about your electronic transfers, call us at , 1-800- 922-8742 or write us at:

TRI COUNTIES BANK
Attn: Customer Service
P.O. Box 909
Chico, CA 95927

If you believe your statement is wrong or if you need more information about a transaction listed on the statement, please contact us right away. We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared.

- Tell us your name and account number (if any)
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information
- The dollar amount of the suspected error

If you tell us orally, we may require you to send us the complaint or question in writing within 10 business days. We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate a complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put

your complaint or question in writing, and we do not receive it within 10 business days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error. We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may request copies of the documents that were used in the investigation.

Tri Counties Bank Mobile & Online Banking Agreement and Disclosure. 01/2024

CONTRACT FOR DEPOSIT OF MONEYS

THIS CONTRACT, relating to the deposit of moneys, made as of the ____ day of _____, 20____ between _____(hereinafter designated "Treasurer") acting in official capacity as _____("Treasurer," "Finance Director," etc.) of _____(hereinafter designated "Depositor"), and Tri Counties Bank (hereinafter designated "Depository"), having a paid-up capital and surplus in excess of One Billion Dollars (\$1,000,000,000).

WITNESSETH:

WHEREAS, the Treasurer proposes to deposit in the Depository from time to time, commencing on _____, 20__ moneys in his/her custody in an aggregate amount on deposit at any one time not to exceed _____ Dollars (\$ _____); or the total of the paid-up capital and surplus of the Depository, whichever is the lesser amount, and said moneys will be deposited subject to Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code of the State of California; and

WHEREAS, said provisions of the Government Code require the Treasurer to enter into a contract with the Depository setting forth the conditions upon which said moneys are deposited; and

WHEREAS, in the judgment of the Treasurer, this contract is to the public advantage;

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. This contract cancels and supersedes any previous contracts between the Treasurer and the Depository relating to the method of handling and collateralization of deposits of moneys.
2. This contract, but not deposits then held hereunder, shall be subject to termination by the Treasurer or the Depository at any time upon 30 days' written notice. Deposits may be withdrawn in accordance with the agreement of the parties and applicable federal and state statutes, rules and regulations. This contract is subject to modification or termination upon enactment of any statute, rule or regulation, state or federal, which, in the opinion of the Administrator of Local Agency Security, is inconsistent herewith, including any change relative to the payment of interest upon moneys so deposited by the Treasurer.
3. Interest shall accrue on any moneys so deposited as permitted by any act of the Congress of the United States or by any rule or regulation of any department or agency of the Federal Government adopted pursuant thereto. If interest may legally be paid, all moneys deposited in accordance with this contract shall bear interest at a rate agreed upon by the Treasurer and the Depository.
4. The Depository shall issue to the Treasurer at the time of each inactive deposit a receipt on a form agreed to by the Depository and the Treasurer, stating the interest to be paid, if any, the duration of the deposit, the frequency of interest payments, and the terms of withdrawal. Each such deposit receipt is by reference made a part of this contract.
5. As security for said deposit, the Depository shall at all times maintain with the Agent of Depository named herein, commencing forthwith, eligible securities having a market value at least 10% in

excess of the actual total amount of local agency moneys on deposit with the Depository. If any eligible security is determined by the Administrator of Local Agency Security of the State of California in accordance with Government Code Section 53661 to be not qualified to secure public deposits, additional security shall be substituted immediately by the Depository, as necessary, to comply with the requirements of this Paragraph.

6. Eligible securities are those listed in Government Code Section 53651.
7. The Agent of Depository, authorized by the Treasurer and the Depository to hold the eligible securities posted as collateral under this contract is **The Independent Bank (TIB)**. Said Agent of Depository has filed with the Administrator of Local Agency Security of the State of California an agreement to comply in all respect with the provisions of Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code. A copy of this agreement is attached hereto.
8. Authority for placement of securities for safekeeping in accordance with Government Code Section 53659 is hereby granted to the Agent of Depository, including placement with any Federal Reserve Banks or branches thereof, and the following banks, other than the Depository, located in cities designated as reserve cities by the Board of Governors of the Federal Reserve System:
9. If the Depository fails to pay all or part of any deposits of the Treasurer which are subject to this contract when ordered to do so in accordance with the terms of withdrawal set forth on the deposit receipt (which is by reference made a part hereof), the Treasurer will immediately notify, in writing, the Administrator of Local Agency Security. Action of the Administrator in converting the collateral required by Paragraph 5 above for the benefit of the Treasurer is governed by Government Code Section 53665.
10. The Depository may add, substitute or withdraw eligible securities being used as security for deposits made hereunder in accordance with Government Code Section 53654, provided the requirements of Paragraph 5 above are met.
11. The Depository shall have and hereby reserves the right to collect the interest on the securities, except in cases where the securities are liable to sale or are sold or converted in accordance with the provisions of Government Code Section 53665.
12. The Depository shall bear the expenses of transportation of eligible securities maintained as collateral to and from the designated Agent of Depository.
13. This contract, the parties hereto, and all deposits governed by this contract shall be subject in all respects to Title 5, Division 2, Part 1, Chapter 4, Article 2 (commencing with Section 53630) of the Government Code, and of all other state and federal laws, statutes, rules and regulations applicable to such deposits, whether now in force or hereafter enacted or promulgated, all of which are by this reference made a part hereof.

IN WITNESS WHEREOF, the Treasurer in his/her official capacity has signed this contract in duplicate and the Depository has caused this contract to be executed in like number by its duly authorized officers.

TREASURER/FINANCE DIRECTOR:

DEPOSITORY: Tri Counties Bank

By _____ By _____

WAIVER OF SECURITY

TO WHOM IT MAY CONCERN:

Pursuant to Section 53653 of the Local Agency Deposit Security Law, a treasurer may, at his discretion, waive security for such portions as are insured pursuant to Federal Law.

WHEREAS, it is the advantage of Tri Counties Bank to increase the amount of its available collateral to secure the deposits of public accounts, and in so doing, without increasing the risk of the deposits of such public accounts;

NOW, THEREFORE, the authorized agent of _____, a public institution, hereby agrees to waive the security required by Section 53653 of the Local Agency Deposit Security Law by Tri Counties Bank the Depository Association for up to the maximum federally insured amount of certain deposits of the described public institution. As a condition to the granting of this Waiver of Security, it is understood that Tri Counties Bank shall continue to maintain approved collateral security for all those deposits in excess of the maximum federally insured amount per Section 53653 of the Local Agency Deposit Security Law.

I authorize Tri Counties Bank to waive security per Section 53653 of the Local Agency Deposit Security Law.

Date: _____

Local Agency entity: _____

Authorized Signer _____

Title: _____

TAX ID of entity _____

RESOLUTIONS FOR ACCEPTANCE OF TREASURY MANAGEMENT SERVICES



_____ (the "Company")

I/we, the undersigned ("Undersigned"), hereby certify to Tri Counties Bank ("Bank") that the undersigned am/are the individual owner of the sole proprietorship, or the secretary of the corporation, or all the general partners, or all the members (if management is by members), or all the managers (if management is by the managers), or all the representatives of the governing body of the Company, and designated keeper of the records and minutes of the Company.

WHEREAS, the following is a true and correct copy of Company Resolutions duly adopted by the Board of Directors (if a corporation), the partners (if a partnership), members/managers (if a limited liability Company), proprietor (if a sole proprietorship) or other governing authority of the Company at a meeting held on the _____ day of _____, **20**_____, at which a quorum was present and acting throughout, or adopted by the written consent of a majority of those entitled or required to act to bind the Company, and that such Company Resolutions are in full force and effect and have not been amended, modified or repealed;

WHEREAS, the Company has reviewed and approved the Tri Counties Bank Acceptance of Treasury Management Services, pursuant to which the Company agrees to be bound by the Tri Counties Bank Master Treasury Agreement, together with each applicable Service Description, including any Supporting Documents, corresponding exhibits, schedules or attachments to the same, which apply to the services designated by Company in the Acceptance (collectively referred to herein as the "Acceptance") to be entered into by and between the Company and Tri Counties Bank ("Bank");

WHEREAS, defined terms in this document shall have the meaning provided in the Acceptance, unless otherwise provided herein; and

WHEREAS, the Company has determined that it is in the best interests of the Company to enter into the Acceptance in connection with the Services and subject to the terms and conditions of the Acceptance, as amended from time to time.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- (i) The Company finds that it is in the best interest of the Company to enter into the Acceptance, as amended from time to time;
- (ii) The Company authorizes and appoints _____ to execute and deliver the Acceptance;
- (iii) The foregoing named person is authorized to negotiate terms and conditions of the Acceptance, amendments or supplements to the Acceptance; and
- (iv) The authority given above will continue, and the Bank may rely on the actions of such person referred to above, until such time as the Bank is given formal written notice of the revocation of such authority and the Bank has an opportunity to respond to the same. All acts and deeds taken by such person referred to above shall be deemed the act and deed of the Company for all purposes relating to the Acceptance and to all services described in the Acceptance or provided by the Bank to the Company under the Acceptance.

The Undersigned hereby certify under penalty of perjury under the laws of the state of California that the forgoing resolutions were duly and legally adopted by the governing body of the Company and that said Resolutions have not been revoked and are currently in full force and effect:

Signature: _____
Title: _____
Print Name: _____
Date: _____

Signature: _____
Title: _____
Print Name: _____
Date: _____

Signature: _____
Title: _____
Print Name: _____
Date: _____

Signature: _____
Title: _____
Print Name: _____
Date: _____



Account Title:

Account Number:
Account Type:

We agree to the terms set forth below**

<p>Taxpayer Identification Number and Certification: ** By signing below, I certify under penalty of perjury that Association's correct taxpayer identification number, the Association is a US Association, and that this Association:</p> <p><input type="checkbox"/> is subject to backup withholding. <input type="checkbox"/> is not subject to backup withholding either because (1) we are exempt from backup withholding, (2) we have not been notified that we are subject to backup withholding as a result of a failure to report all interest or dividends, or (3) the Internal Revenue Service has notified us that we are no longer subject to backup withholding. <input type="checkbox"/> Exempt Payee Code: _____ X _____</p>	<p>Authorized Signers:</p> <p>Signature _____ Date _____ Signature _____ Date _____ Signature _____ Date _____</p>
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**MY/OUR SIGNATURE(S) BELOW CONFIRMS that I/We have received copies of the Bank's Business Deposit Account Agreement and Disclosures and Business Fee Schedule along with applicable regulatory disclosures and agree with Tri Counties Bank that the account specified above shall be maintained subject to all applicable laws and the Bank's present and future rules, regulations, practices and charges.

ACCOUNT INFORMATION	AUTHORIZED SIGNER – PERSONAL INFORMATION
Name: Street Address: City, State Zip: Home Phone: Work Phone: Email Address: Date of Birth: ID Type 1: ID Type 1 Issue/Exp: Tax ID Number: Security Word:	

INDEMNITY AGREEMENT: The above Authorized Signer(s) hereby agrees to hold Tri Counties Bank free and harmless from all claims for loss or damage of any nature whatsoever arising from the acceptance for deposit or payment of items from this ~~Checking~~ Account based on any allegation or claim that such activity is not in furtherance of the ~~Account~~'s authorized purposes. The above Authorized Signer understands and accepts this condition as consideration for Tri Counties Bank's agreement to open the above referenced account. Except as specifically stated herein, all other terms and conditions set forth in the Bank's Business Deposit Account Agreement and Disclosures are unmodified by this Indemnity provision.

ORGANIZATION/UNINCORPORATED ASSOCIATION RESOLUTION

IT IS RESOLVED: The person(s) named below constitute all of the members of this organization/unincorporated association or have been otherwise designated pursuant to the governing rules of the entity with the authority to bind the organization/unincorporated association or execute documents on the entity's behalf with respect to its account(s). **FURTHER RESOLVED:** The person(s) listed as signers on the signature card(s) are authorized to endorse, on behalf of this entity, any checks or other items payable to this entity or its order, to deposit such checks and other items into the account with or without such endorsement, and to direct withdrawals from the account by check drawn on the account or otherwise, including withdrawals payable to anyone who is an authorized signer. **FURTHER RESOLVED:** Any one of the person(s) listed as signers on the signature card are authorized to act alone in all matters relating to this account, including withdrawal transactions. **FURTHER RESOLVED:** This authorization has not been revoked or modified, and is in addition to any other authorizations in effect and shall remain in full force until Bank receives written notice of its revocation at the office of the account or at any other address specified by the Bank. Date: _____

By: _____ Member	By: _____ Member	By: _____ Member
By: _____ Member	By: _____ Member	By: _____ Member

Mailing Address Information: (if different from above)

Prepared By: _____ Reviewed By: _____

EXHIBIT C
FEE SCHEDULE

PRICING

*Volumes are based on 3 month average from US Bank Analysis Statements *Worksheet with formulas is provided as Schedule 1. No one-time setup fees are charged.

SERVICE	VOLUME	UNIT PRICE	TOTAL FEE	ATTACHMENT 2 PRICING FORM
Account Services				
Monthly Maintenance	2	\$ 25.00	\$ 50.00	
Stop Payment	0	\$ 34.00	\$ -	
Online Banking Services				
Trico Treasury Center (per enrollment)	1	\$ 18.00	\$ 18.00	5.,6.,10.,11.,13
Depository Services				
Checks Deposited	242	\$ 0.20	\$ 48.40	3.
Checks Paid	229	\$ 0.22	\$ 50.38	
Deposits	8	\$ 1.75	\$ 14.00	
Electronic Credits	47	\$ 0.22	\$ 10.34	
Electronic Debits	10	\$ 0.22	\$ 2.20	
Cash Handling (per \$1,000)	5	\$ 1.60	\$ 8.00	2.
Returned Items/Checks	1	\$ 10.00	\$ 10.00	
Remote Deposit Services				
Remote Deposit Capture	1	\$ 35.00	\$ 35.00	17.
RDC Scanner Lease (per Scanner)	1	\$ 25.00	\$ 25.00	17.
Remote Deposit Items	242	\$ 0.05	\$ 12.10	17.
ACH Services				
ACH Credit Origination Module	1	\$ 35.00	\$ 35.00	12.,14.,15.,16.
ACH Originated Per Item	240	\$ 0.17	\$ 40.80	12.,14.,15.,16.
Wire Services				
Wire Origination Module	1	\$ 20.00	\$ 20.00	8.
Incoming Wire	1	\$ 15.00	\$ 15.00	8.
Outgoing Online Domestic Wire	2	\$ 12.50	\$ 25.00	8.
Fraud Prevention Services				
Payee Positive Pay	1	\$ 60.00	\$ 60.00	1.
ACH Positive Pay	1	\$ 20.00	\$ 20.00	1.
Positive Pay Paid Item	239	\$ 0.05	\$ 11.95	1.
		TOTAL	\$ 511.17	



Service With Solutions™

KEY	COMMENTS
1. Positive pay system for the operating account	
2. Currency deposits	
3. Check deposits	
4. Deposit error corrections	No Fee
5. Online system access to all account activity	
6. On-line stop payments	
7. NSF/Returned Item (two attempts to clear)	No Fee
8. Wire transfers (in and out)	
9. Courier services (weekly)	No Fee
10. Account reconciliations	Included with Treasury Center
11. Access to cleared checks/imaging	Included with Treasury Center
12. ACH processing	
13. ACH return information	Included with Treasury Center
14. Federal and State tax payments by phone or on-line system	
15. Direct deposit for employee payroll	
16. Payroll tax payments	
17. Remote Deposit	
18. Procurement Cards	No Fee
19. FDIC Insurance	No Fee



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 6(b)

ORIGINATED BY: Colin Nelson, Capital Projects Manager
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Award Contract No. 2023-005 Progressive Design Build Services to Mountain Cascade/Carollo Engineers for the Paradise Sewer Project

LONG TERM RECOVERY PLAN: Yes

COUNCIL ACTION REQUESTED:

1. Consider concurring with staff's recommendation for awarding the contract for Progressive Design Build Services for the Paradise Sewer Project to the Mountain Cascade-Carollo team, and,
2. Authorize the Town Manager to enter into a Progressive Design Build Contract (2023-005) with the recommended firm, contingent upon approval by the Town Attorney, and,
3. Adopt Resolution No. 2024-___, "A Resolution Designating Authority to the Paradise Town Manager to Execute Individual Contract Amendments Under the Resultant Progressive Design Build Contract for RFQ 2023-005 Progressive Design Build Services with Mountain Cascade/Carollo Engineers for the Paradise Sewer Project up to the maximum contract aggregate amount of \$17,000,000 to complete the initial design and progressive design build process for the Paradise Sewer Project" (ROLL CALL VOTE)

Background:

Since its incorporation in 1979, the Town has sought a formal wastewater treatment solution for the community, with service for commercial and densely populated residential areas being a priority. Failed and failing septic systems create public health and environmental concerns and have limited economic growth. Prior to the Camp Fire, which almost completely destroyed the town in 2018, Paradise was the largest unsewered community in California. The Town has prepared numerous studies to address its need for a centralized wastewater treatment solution, and in its most recent study, the Town identified a proposed sewer service area. The proposed sewer service area includes the Town's commercial corridors, and as described in the 2017 feasibility study, it represented the area that had the most septic systems that had failed or were projected to fail by 2022.

The Paradise Sewer Project consists of three primary components: Core Collection System, Export Pipeline System, and Extended Collection System. The Core Collection System would support the centralized businesses and housing in Town, including approximately 1,500 parcels

along the Skyway, Clark Road, and Pearson Road corridors. The proposed Export Pipeline System would start at the southern end of the Core Collection System as a gravity sewer line and would continue southwest approximately 18 miles to the City of Chico for connection to the Chico Water Pollution Control Plant. Other than the Town of Paradise flow, no other connections will be allowed to the export pipeline. The Extended Collection System would be an extension of the Core Collection System that would allow collection of sewage from parcels outside the Core Collection System, but within the Town limits.

The Town of Paradise has secured \$30 million for pre-construction phases of work (environmental, design, right of way, and permitting) and an additional \$15 Million for construction through Community Development Block Grant Disaster Recovery Planning and Infrastructure funds to facilitate the design phase of the Paradise Sewer Project.

Analysis:

On October 30, 2023, staff issued a formal Request for Qualifications (RFQ 2023-005) utilizing formal selection procedures in compliance with Paradise Municipal Code, State and Federal requirements including regulations for typical federally funded projects as well as specific requirements utilizing CDBG-DR funds. The RFQ stated the scope of work for the Progressive Design Build Services and requested proposers provide their qualifications and experience and included price as a component.

In general, the Scope of Work for the Progressive Design Build Team is as follows:

- Develop and implement Project Management Plan, including all schedule and cost tools.
- Perform Risk Management and Mitigation activities.
- Establish and maintain Change Management Plan
- Develop and implement Project Health and Safety practices.
- Facilitate resolution of Project issues and challenges
- Support Project funding activity
- Support Public Information activity
- Provide additional Town-requested, Project-specific services necessary for Project success
- Lead engineering and design team resources
- Develop design deliverables
- Support Project funding activity
- Recommend technology solutions
- Facilitate review of construction submittals and verify design intent is being met during construction
- Manage interface between design and construction team members
- Support Project funding activity
- Prepare and maintain a Project Cost Model and Project Schedule
- Provide constructability input during design.
- Prepare equipment and subcontract procurement plans.
- Develop procurement and construction proposal(s) and negotiate in good faith
- Deliver constructed work
- Support Project funding requirements
- Manage self-performing and subcontracted work

- Manage craft labor
- Maintain site safety and security
- Perform engineering services during construction
- Obtain and comply with government approvals and permits for which the Design-Builder is responsible
- Provide warranty coverage for constructed work
- Maintain and transmit as-built drawings to the Town at construction completion
- Participate in the early development of the operations plan
- Coordinate construction activities with and lead assigned testing, commissioning, startup, and training activities, coordinating with future O&M staff to minimize impacts
- Provide timely and complete submission of manufacturer's equipment O&M materials
- Prepare system O&M manual

The contract term for the Progressive Design Build Team is designed for a base term of five years, with the possibility of one-year extensions at the sole discretion of the Town Manager.

By December 15, 2023 at 12:00 P.M., Town staff had received seven (7) responses to the RFQ.

The proposers are listed below:

1. Kiewit / Woodard & Curan
2. Flatiron / Rasic JV
3. Teichert / AECOM JV
4. Preston Pipelines / Sandis Engineers
5. Mountain Cascade / Carollo Engineers
6. Sukut / West Coast Civil
7. Garney

A five-member evaluation committee was formed to evaluate the proposals, including the following members:

Ashley Stanley, Butte County Department of Public Works
 Marc Mattox, Town of Paradise Public Works Director/Town Engineer
 Jim Goodwin, Town of Paradise, Town Manager
 Colin Nelson, Town of Paradise, Capitol Projects Manager
 Guy Voss, HDR, Town of Paradise Owners Agent

The Committee received and ranked the proposals according to the criteria provided in the RFQ and shown in Table 1 below.

Table 1: Evaluation Criteria Table

Section	Evaluation Criteria	Points Possible
1	Respondent Profile and Minimum Requirements (Pass/Fail)	
2	Project Understanding and Project Approach	30
3	Project Team and Organizational Structure	10
4	Key Personnel	30
5	Relevant Project Experience	25

Committee review of the proposals was performed independently. Evaluation scoring & ranking are shown in Table 2 below.

Table 2

PDB Team Name	Raw Score Total	Ranking Total	Final Ranking
MCI/Carollo	438	5	1
Garney	414	11	2
AECOM-Teichert JV	407	19	3
Kiewit	371	20	4
Sukut	361	22	5
Flatiron-Rasic JV	339	28	6
Preston Pipelines	234	35	7

Staff recommends Council consider awarding contract 2023-005 to the Mountain Cascade/Carollo Engineers Progressive Design Build Team to complete final design on the Paradise Sewer Project and eventually construct the project once construction funding is secured.

The proposed Progressive Design Build Contract is attached to this Agenda Summary. Council is requested to approve this Agreement in its current form and any minor modifications prior to full Contract execution by the Town Manager as approved by the Town Attorney. Minor modifications are defined as agreed items which do not affect the cost or delivery of the project.

Following award of the Progressive Design Build Contract, staff and the Progressive Design Build team will immediately begin work on Phase 1A, as described in the Contract, to deliver a Basis of Design Report. Subsequent to completion of the Basis of Design Report, the Town Manager will be authorized to execute subsequent Contract Amendments to deliver the remaining Project services described under the not-to-exceed aggregate amount of \$17M approved by Council.

Future Council actions relating to this contract award will include major milestones such as amendments to include construction services.

Financial Impact:

The Progressive Design Build Contract and associated Contract Amendments will include a combination of federal and state funds with an estimated not-to-exceed aggregate amount of \$17,000,000. It is anticipated all costs associated with this Agreement will be sourced to the \$30 million CDBG-DR award.

Attachments:

1. Resolution approving Contract 2023-005
2. Agreement (Contract) for Progressive Design Build Services for the Paradise Sewer Project
3. Scope of services for the PDB contract

4. Schedule
5. Budget for phase 1A up to the Basis of Design Report

**TOWN OF PARADISE
RESOLUTION NO. 2024-__**

**RESOLUTION DESIGNATING AUTHORITY TO THE PARADISE TOWN MANAGER
TO EXECUTE INDIVIDUAL CONTRACT AMENDMENTS UNDER
THE RESULTANT PROGRESSIVE DESIGN BUILD CONTRACT
FOR RFQ 2023-005 PROGRESSIVE DESIGN BUILD SERVICES WITH MOUNTAIN
CASCADE/ CAROLLO ENGINEERS FOR THE PARADISE SEWER PROJECT
UP TO THE MAXIMUM CONTRACT AGGREGATE AMOUNT OF \$17,000,000
TO COMPLETE THE INITIAL DESIGN AND PROGRESSIVE DESIGN BUILD
PROCESS FOR THE PARADISE SEWER PROJECT.**

WHEREAS, the 2018 Camp Fire caused unprecedented damage to the Town of Paradise and has necessitated a variety of recovery projects which are further guided by the Paradise Long-Term Recovery Plan;

WHEREAS, the Paradise Sewer Project is by far the largest project in scale, cost and overall benefit to the community;

WHEREAS, to ensure delivery of the Town of Paradise Sewer Project, Town staff issued a Request for Qualifications “Progressive Design Build Services for the Paradise Sewer Project” (RFQ 2023-005);

WHEREAS, RFQ 2023-005 was designed for a base term of five years, with the possibility of one-year extensions at the sole discretion of the Town Manager;

WHEREAS, RFQ 2023-005 was designed for a not-to-exceed aggregate contract amount of \$17,000,000 to be issued as individual contract amendments to the Progressive Design Build Contract;

WHEREAS, RFQ 2023-005 was prepared and reviewed under the most stringent of procurement standards, meeting Paradise Municipal Code, State and Federal requirements;

WHEREAS, RFQ 2023-005 was advertised on October 30, 2023 for work relating to the Town of Paradise Sewer Project, with major scopes of work categories listed below:

- Develop and implement a Project Management Plan, including all schedule and cost tools
- Perform Risk Management and Mitigation activities
- Establish and maintain a Change Management Plan
- Develop and implement a Project Health and Safety practices
- Facilitate resolution of Project issues and challenges
- Support Project funding activity
- Support Public Information activity
- Provide additional Town-requested, Project-specific services necessary for Project success
- Lead engineering and design team resources

- Develop design deliverables
- Support Project funding activity
- Recommend technology solutions
- Facilitate review of construction submittals and verify design intent is being met during construction
- Manage interface between design and construction team members
- Prepare and maintain a Project Cost Model and Project Schedule
- Provide constructability input during design
- Prepare equipment and subcontract procurement plans
- Develop procurement and construction proposal(s) and negotiate in good faith
- Deliver constructed work
- Support Project funding requirements
- Manage self-performing and subcontracted work
- Manage craft labor
- Maintain site safety and security
- Perform engineering services during construction
- Obtain and comply with government approvals and permits for which the Design-Builder is responsible
- Provide warranty coverage for constructed work
- Maintain and transmit as-built drawings to the Town at construction completion
- Participate in the early development of the operations plan
- Coordinate construction activities with and lead assigned testing, commissioning, startup, and training activities, coordinating with future O&M staff to minimize impacts
- Provide timely and complete submission of manufacturer's equipment O&M materials
- Prepare system O&M manual

WHEREAS, seven (7) proposals were received by December 15, 2023, and following subsequent evaluation and interview, the Mountain Cascade-Carollo Team was recommended for the Progressive Design Build Contract;

WHEREAS, by designating the Town Manager authority to execute all contract amendments associated with RFQ 2023-005, full benefits of this robust procurement process will be realized.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Paradise as follows:

Section 1. The above recitals are true and correct and are incorporated as if fully set forth herein.

Section 2. The Paradise Town Manager is authorized to execute a Progressive Design Build Contract with the above-recommended Progressive Design Build Team in its current form including any current or subsequent minor modifications approved in writing by the Town Attorney. Minor modifications are defined as agreed items which do not affect the cost or delivery of the project.

Section 3. The Paradise Town Manager is authorized to execute individual contract amendments under the Progressive Design Build Contract for RFQ 2023-05 Progressive Design Build Services for the Paradise Sewer Project, not to exceed the maximum contract aggregate amount of \$17,000,000 to complete the initial design and progressive design build process for the Paradise Sewer Project and for a base term of five years, with the possibility of one-year extensions.

PASSED AND ADOPTED by the Town Council of the Town of Paradise on this 13th day of February, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: _____
Ronald Lassonde, Mayor

ATTEST:

Dina Volenski, CMC, Town Clerk

APPROVED AS TO FORM:

Scott E. Huber, Town Attorney

DESIGN-BUILD CONTRACT
FOR THE
TOWN OF PARADISE SEWER PROJECT

between

THE TOWN OF PARADISE

and

MOUNTAIN CASCADE, INC.

Dated

[_____, 2024]

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DESIGN-BUILD CONTRACT
FOR THE
TOWN OF PARADISE SEWER PROJECT

THIS DESIGN-BUILD CONTRACT (“Design-Build Contract”) is entered into on [_____, 2024] between the TOWN OF PARADISE (the “Town”), a municipal corporation organized and existing and by virtue of the laws of the State of California and MOUNTAIN CASCADE, INC., a corporation organized and existing under the laws of the State of California (the “Design-Builder”).

RECITALS

WHEREAS, the Town is the largest town in California that relies solely on septic systems for the treatment and disposal of its wastewater. Prior to the Camp Fire in 2018, the Town struggled to support a thriving economy, in part due to the lack of a municipal sewer system.

WHEREAS, for more than 50 years, the Town pursued a municipal solution for wastewater treatment to address failed septic systems that degraded local groundwater quality and constrained affordable housing, essential community services, and related economic growth. Economically, the lack of a sewer system suppressed the development of a sustainable business community by limiting the size and types of businesses that could affordably operate in the community. Development of affordable housing and workforce housing also was hindered, as larger housing facilities require more sewer treatment capacity than a traditional septic system can provide within the available parcel sizes.

WHEREAS, on November 8, 2018, the Camp Fire severely impacted the Town. More than 26,000 Town residents were displaced; 90 percent of structures in the Town, including more than 11,000 homes and 1,000 businesses, were burned to the ground; and, most tragically, 85 people lost their lives. The 2018 Camp Fire affected the Town’s business and management operations, as resources were redirected toward recovery, which delayed further development of a municipal wastewater solution for the Town. Concurrently, many private septic systems were found to be damaged by the fire, which further compounded the pre-fire sewer needs. These additional impacts from the Camp Fire constrained affordable housing, essential community services, overall economic growth and rebuild efforts. The Town embarked on the rebuild while continuing to seek municipal sewer treatment options.

WHEREAS, the Town plans to construct the Paradise Sewer Project (as more particularly defined herein, the “Project”) to establish a municipal sewer system for the Town, as well as connection to the City of Chico Water Pollution Control Plant (as more particularly defined herein, the “Chico WPCP”) for regional treatment of the Town’s wastewater. The project includes three distinct components to serve approximately 1,400 parcels within the Sewer Service Area: a core sewer collection system in the Town, an 18-mile sewer export pipeline system to convey wastewater to the Chico WPCP, and the sewer pipeline connection to the Chico WPCP.

WHEREAS, the Town has determined that it is in the Town’s best interests to contract with a private entity to design and construct the Project using the progressive design-build project delivery method in accordance with Chapter 4.1 of Part 3 of Division 2 (Section 22170 et seq.) of the California Public Contract Code (the “Enabling Law”);

WHEREAS, pursuant to the Enabling Law, the Town issued a Request for Qualifications for Progressive Design-Build Services for the Paradise Sewer Project, Town of Paradise Project Number: CIP-9394, Federal Aid Project Number: 18-DRINFRA-18009, Town of Paradise, Public Works Department, 5555 Skyway, Paradise, CA 95969, No. RFQ

2023-9394-01, on October 30, 2023 (as amended by addenda issued on November 13, 2023, November 21, 2023 and November 30, 2023 (the “RFQ”), in order to select the design-build entity whose statement of qualifications would be evaluated and determined to be the most advantageous to the Town based upon the evaluation criteria set forth in the RFQ;

WHEREAS, statements of qualifications submitted in response to the RFQ were received on December 15, 2023, from seven entities, including the Design-Builder;

WHEREAS, the Town’s selection committee engaged in a comprehensive evaluation of the competing statements of qualifications in accordance with the evaluation factors and selection criteria set forth in the RFQ;

WHEREAS, the Town’s selection committee determined that the statement of qualifications submitted by the Design-Builder was the most advantageous to the Town considering the evaluation factors set forth in the RFQ, subject to the negotiation of an acceptable contract;

WHEREAS, on [_____, 2024], the Town Council adopted Resolution Number [_____] authorizing the execution and delivery of this Design-Build Contract;

WHEREAS, the Project will be designed and constructed by the Design-Builder pursuant to the terms of this Design-Build Contract and the appendices attached hereto; and

WHEREAS, the Town desires to receive, and the Design-Builder desires to provide design and construction services under the terms of this Design-Build Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

“Additional Preliminary Services” means the Phase 1a Additional Preliminary Services and the Phase 1b Additional Preliminary Services.

“Affiliate” means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Anticipated Design-Build Period Work Cost Schedule” means the detailed, itemized list of prices and costs that establishes the value of each part or component of the Design-Build Period Work, to be developed by the Design-Builder in accordance with the Contract Standards, and to serve as the basis for tracking contingency and line item savings of the Design-Build Price during the Design-Build Period.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Design-Build Contract and identified as such in the table of contents to this Design-Build Contract.

“Applicable Law” means:

- (1) Any federal, state, Town or local law, statute, ordinance, code, rule or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction;
- (3) Any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable;
- (4) Any Governmental Approval; and
- (5) Any consent order or decree, settlement agreement or similar agreement between the Town and any Governmental Body;

in each case having the force of law and applicable from time to time, over the Project, the Contract Obligations or any other transaction contemplated hereby.

“Approved Subcontractors” means the subcontractors identified in Appendix 11 (Key Personnel and Approved Subcontractors).

“Archaeological Construction Monitoring, Mitigation and Preservation Plans” means the archaeological construction monitoring, mitigation and preservation plans to be developed by the Design-Builder as part of the Phase 1b Preliminary Services in accordance with the Contract Standards and required to comply with CEQA and NEPA in accordance with Section 4.3 (Environmental Review).

“Base Guaranteed Maximum Price” means the initial amount approved by the Town as the Guaranteed Maximum Price pursuant to Appendix 8 (Design-Build Price).

“Base Guaranteed Maximum Price Adjustment” means an adjustment to the Base Guaranteed Maximum Price made in accordance with and subject to the terms and conditions of Appendix 8 (Design-Build Price).

“Base Preliminary Services” means the Phase 1a Base Preliminary Services and the Phase 1b Base Preliminary Services.

“Baseline Cost Model” means the cost model to be prepared by the Design-Builder and included in or submitted no later than thirty (30) days following delivery of the Basis of Design Report pursuant to the Phase 1a Base Preliminary Services set forth in Appendix 2 (Preliminary Services).

“Baseline Date” means the Contract Date; except that:

- (1) With respect to any Design-Build Work authorized pursuant to an Early Work Package Amendment, the Baseline Date shall mean the Early Work Package Amendment Date; and
- (2) Upon the execution and delivery of a GMP Amendment, the Baseline Date shall mean the GMP Amendment Date.

“Baseline Design Documents” means the Specifications, Drawings, and other technical requirements for the performance of the Design-Build Work developed by or on behalf of the Design-Builder through the performance of the Preliminary Services and established in any Early Work Package Amendment or GMP Amendment, as applicable and including the Technical Standards set forth in Appendix 4 (Baseline Design Documents) hereto.

“Baseline Design Requirements Change” means a change to the Baseline Design Documents made by a Change Order pursuant to Section 6.8 (Changes to the Baseline Design Documents at Design-Builder Request), Section 6.9 (Other Changes to the Baseline Design Documents) or a Work Change Directive pursuant to Section 6.11 (Work Change Directives):

- (1) As a result of a Design-Builder request agreed to by the Town;
- (2) Due to Uncontrollable Circumstances;
- (3) As a result of a term or condition imposed by a Governmental Body; or
- (4) At the direction of the Town.

“Baseline Design and Construction Phasing Plan and Schedule” means the non-guaranteed schedule so designated to be prepared by the Design-Builder and included in or submitted no later than thirty (30) days following delivery of the Basis of Design Report pursuant to the Phase 1a Base Preliminary Services set forth in Appendix 2 (Preliminary Services).

“Basis of Design Report” or **“BODR”** means the report so designated to be prepared by the Design-Builder pursuant to the Phase 1a Base Preliminary Services set forth in Appendix 2 (Preliminary Services).

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. “Bankruptcy Law” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Books and Records” has the meaning specified in Section 9.10(A) (Books and Records).

“Business Day” means a day other than a Saturday, Sunday or an official the Town holiday.

“Butte County” means the County of Butte, a political subdivision of the State.

“Caltrans” means the California State Department of Transportation.

“Caltrans Requirements” means the written and oral requirements of Caltrans regarding construction of the Project below Highway 99.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“CEQA” means the California Environmental Quality Act of 1970, California Public Resources Code Section 21000 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of the Design-Builder:

(1) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Baseline Date, unless such Applicable Law was on or prior to the Baseline Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(2) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the order or judgment of any Governmental Body issued on or after the Baseline Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Baseline Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the denial of an application for, a delay in review, issuance or renewal of, or the suspension, termination or interruption of any Town Managed Governmental Approvals, or the imposition of a term, condition or requirement on or after the Baseline Date in connection with the issuance, renewal or failure of issuance or renewal of any Town Managed Governmental Approval, to the

extent such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a “Change in Law”:

(1) Acts, events and circumstances with respect to Town Managed Governmental Approvals to the extent the Design-Builder has assumed the permitting risk under Section 6.5 (Permitting Responsibilities and Schedule);

(2) Any Change in Law relating to Taxes other than a change in law pertaining to state sales Taxes or tariffs on materials and equipment incorporated in the Project;

(3) A change in the severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law that was in effect as of the Contract Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Baseline Date;

(5) Any Change in Law (including the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Design-Builder than are imposed by the Contract Standards in effect as of the Baseline Date;

(6) Any event that affects generally applicable working conditions or standards that is not specific to the wastewater pipeline construction industry or the Project; or

(7) Acts, events and circumstances with respect to Design-Builder Managed Governmental Approvals to the extent the Design-Builder has assumed the permitting risk under Section 6.5 (Permitting Responsibilities and Schedule).

“**Change Order**” means a written order issued by the Town and agreed to in writing by the Design-Builder prior to Final Completion making a Baseline Design Requirements Change, a Base Guaranteed Maximum Price Adjustment, adjustment to the Scheduled Substantial Completion Date or any other change to the terms and conditions of the Contract Documents. A Change Order shall be deemed to constitute a Contract Amendment.

“**Chico WPCP**” means the City of Chico’s Water Pollution Control Plant.

“**Chico WPCP Connection**” means the sewer pipeline connection from the Export Pipeline System to the Chico WPCP at its Influent Sewer Junction Box A.

“**Chico WPCP Connection Site**” means the site where the Chico WPCP Connection will be located pursuant to the Baseline Design Documents.

“**City of Chico**” means the City of Chico, California, a municipal corporation organized and existing and by virtue of the laws of the State.

“Construction” means that part of the Design-Build Work consisting of the construction of the Project as required by the Contract Documents, including furnishing, installing or incorporating Supplies into the Project.

“Construction Commencement Date” means the date, following satisfaction of the Construction Commencement Date Conditions by the Design-Builder, upon which the Design-Builder shall have the right to proceed with the Construction of the Project, as determined in accordance with Section 6.1(A)(1) (Notice to Proceed).

“Construction Commencement Date Conditions” has the meaning specified in Section 6.2(A) (Construction Commencement Date Generally).

“Construction Phasing Plan” means the Design-Builder’s plan for Construction sequencing site access, to be developed as part of the Phase 1b Preliminary Services in accordance with the requirements set forth in Appendix 2 (Preliminary Services).

“Contaminated Media Management Plan” means the Design-Builder’s plan for the management of contaminated soils and groundwater, to be developed as part of the Phase 1b Preliminary Services in accordance with the Contract Standards and required to comply with CEQA and NEPA in accordance with Section 4.3 (Environmental Review).

“Contract Administration Memorandum” has the meaning specified in Section 17.4(B) (Contract Administration Memoranda).

“Contract Amendment” has the meaning specified in Section 17.5(A) (Amendments Generally).

“Contract Compensation” means the Preliminary Services Fee and the Design-Build Price.

“Contract Date” means the date this Design-Build Contract is executed and delivered by the parties hereto.

“Contract Documents” means:

- (1) This Design-Build Contract and all Appendices;
- (2) Any amendments to the Design-Build Contract including the GMP Amendment and any Early Work Package Amendment;
- (3) The Baseline Design Documents;
- (4) Any Change Order, Work Change Directive or other Contract Amendment;
- (5) Any Notice to Proceed;
- (6) Any Contract Administration Memoranda; and
- (7) The Issued for Construction Drawings and Specifications.

“Contract Obligations” means everything required to be furnished and done for and relating to the Design-Build Work and the Warranty Work pursuant to the Contract Documents.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Baseline Design Documents;
- (3) The Substantial Completion Standards;
- (4) Good Engineering and Construction Practice;
- (5) The Insurance Requirements;
- (6) All plans required to be developed by the Design-Builder pursuant to the requirements of this Design-Build Contract;
- (7) All applicable requirements of the Grants, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines); and
- (8) the Quality Management Plan;
- (9) the Health and Safety Plan;
- (10) the Operations and Maintenance Manual; and
- (11) Any other standard, term, condition or requirement specifically provided in the Contract Documents to be observed by the Design-Builder.

Section 1.2(R) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards.

“Core Collection System” means the wastewater pipelines (including connections beginning at the property lines and trunkline) for the collection of wastewater from the properties located in the Sewer Service Area to the Export Pipeline System, including all related structures, lift stations, pipes, valves and equipment, as generally described in Appendix 1 (Project and Project Sites) and more particularly described in the Baseline Design Documents, to be designed, constructed, and tested by the Design-Builder in accordance with the Contract Documents.

“Core Collection System Rights of Way” means the right of access to the real property, as generally described in Appendix 1 (Project and Project Sites) and more particularly described in the Baseline Design Documents, on or under which the Core Collection System are to be constructed by the Design-Builder.

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 9.8 (Cost Substantiation).

“Deliverable Material” means the Preliminary Services Deliverable Material and the Design-Build Period Work Deliverable Material.

“Design-Build Contract” means this Design-Build Contract for the Town of Paradise Sewer Project between the Design-Builder and the Town, including the Appendices and all other Contract Documents, as the same may be amended or modified from time to time in accordance herewith.

“Design-Build Period” means the period from and including the GMP Amendment Date (or with respect to any Design-Build Work authorized pursuant to an Early Work Package Amendment, the applicable Early Work Package Amendment Date) through the date Final Completion is achieved.

“Design-Build Period Costs” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Build Period Work” means all Design-Build Work performed by the Design-Builder hereunder on and after (1) the GMP Amendment Date and (2) the Early Work Package Amendment Date in connection with any Early Work Package.

“Design-Build Period Work Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to the Town in the performance of the Design-Build Period Work pursuant to this Design-Build Contract, including the Final Design Documents.

“Design-Build Period Work Schedule” means the Design-Builder’s critical path method completion schedule for the performance of the Design-Build Period Work, as set forth as an attachment to Appendix 5 (General Design-Build Work Requirements) on the GMP Amendment Date and as updated and maintained by the Design-Builder in accordance with Section 6.1(F) (Design-Build Period Work Schedule and Reports).

“Design-Build Price” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Build Work” means everything required to be furnished and done for and relating to the design and construction of the Project pursuant to the Contract Documents. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder’s design, engineering, permitting, procurement, construction, Testing, and related obligations with respect to the construction of the Project under the Contract Documents, including all completed structures, assemblies, fabrications, acquisitions and installations, all testing, and all of the Design-Builder’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under the Contract Documents pertaining to such obligations. Design-Build Work includes the Preliminary Services, all work performed pursuant to Early Work Package Amendments, the Design-Build Period Work and the Warranty Work. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and shall include all Design-Build Work authorized by Change Order or Work Change Directive.

“Design-Builder” means Mountain Cascade, Inc., a corporation organized and existing under the laws of the State of California, and its permitted successors and assigns.

“Design-Builder Contingency” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Builder Contract Representative” has the meaning specified in Section 17.6(A) (Design-Builder Contract Representative and Senior Supervisors).

“Design-Builder Fault” means:

- (1) A breach by the Design-Builder of any of its obligations under this Design-Build Contract;
- (2) A breach of any representation or warranty made by the Design-Builder under this Design-Build Contract;
- (3) Willful misconduct of the Design-Builder or any other Design-Builder Person; or
- (4) A negligent act or omission of the Design-Builder or any other Design-Builder Person.

“Design-Builder Fee” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Builder Managed Governmental Approvals” means the Governmental Approvals other than the Town Managed Governmental Approvals. The Design-Builder Managed Governmental Approvals are those Governmental Approvals for which the Design-Builder is the application manager, as designated in Appendix 3 (Governmental and Non-Governmental Approvals).

“Design-Builder Managed Non-Governmental Approvals” means the Non-Governmental Approvals other than the Town Managed Non-Governmental Approvals. The Design-Builder Managed Non-Governmental Approvals are those Non-Governmental Approvals for which the Design-Builder is the application manager, as designated in Table A3-2 in Appendix 3 (Governmental and Non-Governmental Approvals).

“Design-Builder Person” means each of the following:

- (1) The Design-Builder;
- (2) Any director, officer, employee or agent of the Design-Builder in each case acting as such;
- (3) Any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Design-Builder, in any such person’s capacity as a provider of services directly or indirectly to the Design-Builder in connection with the Project; and
- (4) Anyone for whose acts any of the foregoing may be legally or contractually liable in connection with this Design-Build Contract, including officers, directors, employees, representatives, agents, consultants, and contractors.

“Design Professional Services” means that part of the Design-Build Work consisting of the preparation of plans, drawings and specifications for the Project by licensed professional engineering, architectural and land surveying firms, as well as all other services required to be performed by licensed design professionals as part of the Design-Build Work for the design and engineering of the Project, including professional engineering, architectural and land surveying services.

“Design Professional Services Firm” means any person providing Design Professional Services.

“Differing Site Conditions” means (a) actual subsurface or latent physical subsurface conditions along the Core Collection System Rights of Way, along the Export Pipeline System Rights of Way or at the Transition Chamber Site or the Flow Control and Metering Structure Site that differ materially from those indicated in the Reference Documents or those documents prepared by the Design-Builder as part of the Preliminary Services (including the Basis of Design Report), or (b) unknown physical subsurface conditions at the of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character required herein; provided, however, that the term “Differing Site Conditions” excludes: (1) conditions of which the Design-Builder had actual or constructive knowledge as of the Baseline Date (including through review of the Reference Documents and those documents prepared by the Design-Builder as part of the Preliminary Services as well as conditions that are evident from the location, topography and nature of the Project Sites); and (2) conditions that should have been discovered through a reasonable investigation performed prior to the Baseline Date and through the geotechnical, hydrogeology, and contaminated soil and water management work required to be performed by the Design-Builder as part of the Preliminary Services.

“Document Management Plan” means the Design-Builder’s plan for document management in implementing the Phase 1b Preliminary Services and the Design-Build Period Work to be developed as part of the Phase 1a Preliminary Services in accordance with Appendix 2 (Preliminary Services).

“Drawings” means drawings, diagrams, illustrations, schedules and other data that show the scope, extent, and character of the Design-Build Work, as prepared by or on behalf of the Design-Builder.

“Early Work Package” has the meaning specified in Section 5.6(A) (Early Work Packages).

“Early Work Package Amendment” has the meaning specified in Section 5.6(A) (Early Work Packages).

“Early Work Package Amendment Date” means the date that an Early Work Package Amendment is executed and delivered by the parties.

“Early Work Package Price” means the price established in any Early Work Package for the portion of the Design-Build Work to be performed thereunder.

“Early Work Package Submittal” has the meaning specified in Section 5.6(A) (Early Work Packages).

“Encumbrances” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“Engineer-of-Record” means the professional engineer licensed in the State in good standing who is designated by the Design-Builder and acceptable to the Town, acting reasonably, as the engineer responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to all or a portion of the Design-Build Work.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“Environmental Mitigation Measures” means any environmental mitigation measures set forth in, or required in connection with, a Governmental Approval.

“Event of Default” means, with respect to the Design-Builder, those items specified in Section 12.2 (Events of Default by the Design-Builder) and, with respect to the Town, those items specified in Section 12.5 (Events of Default by the Town).

“Expiration Date” means the last day of the Warranty Period.

“Export Pipeline System” means the 18-mile-long export pipeline system to convey wastewater from the Core Collection System to the Chico WPCP, including all related structures, pipes, valves and equipment, as generally described in Appendix 1 (Project and Project Sites) and more particularly described in the Baseline Design Documents, to be designed, constructed, and tested by the Design-Builder in accordance with the Contract Documents. The Export Pipeline System will include the Ridge Gravity Section, the Gravity Force Main Section, the Transition Chamber and the Flow Control and Metering Structure.

“Export Pipeline System Rights of Way” means the right of access to the real property, as generally described in Appendix 1 (Project and Project Sites) and more particularly described in the Baseline Design Documents, on or under which the Export Pipeline System are to be constructed by the Design-Builder.

“Extension Period” means 60 days following the Scheduled Substantial Completion Date.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Federal Agencies” means (a) the California Department of Housing and Urban Development; (b) the California Department of Housing and Urban Development; and (c) the California State Water Resources Control Board.

“Federal Highway Administration Requirements” means the written and oral requirements of Federal Highway Administration regarding construction of the Project below Highway 99.

“Final Completion” means completion of the Design-Build Work, including all construction of the Project, in compliance with the Contract Documents and the requirements of Section 8.4 (Final Completion).

“Final Design Documents” means the Design-Builder’s plans, technical specifications, drawings, record drawings and other design documents prepared following the GMP Amendment Date (or in connection with any Early Work Package, the applicable Early Work Package Amendment Date) in connection with the Design-Build Period Work, including:

(1) Specifications, Drawings and all other work product generated through the performance of the Design Professional Services following the establishment of the Baseline Design Documents; and

(2) All technical criteria, written descriptions and design data necessary for obtaining Governmental Approvals and performing Construction, such as shop drawings, product data and samples whether or not such documents are required to be prepared by licensed design professionals.

“Flow Control and Metering Structure” means a structure and equipment located therein for the flow control and metering of wastewater, located at or near the Chico WPCP, including all related structures, pipes, valves and equipment, as generally described in Appendix 1 (Project and Project Sites) and more particularly described in the Baseline Design Documents, to be designed, constructed, and tested by the Design-Builder in accordance with the Contract Documents.

“Flow Control and Metering Structure Site” means the site where the Flow Control and Metering Structure will be located pursuant to the Baseline Design Documents.

“General Conditions Costs” has the meaning specified in Appendix 8 (Design-Build Price).

“General Conditions Fee” has the meaning specified in Appendix 8 (Design-Build Price).

“Geotechnical Baseline Report” means the report so designated to be prepared by the Design-Builder pursuant to Preliminary Services set forth in Appendix 2 (Preliminary Services).

“Geotechnical Evaluation Report” means the report so designated to be prepared by the Design-Builder pursuant to Preliminary Services set forth in Appendix 2 (Preliminary Services).

“GMP Amendment” has the meaning specified in Section 5.8(B) (Negotiation and Execution of the GMP Amendment).

“GMP Amendment Date” has the meaning specified in Section 5.8(B) (Negotiation and Execution of the GMP Amendment).

“GMP Submittal” has the meaning specified in Section 5.7 (GMP Submittal).

“GMP Submittal Design Level” means the design of the Project progressed to a level sufficient to permit the Design-Builder to provide the GMP Submittal, as determined by the Town based on information provided by the Design-Builder in the Phase 1a Base Preliminary Services Submittal, and as to be described in an amendment to Appendix 2 (Preliminary Services) to be executed prior to issuance of a Notice to Proceed with any Phase 1b Preliminary Services. [Note: To be agreed to by the parties prior to Phase 1b Base Preliminary Services Amendment.]

“Good Engineering and Construction Practice” means (a) with respect to the design and engineering services performed by the Design-Builder under this Design-Build Contract, those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as meeting the prevailing standard of care ordinarily used by members of the subject profession, having experience with projects similar in scope and complexity and practicing in the State, and (b) with respect to equipping, installation, construction, commissioning and testing services performed by the Design-Builder under this Design-Build Contract, those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good equipping, installation, construction, commissioning and testing practices as observed for water and sewer pipelines, as followed in the State.

“Governmental Approval” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement or approval issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Design-Build Work, including any Town Managed Governmental Approvals and Design-Builder Managed Governmental Approvals.

“Governmental Approval Application Date” means the applicable date set forth in the Governmental and Non-Governmental Approvals Table.

“Governmental and Non-Governmental Approvals Table” means Table A3-1 and A3-2 of Appendix 3 (Governmental and Non-Governmental Approvals) to be developed by the Design-Builder as part of the Phase 1a Preliminary Services in accordance with Appendix 2 (Preliminary Services). [Note: To be completed as part of the Phase 1a Base Preliminary Services.]

“Governmental Body” means any federal, State, Town, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the Town, acting in its governmental capacity other than as a party to this Design-Build Contract), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Design-Build Contract or the Project.

“Grant Requirements” means the written requirements of the Grants relating to the Preliminary Services and the Design-Build Work, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines). As of the Contract Date, the written requirements of any California State Water Resources Control Board grants have not yet been established and therefore are not yet reflected in Appendix 12 (Certain Grant Requirements and Guidelines). The parties intend to update Appendix 12 (Certain Grant Requirements and Guidelines) by Contract Amendment once such written requirements have been established.

“Granting Agencies” means (a) the California Department of Housing and Urban Development; (b) the California Department of Housing and Urban Development; and (c) the California State Water Resources Control Board.

“Grants” means (a) the \$30,000,000 Community Development Block Grant – Disaster Recovery grant from the California Department of Housing and Urban Development; (b) the \$200,000,000 Community Development Block Grant – Disaster Recovery grant from the California Department of Housing and Urban Development, approximately \$16,000,000 of which will be used to pay all amounts under this Design-Build Contract, including the Phase 1a Preliminary Services Fee, the Phase 1b Preliminary Services Fee and the Design-Build Price; and (c) one or more California State Water Resources Control Board grants administered by the Division of Financial Assistance of the California State Water Resources Control Board.

“Gravity Force Main Section” means the second section of the Export Pipeline System anticipated to be approximately 60,150 feet or 11.4 miles long, beginning at the Transition Chamber, dropping 224 feet in elevation and ending at the Flow Control and Metering Structure.

“Guaranteed Maximum Price” has the meaning specified in Appendix 8 (Design-Build Price).

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law, including “hazardous substances” as defined under CERCLA, “hazardous waste” as defined under RCRA and in California Health and Safety Code

Section 25117, and “hazardous material” as defined under US DOT regulations (49 CFR 100-180).

“Health and Safety Plan” means the Design-Builder’s plan for health and safety in implementing, initially, the Phase 1a Preliminary Services including related field work, to be developed as part of the Phase 1a Preliminary Services in accordance with the requirements set forth in Appendices 2 and 5, as updated to become the Design-Builder’s plan for health and safety in implementing the Phase 1b Preliminary Services including related field work, and as further updated to become the Design-Builder’s plan for health and safety in implementing the Design-Build Period Work.

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights or trademarks recognized under Applicable Law.

“Inter-Municipal Agreement” means the Inter-Municipal Agreement, City of Chico Wastewater Treatment Services to the Town of Paradise, approved by the Town Council on February 14, 2023 and approved by the City of Chico City Council February 21, 2023, by and between the City of Chico and the Town, as the same may be amended from time to time in accordance therewith.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance company that has issued a policy of Required Insurance under this Design-Build Contract or by any insurance company that has issued a policy of insurance required to be obtained and maintained by the Town in connection with this Design-Build Contract, compliance with which is a condition to the effectiveness of such policy.

“Issued for Construction Drawings and Specifications” means the Drawings and Specifications which have been accepted by the Town as final Drawings and Specifications for the commencement of Construction of all or any portion of the Design-Build Work.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Design-Build Contract, and all appeals therefrom.

“Lien” means any and every lien against the Project or against any monies due or to become due from the Town to the Design-Builder under this Design-Build Contract, for or on account of the Contract Obligations, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Limited Notice to Proceed” means a written notice issued by the Town Contract Representative authorizing the Design-Builder to proceed with Construction under certain specific terms and conditions pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), in either case as specified in the Limited Notice to Proceed.

“Loss-and-Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, Lien, deposit, Tax, charge, assessment, cost or expense, including all Fees and Costs, relating to third party claims for which the Design-Builder is obligated to indemnify the Town Indemnitees pursuant to this Design-Build Contract.

“Mediator” means any person serving as a third-party mediator of disputes hereunder pursuant to Section 11.1 (Dispute Resolution Procedures).

“Monthly Progress Report” has the meaning specified in Section 4.9 (Monthly Progress Reports).

“NEPA” means the National Environmental Policy Act, 42 U.S.C. 4321 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“NEPA Document” means the categorical exclusion, environmental assessment, finding of no significant impact or environmental impact statement for the Project pursuant to NEPA, in draft and final forms as applicable.

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by Section 11.1 (Dispute Resolution Procedures) for the resolution of any dispute arising under this Design-Build Contract.

“Non-Governmental Approvals” means the UPRR Approval and access approvals and easements from private property owners, including any Town Managed Non-Governmental Approvals and Design-Builder Managed Non-Governmental Approvals.

“Notice of Final Completion” has the meaning set forth in Section 8.4(B) (Notice and Report of Final Completion).

“Notice to Proceed” or **“NTP”** means a written notice issued by the Town Contract Representative authorizing the Design-Builder to commence performing a portion of the Design-Build Work, as specified in the Notice to Proceed.

“Operations and Maintenance Manual” means the manual and related computer programs prepared by the Design-Builder containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Project, developed and maintained as required by Section 6.20 (Operations and Maintenance Manual) and Appendix 5 (General Design-Build Work Requirements). The Operations and Maintenance Manual includes the service manuals describing the operation and maintenance requirements for each equipment system, package and unit incorporated into the Project.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 *et seq.*, including the applicable regulations promulgated thereunder, as amended or superseded from time to time.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

“Owner Representative” means any individual or firm, or team of individuals or firms, under contract with the Town, including subcontractors, and designated by the Town from time to time as part of its management-consulting, engineering or construction management team for purposes of administering this Design-Build Contract on behalf of the Town.

“Payment Bond” means the labor and materials payment bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Payment Request” means a written submission by the Design-Builder in the form approved by the Town and accompanied by all required supporting documentation, requesting payment hereunder of any portion of the Contract Compensation.

“Performance Bond” means the performance bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves in accordance with generally accepted accounting principles;

(2) Any encumbrance arising out of any judgment rendered that is being contested diligently and in good faith by the Design-Builder, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on (a) the ability of the Design-Builder to construct the Project in accordance with this Design-Build Contract or (b) the ability of the Town to utilize the Project;

(3) Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves or bonded against, at the Town’s request;

(4) Servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements or similar items which shall not individually or in the aggregate materially and adversely impair (a) the construction of the Project by the Design-Builder in accordance with this Design-Build Contract or (b) the operation of the Project by the Town;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which individually or in the aggregate do not materially interfere with and adversely affect (a) the construction of the Project by the Design-Builder in accordance with this Design-Build Contract or (b) the utilization of the Project by the Town;

(6) Encumbrances which are created on or before the Contract Date;

(7) Encumbrances which are created by a Change in Law on or after the Contract Date; and

(8) Any encumbrance created by the Town.

“PG&E” means Pacific Gas and Electric Company.

“Phase 1a Additional Preliminary Services” has the meaning specified in Section 5.2(B) (Additional Preliminary Services).

“Phase 1a Base Preliminary Services” means those services designated as Phase 1a Base Preliminary Services in Appendix 2 (Preliminary Services).

“Phase 1a Preliminary Services” means, collectively, the Phase 1a Base Preliminary Services and the Phase 1a Additional Preliminary Services.

“Phase 1a Preliminary Services Fee” has the meaning specified in Section 9.1 (Compensation for Preliminary Services) and Appendix 2 (Preliminary Services).

“Phase 1a Preliminary Services Schedule” has the meaning specified in Section 5.3 (Preliminary Services Schedule).

“Phase 1b Additional Preliminary Services” has the meaning specified in Section 5.2(B) (Additional Preliminary Services).

“Phase 1b Base Preliminary Services” means those services designated as Phase 1b Base Preliminary Services in Appendix 2 (Preliminary Services).

“Phase 1b Base Preliminary Services Submittal” has the meaning specified in subsection 5.1(C) (Phase 1b Base Preliminary Services).

“Phase 1b Base Preliminary Services Amendment” has the meaning specified in Section 5.6(A) (Early Work Packages).

“Phase 1b Base Preliminary Services Amendment Date” has the meaning specified in Section 5.6(A) (Early Work Packages).

“Phase 1b Preliminary Services” means, collectively, the Phase 1b Base Preliminary Services and the Phase 1b Additional Preliminary Services.

“Phase 1b Preliminary Services Fee” has the meaning specified in Section 9.1 (Compensation for Preliminary Services) and Appendix 2 (Preliminary Services).

“Phase 1b Preliminary Services Schedule” has the meaning specified in Section 5.3 (Preliminary Services Schedule).

“Preliminary Design Documents” means the Design-Builder’s plans, technical specifications, drawings and other documents prepared in connection with the Preliminary Services, including the Baseline Design Documents.

“Preliminary Services” means the Base Preliminary Services and the Additional Preliminary Services performed by the Design-Builder hereunder prior to the GMP Amendment Date.

“Preliminary Services Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to the Town in the performance of the Preliminary Services pursuant to this Design-Build Contract, including the Preliminary Design Documents.

“Preliminary Services Fee” means an amount equal to the sum of the Phase 1a Preliminary Services Fee and the Phase 1b Preliminary Services Fee.

“Preliminary Services Period” means the period between the Contract Date and the GMP Amendment Date.

“Preliminary Services Tasks” means the tasks specified in Appendix 2 (Preliminary Services) for Phase 1a Base Preliminary Services or Phase 1b Base Preliminary Services.

“Prime Rate” means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

“Project” means the Core Collection System, the Core Collection System Rights of Way, the Export Pipeline System, the Export Pipeline System Rights of Way, the Transition Chamber Site, the Flow Control and Metering Structure Site, the Chico WPCP Connection and all Contract Obligations required to be performed under the Contract Documents.

“Project Management Plan” means the Design-Builder’s plan for project management in implementing the Phase 1b Preliminary Services and the Design-Build Period Work to be developed as part of the Phase 1a Preliminary Services in accordance with Appendix 2 (Preliminary Services).

“Project Manager” has the meaning specified in Section 7.1(A) (Project Manager).

“Project Schedule” means the Phase 1a Preliminary Services Schedule, the Phase 1b Preliminary Services Schedule and the Design-Build Period Work Schedule.

“Project Sites” means the Core Collection System Rights of Way, the Export Pipeline System Rights of Way, the Transition Chamber Site, the Flow Control and Metering Structure Site and the Chico WPCP Connection Site.

“Project Warranties” has the meaning specified in Section 10.1(A) (Project Warranties Defined).

“Punch List” has the meaning specified in Section 6.21(A) (Punch List Requirements).

“Quality Management Plan” means the Design-Builder’s plan for quality assurance and quality control in implementing, initially, the Phase 1a Preliminary Services, to be developed as part of the Phase 1a Preliminary Services in accordance with Appendix 2 (Preliminary Services), as updated to become the Design-Builder’s plan for quality assurance and quality control in implementing the Phase 1b Preliminary Services, and as further updated to become the Design-Builder’s plan for quality assurance and quality control in implementing the Design-Build Period Work.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Reference Documents” means the documents listed as reference documents in Appendix 1 (Project and Project Sites) Table A1-1 to this Design-Build Contract.

“Regulated Site Condition” means, and is limited to:

- (1) The presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law;
- (2) The presence anywhere in, on or under the Project Sites of historical, archaeological, religious architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity that are regulated by Applicable Law;
- (3) The presence anywhere in, on or under the Project Sites on the Baseline Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances; and

(4) The presence of Regulated Substances in environmental media anywhere in, on or under the Project Sites (including presence in surface water, groundwater, soils or subsurface strata), but not including Regulated Substances used, stored or otherwise brought to the Project Sites by the Design-Builder or any Subcontractor as provided in Section 6.4(A) (Design-Builder Responsibilities).

“Regulated Substance” means:

- (1) Any oil, petroleum or petroleum product; and
- (2) Any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials.

“Related Projects” has the meaning specified in Section 6.13(B) (Related Projects Generally).

“Relief Request Notice” has the meaning specified in Section 14.2(C) (Submittal of Relief Request).

“Request for Qualifications” or **“RFQ”** means the Town’s Request for Qualifications for Progressive Design-Build Services for the Paradise Sewer Project, Town of Paradise Project Number: CIP-9394, Federal Aid Project Number: 18-DRINFRA-18009, Town of Paradise, Public Works Department, 5555 Skyway, Paradise, CA 95969, No. RFQ 2023-9394-01, on October 30, 2023, as amended.

“Required Insurance” means the insurance policies and coverage required to be provided by the Design-Builder under this Design-Build Contract, as set forth in Section 13.1 (Insurance) and Appendix 10 (Insurance Requirements).

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) Is disbarred, suspended, or otherwise disqualified from federal, State, or Town contracting for any services similar in nature to the Contract Obligations;
- (2) Was or is subject to any material claim of the United States, State, or Town in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the Town’s view, in either case, be reasonably likely to materially affect the ability of the Design-Builder to perform its obligations under this Design-Build Contract;
- (3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanor) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;
- (4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

“Ridge Gravity Section” means the first section of the Export Pipeline System anticipated to be approximately 35,700 feet or 8.8 miles long, beginning at the southwest edge of the Town, dropping about 1,070 in elevation and ending at the Transition Chamber.

“Safety Manager” has the meaning specified in Section 6.16(A) (Safety Manager).

“Scheduled Substantial Completion Date” means the date which is [____] days following the GMP Amendment Date, as such Scheduled Substantial Completion Date may be adjusted in accordance with Section 14.4 (Schedule Relief and Related Price Relief). [Note: To be negotiated as part of the GMP Amendment.]

“Security Instruments” means the Performance Bond and the Payment Bond.

“Senior Supervisors” has the meaning specified in Section 17.6(A) (Design-Builder Contract Representative and Senior Supervisors).

“Separate Contractor” means any person or entity under contract with the Town for the performance of work associated with the Related Projects or under contract with a non-Town owner to perform work at the Project Sites.

“Shared Savings Amount” has the meaning specified in Appendix 8 (Design-Build Price).

“Sewer Service Area” means the Town’s sewer service area as depicted in Appendix 1 (Project and Project Sites).

“Specifications” means the documents prepared by or on behalf of Design-Builder comprising written technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Design-Build Work and certain administrative details applicable thereto.

“Specified Project Risk Contingency” means the amount that the Town has included in the Base Guaranteed Maximum Price to address certain Design-Builder assumed risks as set forth in Appendix 8 (Design-Build Price).

“State” means the State of California.

“Statement of Qualifications” means the statement of qualifications submitted by the Design-Builder on December 15, 2023, in response to the RFQ.

“Subcontract” means any contract entered into by the Design-Builder, or a Subcontractor of the Design-Builder of any tier, with one or more persons in connection with the carrying out of the Design-Builder’s obligations under this Design-Build Contract, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise, including contracts for Construction, Design Professional Services and Supplies.

“Subcontracting Plan” means the Design-Builder’s plan for entering into Subcontracts, to be developed as part of the Phase 1b Preliminary Services in accordance with the requirements set forth in Appendix 2 (Preliminary Services) and the attachment to Appendix 11 (Key Personnel and Approved Subcontractors) and finalized on the GMP Amendment Date in accordance with Section 7.4(C) (Subcontracting Plan).

“Subcontractor” means any person, other than the Design-Builder, that enters into a Subcontract, including Construction Subcontractors, Design Professional Services Firms and Suppliers.

“Substantial Completion” means demonstration by the Design-Builder in accordance with Article 8 (Substantial Completion and Final Completion) and Appendix 9 (Substantial Completion and Final Completion) that the Project has met all of the Substantial Completion Conditions, as certified by the Design-Builder pursuant to Section 8.1(A) (Substantial Completion Date Conditions) and agreed to by the Town pursuant to Section 8.2(A) (Substantial Completion Date Concurrence).

“Substantial Completion Date” means the date on which Substantial Completion of the Project occurs or is deemed to have occurred under Article 8 (Substantial Completion and Final Completion).

“Substantial Completion Date Conditions” means the preconditions for the achievement of Substantial Completion by the Design-Builder, as set forth in Section 8.1 (Substantial Completion Date Conditions).

“Supplier” means a manufacturer, distributor, materialman, fabricator, vendor or other supplier having a Subcontract to furnish Supplies.

“Supplies” means materials, equipment or other supplies furnished in connection with the Design-Build Work.

“Surety” means the surety company issuing the Performance Bond, the Payment Bond, as applicable.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“Technical Standards” means the technical standards applicable to design and testing for the Project set forth in Appendix 4 (Baseline Design Documents) hereto.

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Date” means the last day of this Design-Build Contract resulting from a termination under any provision hereof.

“Town” means the Town of Paradise, California, a municipal corporation organized and existing and by virtue of the laws of the State.

“Town Allowance” means the amount that the Town has included in the Guaranteed Maximum Price to address Uncontrollable Circumstances as set forth in Section 8.8 of Appendix 8 (Design-Build Price).

“Town Contract Representative” has the meaning specified in Section 17.6(B) (Town Contract Representative).

“Town Fault” means any breach (including the untruth or breach at the time made of any Town representation or warranty herein set forth), failure, non-performance or non-compliance by the Town under this Design-Build Contract with respect to its obligations and responsibilities under this Design-Build Contract to the extent not directly attributable to

any Uncontrollable Circumstance and which materially and adversely affects the Design-Builder's rights, obligations or ability or costs to perform under this Design-Build Contract.

"Town Indemnitee" has the meaning specified in Section 15.1 (Design-Builder's Obligation to Indemnify).

"Town Managed Governmental Approvals" means those Governmental Approvals for which the Town is the application manager, as designated in Appendix 3 (Governmental and Non-Governmental Approvals). [Note: For purposes in addition to Uncontrollable Circumstances, we can revisit.]

"Town Managed Non-Governmental Approvals" means those Non-Governmental Approvals for which the Town is the application manager, as designated in Table A3-2 in Appendix 3 (Governmental and Non-Governmental Approvals).

"Town Property" means any structures, improvements, equipment, or other real or personal property owned, leased, operated, maintained, or occupied by the Town.

"Traffic Control Plan" means the Design-Builder's plan for traffic control, to be developed as part of the Design-Build Period Work in accordance with the requirements set forth in Appendix 2 (Preliminary Services). The Traffic Control Plan shall include the traffic control requirements of all applicable jurisdictions, including, without limitation, Butte County, the City of Chico, Caltrans and UPRR.

"Transaction Form" means any of the transaction forms identified in the table of contents to this Design-Build Contract.

"Transition Chamber" means the chamber that provides the necessary transition of the wastewater flow from the steep Ridge Gravity Section to the Gravity Force Main Section that runs along the flatter portions of the valley floor, connecting the Gravity Force Main Section to the Chico WPCP.

"Transition Chamber Site" means the site where the Transition Chamber will be located pursuant to the Baseline Design Documents.

"Unallowable Costs" has the meaning specified in Appendix 8 (Design-Build Price).

"Uncontrollable Circumstance" means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of the party under this Design-Build Contract, and (2) materially expands the scope, interferes with, delays or increases the cost of performing the party's obligations under this Design-Build Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Design-Build Contract on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include the following:

(a) A Change in Law;

(b) The existence of Differing Site Conditions, as and to the extent provided in Section 6.3 (Differing Site Conditions) but subject to the limited relief set forth in Section 6.3(D) (Relief for Differing Site Conditions);

- (c) The existence of a Regulated Site Condition, as and to the extent provided in Section 6.4 (Regulated Site Conditions) but subject to the limited relief set forth in Section 6.4(E) (Uncontrollable Circumstance Relief);
- (d) Acts, events or circumstances associated with the Separate Contractors, as and to the extent provided in Section 6.13(C) (Interrelated Work);
- (e) Naturally occurring events, including unusually severe and abnormal climatic conditions (as determined in accordance with Section 14.5 (Unusually Severe and Abnormal Climatic Events)), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
- (f) Explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (g) Labor disputes or actions, except labor disputes or actions involving employees of the Design-Builder, its Affiliates, or Subcontractors, which affect the performance of the Design-Build Work;
- (h) The failure of any Subcontractor (other than the Design-Builder or any Affiliate of the Design-Builder) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly, and the Design-Builder is not able after exercising all reasonable efforts to timely obtain replacements;
- (i) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;
- (j) An act, event or circumstance occurring outside of the United States only to the extent that such act, event or circumstance (i) directly impacts the Design-Builder's foreign Suppliers or vendors with respect to the performance of the Design-Build Work, and (ii) would otherwise constitute an Uncontrollable Circumstance affecting the Design-Builder directly, as determined in accordance with Article 14 (Uncontrollable Circumstances);
- (k) Failure of Utilities to perform any relocation work identified in the Utility Relocation Plan in a timely manner following reasonable notice provided that reasonable notice shall at a minimum be [____] days;
- (l) With respect to the Design-Builder, any Town Fault or a Change Order not made due to Design-Builder Fault;
- (m) With respect to the Town, any Design-Builder Fault;
- (n) The addition of any new federal or state project funding requirements that did not exist as of the GMP Submittal; or
- (o) Any other act, event or circumstance specifically identified herein as providing a basis for Uncontrollable Circumstance relief.
- (2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

- (a) Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
- (b) Changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, labor availability, currency values, exchange rates or other economic conditions; [Note: Parties to determine whether to provide for escalation of cost of materials prior to GMP Submittal.]
- (c) Changes in the financial condition of the Town, the Design-Builder or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;
- (d) The consequences of error, neglect or omissions by the Design-Builder, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;
- (e) Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Design-Builder of performing the Design-Build Work;
- (f) Except as specifically included as an Uncontrollable Circumstance pursuant to clause (i)(g) of this definition, strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions;
- (g) Weather conditions that do not constitute unusually severe and abnormal climatic conditions (as determined in accordance with Section 14.5 (Unusually Severe and Abnormal Climatic Events));
- (h) Except as specifically provided in Section 6.3 (Differing Site Conditions) and Section 6.4 (Regulated Site Conditions), any surface or subsurface conditions affecting the Project Sites during the Design-Build Period Work;
- (i) Except as specifically provided in the "Inclusions" section of this definition, any act, event, circumstance or Change in Law occurring outside of the United States;
- (j) Mechanical failure of equipment or repair delays to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;
- (k) The failure of the Design-Builder to secure any patent or other Intellectual Property right which is or may be necessary for the performance of the Design-Build Work;
- (l) Acts, events and circumstances with respect to Town Managed Governmental Approvals to the extent the Design-Builder has assumed the permitting risk under Section 6.5 (Permitting Responsibilities and Schedule); or
- (m) Acts, events and circumstances with respect to Design-Builder Managed Governmental Approvals to the extent the Design-Builder has assumed the permitting risk under Section 6.5 (Permitting Responsibilities and Schedule).

"UPRR" means the Union Pacific Railroad.

"UPRR Approval" means the approval required to be granted by UPRR regarding construction of the Project in the UPRR right of way.

“UPRR Requirements” means the written and oral requirements of UPRR relating to the Design-Build Work to be performed near, next to or under the railway owned by UPRR.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Utility Relocation Plan” means the Design-Builder’s plan for utility relocation to be developed as part of the Phase 1b Preliminary Services in accordance with the requirements set forth in Appendix 2 (Preliminary Services).

“Warranty Period” has the meaning specified in Section 10.1(B) (Term of the Project Warranties).

“Warranty Work” means all work and services required to be performed or provided by the Design-Builder pursuant to the Project Warranties in accordance with Article 10 (Project Warranties).

“Wastewater Pipelines” means the wastewater pipes to be designed and installed by the Design-Builder as set forth in Appendix 4 (Baseline Design Documents).

“Work Change Directive” has the meaning specified in Section 6.11 (Work Change Directives).

SECTION 1.2. INTERPRETATION.

This Design-Build Contract shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Design-Build Contract otherwise require:

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include firms, individuals, legal personal representatives, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations, Governmental Bodies and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Design-Build Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereto”, “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Design-Build Contract.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to the Town, Governmental Bodies and Private Persons. Each reference to the Town or a Governmental Body is deemed to include a reference to any successor to the Town or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of the Town or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, innovated or assigned.

(J) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances.

(K) Entire Agreement. This Design-Build Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Design-Build Contract. Without limiting the generality of the foregoing, this Design-Build Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ, the Statement of Qualifications, and any amendments or supplements to any such documents.

(L) Standards of Workmanship and Materials. Any reference in the Contract Documents to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Design-Builder to furnish the same in accordance with the grades and standards therefor indicated in the Contract Documents. Where the Contract Documents do not specify any explicit quality or standard for construction materials or workmanship, the Design-Builder shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials that are specified elsewhere in the Contract Documents, and the Contract Documents are to be interpreted accordingly.

(M) Technical Standards and Codes. References in the Contract Documents to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Baseline Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Baseline Design Documents, and (2) if any material revision occurs, to the Design-Builder’s actual knowledge, after the Baseline

Date, and prior to completion of the applicable Design-Build Work, the Design-Builder shall notify the Town. If so directed by the Town through a Work Change Directive or Change Order, the Design-Builder shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification, subject to the Design-Builder's rights under this Design-Build Contract with respect to Work Change Directives and Change Orders at the direction of the Town.

(N) Causing Performance. A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Design-Build Contract.

(O) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Guaranteed Maximum Price.

(P) Good Engineering and Construction Practice. Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards.

(Q) Interpretation of Contract Documents. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The parties recognize that Contract Amendments, Change Orders and Work Change Directives may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the Contract Amendment, Change Order or Work Change Directive. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by a Contract Amendment, Change Order or Work Change Directive shall remain in effect. Section 1.2(R) (Applicability, Stringency and Consistency of Contract Standards) shall govern matters of interpretation related to the applicability, stringency and consistency of the Contract Documents, the requirements of which are included among the Contract Standards.

(R) Applicability, Stringency and Consistency of Contract Standards. The Design-Builder shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the Design-Builder hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. In the event of any inconsistency among the Contract Standards, the Town's determination, acting reasonably, as to the applicable standard shall be binding.

(S) Delivery of Documents in Digital Format. In the Contract Documents, the Design-Builder is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Design-Builder agrees that all such documents shall be submitted to the Town both in printed form (in the number of copies indicated) and, at the Town's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the Town may reasonably request to facilitate the administration and enforcement of this Design-Build Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(T) Severability. Each provision of this Design-Build Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Design-Build Contract is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Design-Build Contract, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Design-Build Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Design-Build Contract as nearly as possible to its original intent and effect.

(U) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Design-Build Contract to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(V) No Third-Party Rights. This Design-Build Contract is exclusively for the benefit of the Town and the Design-Builder and, except as specifically provided in Article 15 (Indemnification) with respect to the Town Indemnitees and except as specifically provided in Section 17.20 (Rights of Granting Agencies and Federal Agencies) with respect to Granting Agencies and Federal Agencies, shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

(W) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Design-Build Contract. When a party does not have “discretion” it means that the party shall act reasonably.

(X) Counterparts. This Design-Build Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Design-Build Contract.

(Y) Governing Law. This Design-Build Contract shall be governed by and construed in accordance with the applicable laws of the State.

(Z) Defined Terms. The definitions set forth in Section 1.1 (Definitions) shall control in the event of any conflict with any definitions used in the recitals hereto.

(AA) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(BB) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles.

(CC) References to Dollar Amounts. All statements of, or references to, dollar amounts or money, including references to “\$” and “dollars”, are to the lawful currency of the United States of America. All payments required to be made by either party hereunder shall be made in dollars.

(DD) Liquidated Damages. This Design-Build Contract provides for the payment by the Design-Builder of liquidated damages in certain circumstances associated with unexcused delays in achieving Substantial Completion, as and to the extent provided in Section 8.3(C) (Delay Liquidated Damages). Each party agrees that the Town's actual damages in each such circumstance of replacement or unexcused delay would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance of unexcused delay are intended to place the Town in the same economic position as it would have been in had the unexcused delay not occurred. Such liquidated damages shall constitute the only damages payable by the Design-Builder to the Town to compensate the Town for such replacement or for unexcused delays in achieving Substantial Completion by the Scheduled Substantial Completion Date, as applicable, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Design-Build Contract, including the Town's remedies associated with an Event of Default by the Design-Builder under Section 12.2 (Events of Default by the Design-Builder). The parties acknowledge and agree that the additional remedies specifically provided for in this Design-Build Contract are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows:

(1) that the liquidated damages payable under this Design-Build Contract are not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the circumstances of unexcused delay; and

(2) that, in recognition of the acknowledgments above, the Design-Builder is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

(EE) Convenience Termination. The Town may exercise its right of convenience termination under this Design-Build Contract in its discretion. The exercise by the Town of its right of convenience termination under any provision of this Design-Build Contract shall not be deemed a breach of any implied duty of good faith dealing or a Town Event of Default nor shall any damages be payable by the Town on account thereof. The only compensation payable by the Town upon the exercise of its convenience termination option shall be any amounts specified in Section 12.6 (Town Convenience Termination Rights) in connection therewith.

ARTICLE 2

DESIGN-BUILDER REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE DESIGN-BUILDER.

In addition to any other representations and warranties made by the Design-Builder in this Design-Build Contract, the Design-Builder represents and warrants that:

(A) Existence and Powers. The Design-Builder is a corporation, having its principal office at 555 Exchange Court, Livermore, California 94550. Such corporation is duly organized, validly existing and in good standing under the laws of the State and has the authority to do business in the State and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Design-Build Contract.

(B) Due Authorization and Binding Obligation. This Design-Build Contract has been duly authorized, executed and delivered by all necessary corporate action of the Design-Builder and constitutes a legal, valid and binding obligation of the Design-Builder, enforceable against the Design-Builder in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Law or by equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Design-Builder of this Design-Build Contract nor the performance by the Design-Builder of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the Design-Builder of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Design-Builder or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Design-Builder or any of its Affiliates is a party or by which the Design-Builder or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Commitments Limiting Ability to Perform Contract Obligations. The Design-Builder has no commitments, obligations, or impediments of any kind that would have a material and adverse impact on the ability of the Design-Builder to perform the Contract Obligations in accordance with the Contract Standards. The Design-Builder covenants that it will not enter into any such commitment throughout the Term.

(E) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Design-Build Contract by the Design-Builder except as such have been duly obtained or made.

(F) Licensing and Registration Requirements. The Design-Builder possesses all licenses required under Applicable Law to perform all services required of the Design-Builder under this Design-Build Contract and is not in violation of any of the terms or conditions of such licenses. The Design-Builder is registered with all appropriate Governmental Bodies to the extent necessary to perform all services required of the Design-Builder under this Design-Build Contract.

(G) No Litigation. There is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending or, to the best of the Design-Builder's knowledge after due inquiry, overtly threatened or publicly announced against the Design-Builder, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Design-Build Contract by the Design-Builder or the validity, legality or enforceability of this Design-Build Contract against the Design-Builder, or any other agreement or instrument entered into by the Design-Builder in connection with the transactions contemplated hereby, or on the ability of the Design-Builder to perform its obligations hereunder or under any such other agreement or instrument.

(H) Claims and Demands. There are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the Design-Builder or any of its Affiliates with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates that would have a material and adverse effect upon the ability of the Design-Builder to perform the Contract Obligations.

(I) Applicable Law Compliance. To the best of its knowledge after due inquiry, the Design-Builder and its Affiliates have no material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates.

(J) Information Supplied by the Design-Builder. The information supplied and representations and warranties made by the Design-Builder in all submittals made in response to the RFQ with respect to the Design-Builder (and to its knowledge after due inquiry, all information supplied in such submittals with respect to any Affiliate or Subcontractor) are true, correct and complete in all material respects.

(K) Intellectual Property. The Design-Builder owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any material conflict with the rights of others.

(L) Practicability of Performance. Subject to, and in accordance with, the terms of this Design-Build Contract, the Design-Builder assumes the risk of the practicability and possibility of performance of the Contract Obligations in compliance with the requirements of the Contract Standards on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Contract Compensation.

(M) Required Insurance. Concurrently with the execution of this Design-Build Contract, the Design-Builder has provided the Town with certificates of insurance for all Required Insurance specified in Appendix 10 (Insurance Requirements) to be in effect as of the Contract Date. The Required Insurance is in compliance with the requirements of Section 13.1 (Insurance).

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Design-Build Contract shall become effective, and the term hereof (the “Term”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Design-Build Contract is earlier terminated by either party in accordance with their respective termination rights under Article 12 (Breach, Default, Remedies and Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Design-Build Contract shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Design-Build Contract, this Section and the following provisions hereof shall survive the expiration or any earlier termination of this Design-Build Contract:

(1) Article 2 (Design-Builder Representations and Warranties);

(2) Section 4.8 (Ownership and Use of Documents and Information);

(3) Section 5.8(F) (Elective Continuance of the Project by the Parties on Other Bases);

(4) Section 5.8(G) (Elective Continuance of the Project by the Town with Other Contractors; Project Documents);

(5) Section 7.2(G); (Non-Discrimination in Employment);

(6) Section 9.9 (Interest on Overdue Obligations);

(7) Section 9.10 (Retention And Audit of Books and Records);

(8) Section 10.3 (Project Warranties Not Exclusive);

(9) Article 11 (Dispute Resolution);

(10) Article 12, as applicable to the obligations of the parties following the Termination Date (Breach, Default, Remedies and Termination);

(11) Article 15, including all of the indemnities, limitations and releases set forth therein (Indemnification);

(12) Section 17.7 (Property Rights);

- (13) Section 17.13 (Confidentiality);
- (14) Attachment 8D (Anticipated Design-Build Period Work Cost Schedule and Design-Builder Contingency) of Appendix 8 (Design-Build Price) regarding Subcontractor and surety recoveries;
- (15) Appendix 10 (Insurance Requirements);
- (16) All provisions of this Design-Build Contract with respect to payment obligations of the Design-Builder or the Town accrued prior to the Termination Date;
- (17) Any other provisions which either expressly or by their context or inherent character should survive expiration or earlier termination of this Design-Build Contract or the completion of the Contract Obligations; and
- (18) Any provisions necessary to give effect to the provisions referenced or described in this Section 3.2 (Survival).

ARTICLE 4

GENERAL PERFORMANCE REQUIREMENTS

SECTION 4.1. PROJECT SCOPE AND PERSONNEL.

(A) Project Scope Generally. The Project and the Project Sites are generally described in Appendix 1. The Design-Builder recognizes that the Project will ultimately be defined by the Baseline Design Documents, which will be developed by the Design-Builder as part of the Preliminary Services.

(B) Pricing Established on the Contract Date. The parties acknowledge and agree that the not-to-exceed limit for the Phase 1a Preliminary Services Fee and the Design-Builder Fee were proposed by the Design-Builder as part of the Statement of Qualifications, negotiated by the parties prior to the Contract Date and included in this Design-Build Contract as executed on the Contract Date, and shall not be the subject of (1) any Early Work Package Submittal or any Early Work Package Amendment, and (2) the GMP Submittal or the GMP Amendment.

(C) Pricing Established Subsequent to the Contract Date. The parties further acknowledge and agree that all other elements of pricing provided for in this Design-Build Contract (including the Phase 1b Preliminary Services Fee, the General Conditions Fee and the Guaranteed Maximum Price) are to be negotiated by the parties subsequent to the Contract Date in connection with establishing the Phase 1b Preliminary Services Amendment, any Early Work Package Amendment and the GMP Amendment in accordance with the terms and conditions of this Design-Build Contract. The parties acknowledge that the General Conditions Fee is intended to fully compensate the Design-Builder for General Conditions Costs as defined in Appendix 8 (Design-Build Price). The Town reserves the right to transition the Phase 1a Preliminary Services Fee, the Phase 1b Preliminary Services Fee, the Design-Builder Fee, the General Conditions Fee and/or the Guaranteed Maximum Price to a lump sum basis.

(D) Estimated Substantial Completion Date. As of the Phase 1b Base Preliminary Services Amendment Date, the estimated Scheduled Substantial Completion Date is [____], 202[], based on an estimated Preliminary Services Period (including negotiation of the GMP Amendment) of [] days, and an estimated Design-Build Period of [] days. [Note: To be agreed to by the parties prior to Phase 1b Base Preliminary Services Amendment.] The Design-Builder shall be responsible for updating and refining the estimated Scheduled Substantial Completion Date as part of the Preliminary Services. Ultimately, the parties intend to negotiate and agree on the definitive Scheduled Substantial Completion Date (expressed as a number of days following the GMP Amendment Date) in accordance with Section 5.8 (GMP Amendment), and to incorporate the agreed upon Scheduled Substantial Completion Date in the GMP Amendment.

SECTION 4.2. DESIGN-BUILDER RESPONSIBILITIES GENERALLY.

(A) Reliance. The Design-Builder acknowledges and agrees that the Town is entering into this Design-Build Contract in reliance on the Design-Builder's expertise with respect to the performance of the Contract Obligations. The Design-Builder recognizes that the Town's sole purpose is to provide an essential public service and that the achievement of Substantial Completion by the Scheduled Substantial Completion Date and Final Completion by the date specified in Section 8.4 (Final Completion) is critically important to the Town. The Design-Builder agrees that it will be relieved of its performance obligations under this Design-

Build Contract solely to the extent provided in Article 14 (Uncontrollable Circumstances) with respect to the occurrence of Uncontrollable Circumstances.

(B) Scope of the Contract Obligations. The Contract Obligations are divided into the Phase 1a Preliminary Services, the Phase 1b Preliminary Services, the Design-Build Period Work and the Warranty Work, each as more particularly described in Article 5 (Preliminary Services), Article 6 (Design-Build Work), Article 8 (Substantial Completion and Final Completion) and Article 10 (Project Warranties). The Design-Builder recognizes that, notwithstanding this division, the Contract Obligations may overlap and agrees to perform all Contract Obligations in accordance with the Contract Standards. In no event shall the Design-Builder commence with any Early Work Package prior to the execution of an Early Work Package Amendment and the issuance by the Town of the associated Notice to Proceed in accordance with Section 5.6(H) (Limited Authorization to Proceed; Commencement of Early Work Package). In no event shall the Design-Builder commence with any portion of the Design-Build Period Work authorized in a Limited Notice to Proceed prior to the issuance by the Town of the associated Limited Notice to Proceed in accordance with Section 6.1(A)(2) (Limited Notice to Proceed). Except in respect of any Early Work Package or in respect of any portion of the Design-Build Work authorized in a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), in no event shall the Design-Builder commence with the Design-Build Period Work prior to the GMP Amendment Date and the issuance of the Notice to Proceed with respect to Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed). Following the issuance of the earlier of the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) or a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), the Design-Builder shall be solely responsible for undertaking and completing the design and for the construction of the Project in accordance with the Contract Documents, including supervision, coordination and administration of all design work and of all Construction, and all other work reasonably inferable from the Contract Documents.

(C) Cooperation. The Design-Builder agrees to cooperate with the Town and any entity engaged by the Town in connection with the work to be performed toward completion of the Project and any Related Project, including the Owner Representative and any Separate Contractor, as well as with any contractor performing work for a non-Town owner that could affect the Preliminary Services or the Design-Build Period Work. The Design-Builder recognizes that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and agrees to use all reasonable efforts to work with all such other persons toward fostering such an environment.

(D) Responsibility for Personnel and Subcontractors. All obligations of the Design-Builder under this Design-Build Contract shall be performed by Design-Builder employees, agents or Subcontractors (subject to the limitations set forth in Article 7 (Management, Labor and Subcontractors)) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The Design-Builder shall be fully responsible, in accordance with the terms and conditions of this Design-Build Contract, for all Contract Obligations performed by its employees, agents or Subcontractors.

(E) Stationing of Key Personnel. From and after the Construction Commencement Date, the Design-Builder's construction superintendent shall on a full-time basis be stationed at the Project Site, and the Project Manager and other appropriate Key Personnel shall also be stationed at the Project Site or be available as required for communications with the Town.

SECTION 4.3. ENVIRONMENTAL REVIEW.

(A) CEQA. The Town is complying with CEQA for the Project as described herein. The Town Council approved and certified a Programmatic EIR in November 2022. The Design-Builder shall provide the Town with any reasonably requested assistance associated with CEQA compliance and any environmental mitigation measures required as a result of the CEQA process shall constitute Baseline Design Documents, which the Design-Builder is required to comply with hereunder. The CEQA analysis for the Project will not be completed prior to the Contract Date. The Town will not issue the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) or a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed) with ground disturbing construction (as opposed to ground disturbing investigations) until the CEQA process is successfully completed and all other Construction Commencement Date Conditions are achieved. Prior to the issuance of the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) establishing the Construction Commencement Date, the Design-Builder is authorized to perform the following Design-Build Work:

- (1) Design Professional Services, including site investigations and the preparation of the Archaeological Construction Monitoring, Mitigation and Preservation Plans;
- (2) Design work to support environmental regulatory compliance and early permit coordination; and
- (3) Surface, subsurface and geotechnical studies or tests.

(B) NEPA. The Town will serve as the lead agency with respect to any necessary NEPA compliance. The Design-Builder shall provide the Town with any reasonably requested assistance associated with NEPA compliance and any environmental mitigation measures required as a result of the NEPA process shall constitute Baseline Design Documents, which the Design-Builder is required to comply with hereunder. The NEPA analysis for the Project will not be completed prior to the Contract Date. The Town will not issue the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) or a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed) with ground disturbing construction (as opposed to ground disturbing investigations) until the NEPA process is successfully completed and all other Construction Commencement Date Conditions are achieved. Prior to the issuance of the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) establishing the Construction Commencement Date, the Design-Builder is authorized to perform the following Design-Build Work:

- (1) Design Professional Services, including site investigations and the preparation of the Archaeological Construction Monitoring, Mitigation and Preservation Plans;
- (2) Design work to support environmental regulatory compliance and early permit coordination; and
- (3) Surface, subsurface and geotechnical studies or tests.

SECTION 4.4. ACCESS TO AND SUITABILITY OF THE PROJECT SITES.

(A) Familiarity with the Project Sites. Prior to the issuance of the earlier of the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1)

(Notice to Proceed) or a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), the Design-Builder's agents and representatives shall have inspected and become familiar with the Project Sites, their physical condition relevant to the obligations of the Design-Builder pursuant to this Design-Build Contract, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions and, as part of the Preliminary Services, shall have developed the Geotechnical Baseline Report, the Geotechnical Evaluation Report and the Contaminated Media Management Plan and other Preliminary Services Deliverable Materials. As of the issuance of the earlier of the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) or a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), the Design-Builder shall be familiar with all local and other conditions which may be material to the Design-Builder's performance of the Design-Build Period Work (including transportation; seasons and climate; water tables; typical weather; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); the Design-Builder shall have received and reviewed all information regarding the Project Sites provided to it or developed by it in connection with the Preliminary Services pursuant to this Design-Build Contract; and the Design-Builder shall have made all other site investigations that it deems necessary to make a determination as to the suitability of the Project Sites and to submit its GMP Submittal to the Town in accordance with Section 5.7 (GMP Submittal).

(B) Independent Verification of the Town-Provided Project Sites Information.

The Design-Builder acknowledges that it is responsible for the independent verification and confirmation of any Project Sites information, including geotechnical, soils, utility locations, groundwater levels and other reports, surveys and analyses regarding the Project Sites, supplied to it by or on behalf of the Town and upon which it elects to rely in connection herewith. Except with respect to Differing Site Conditions and Regulated Site Conditions, as and to the extent provided in Section 6.3(D) (Relief for Differing Site Conditions) and (E) (Uncontrollable Circumstance Relief) respectively, no error or omission in any such information shall constitute an Uncontrollable Circumstance, or relieve the Design-Builder from the Contract Obligations or entitle the Design-Builder to any increase in compensation hereunder. Notwithstanding any factual statement, conclusion, or any language or recommendation contained in any information supplied to the Design-Builder by or on behalf of the Town, the Design-Builder assumes full responsibility for inspecting the Project Sites and for the means and methods of construction that it employs when performing the Design-Build Work.

(C) Access to the Project Sites. Subject to the provisions of this Section 4.4(C), the Design-Builder shall have access to the Project Sites for the purposes of performing the Contract Obligations, including such surface, subsurface and geotechnical studies or tests required to be performed as part of the Preliminary Services and as deemed necessary by the Design-Builder prior to the commencement of Construction in accordance with Good Engineering and Construction Practice. Such access shall be subject to the Town's prior approval, which shall not be unreasonably withheld, as to time and scope, and shall be subject to all Town procedures and requirements regarding Project Sites security and any applicable easement or right of way restrictions. The Design-Builder shall perform all such activities in accordance with the Contract Standards, including the specific requirements set forth in Appendix 2 (Preliminary Services) and Appendix 5 (General Design-Build Work Requirements), and shall provide the Town with all reports or analyses generated by such activities promptly after such reports or analyses are generated. Except to the extent provided in Section 6.4 (Regulated Site Conditions) with respect to Regulated Site Conditions, the Design-Builder shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the Town Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense resulting therefrom. Following the issuance of the Notice to Proceed with Design-Build Period Work and for the duration of the Design-Build Period, the Design-Builder shall have all Project Sites access rights as are

necessary for the performance of the Design-Build Work in accordance with the Contract Documents. Notwithstanding any of the foregoing, the Design-Builder shall not access portions of the alignment until either the Design-Builder or the Town has obtained legal access rights, and the Design-Builder shall at all times comply with the Project Sites access requirements and restrictions set forth in the Contract Documents, including Appendix 5 (General Design-Build Work Requirements), and shall coordinate the Design-Build Work and interface with all Separate Contractors in accordance with Section 6.13 (Interface and Coordination with Town, Utilities and Other Contractors).

(D) Core Collection System Rights of Way. The Town shall acquire all easements or rights of way necessary for the Core Collection System Rights of Way. The Design-Builder shall comply with all conditions of all Non-Governmental Approvals. Upon such acquisition, the acquiring party shall notify the other party, and the Design-Builder shall thereafter have access rights in respect thereof in accordance with Section 4.4(C) (Access to the Project Sites). Each party shall use all reasonable efforts to inform the other party of its progress toward acquiring such.

(E) Export Pipeline System Rights of Way. The Town shall acquire all easements or rights of way necessary for the Export Pipeline System Rights of Way, including the UPRR and Caltrans crossings. The Design-Builder shall comply with all conditions of all Non-Governmental Approvals. Upon such acquisition, the acquiring party shall notify the other party, and the Design-Builder shall thereafter have access rights in respect thereof in accordance with Section 4.4(C) (Access to the Project Sites). Each party shall use all reasonable efforts to inform the other party of its progress toward acquiring such.

(F) Project Sites Signage. The Design-Builder shall provide all Project Sites signage, including directional, safety, information, and warning signs in accordance with the Contract Standards.

SECTION 4.5. INFORMATION PROVIDED BY OR ON BEHALF OF THE TOWN.

(A) Generally. The Town has made data and information available to the Design-Builder on the Project website. The Town makes no representation or warranty with respect to any information provided to the Design-Builder by or on behalf of the Town in connection with this Design-Build Contract. The Design-Builder shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of the Town and upon which the Design-Builder elects to rely in connection herewith. Except as may reasonably be requested by the Design-Builder, agreed upon by the Town in its discretion, and expressly established in the GMP Amendment or any Early Work Package Amendment, the Design-Builder shall have no right to relief hereunder or to make any claim against the Town, or to seek any adjustment to the Contract Compensation or the Scheduled Substantial Completion Date as the result of any error, omission or insufficiency relating to any information provided to the Design-Builder by or on behalf of the Town in connection with this Design-Build Contract.

SECTION 4.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law Generally. The Design-Builder shall, and shall cause all Subcontractors to, perform the Contract Obligations in accordance with Applicable Law and all other applicable Contract Standards. The Design-Builder shall provide all notices required by Applicable Law and the Contract Standards. The incorporation, reference or citation of specific statutes or other parts of Applicable Law in the Contract Documents is not intended, nor shall it be construed, to limit the generality of the Design-

Builder's and all Subcontractors' obligations to comply with Applicable Law (whether or not specifically incorporated or referenced in the Contract Documents).

(B) Compliance with Conditions in Governmental Approvals. The Design-Builder shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Contract Obligations, including the Town Managed Governmental Approvals. The Design-Builder shall report to the Town, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project. The Town, in its capacity as the counterparty to the Design-Builder under this Design-Build Contract, shall have the right independently to enforce compliance with this Design-Build Contract regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. The Design-Builder shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. Any violations of or noncompliance with any Governmental Approval caused by the Design-Builder violating or not being in compliance with a Governmental Approval shall be at the sole risk of the Design-Builder and shall not be a basis for Uncontrollable Circumstance relief under this Design-Build Contract.

(C) Fines, Penalties and Remediation. In the event that the Design-Builder or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design-Build Work, the Design-Builder shall:

- (1) Promptly respond to any notice of non-compliance, warning letter, notice of violation or other enforcement action and seek amicable resolution of the issues;
- (2) Immediately correct such failure and resume compliance with Applicable Law;
- (3) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (4) Indemnify, defend and hold harmless the Town Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense resulting therefrom;
- (5) Make all changes in performing the Contract Obligations which are necessary so that the failure of compliance with Applicable Law will not recur; and
- (6) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Design-Builder to comply with Applicable Law.

(D) Compliance with Conditions in Grants. The parties acknowledge and agree that the Town intends to utilize Grants for the entirety of its financing structure. The Design-Builder hereby acknowledges that the utilization of the Grants is predicated on complying with all applicable requirements of the Grants, including, as applicable, complying with Davis-Bacon Act wage requirements, the Disadvantaged Business Enterprise Program, Build America Buy America Act, American Iron and Steel requirements and Section 3 of the Housing and Urban Development Act of 1968. The Design-Builder shall comply will all such requirements, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines). The Design-Builder represents and warrants that the costs of compliance with all federal or state programs that may be required in order to obtain the Grants (including the requirements identified in Appendix 12 (Certain Grant Requirements and

Guidelines) are incorporated into the Phase 1a Preliminary Services Fee as of the Contract Date. Only the addition of any new federal or state project funding requirements that did not exist as of the GMP Submittal shall constitute an Uncontrollable Circumstance.

SECTION 4.7. ENGAGEMENT OF TOWN REPRESENTATIVES.

The Design-Builder shall fully cooperate with the Owner Representative and any other representative designated by the Town from time to time. The services of the Owner Representative and other Town-designated representatives may include the following:

- (1) Reviewing drawings, plans and specifications for compliance with the Contract Documents;
- (2) Reviewing proposed changes to the Baseline Design Documents;
- (3) Determining the completion of specified portions of the Design-Build Work and reviewing the release of funds to the Design-Builder pursuant hereto;
- (4) Reviewing and monitoring Construction progress, scheduling, payments and procedures;
- (5) Monitoring testing undertaken by the Design-Builder;
- (6) Assisting the Town in reviewing the validity of the Design-Builder's written notice that an Uncontrollable Circumstance has occurred; and
- (7) Reviewing and advising the Town with respect to material changes to the Project during the Term.

It is understood that the services intended to be provided by the Owner Representative shall be of an observational and review nature only, and that the Owner Representative shall not have authority to interfere with, halt or delay in any way the construction of the Project or to require or approve changes to the Design-Builder's Baseline Design Documents or plans and specifications made in accordance therewith. Any fees of the Owner Representative shall be paid by the Town. Nothing in this Section 4.7 shall be construed to limit the right of any Town personnel or representative having the authority to protect the health and safety from inspecting the Project or otherwise exercising any power permitted under Applicable Law.

SECTION 4.8. OWNERSHIP AND USE OF DOCUMENTS AND INFORMATION.

The Design-Builder acknowledges and agrees that the Town shall own exclusively the Deliverable Material and any and all other documents and information in whatsoever form and character produced or maintained in accordance with, pursuant to, or as a result of this Design-Build Contract. All such documents and information may be used as the Town determines and shall be delivered to the Town at no additional cost to the Town as required hereunder, upon request, upon Project completion or upon termination of this Design-Build Contract. If the Town uses any such documents and material for a purpose other than the Project, such use shall be at the Town's sole risk and liability.

SECTION 4.9. MONTHLY PROGRESS REPORTS.

The Design-Builder shall provide the Town and the Owner Representative with monthly written reports ("Monthly Progress Report") prepared in accordance with the Contract

Standards, covering the Project and addressing work performed during the past month, percentage of work completion and compliance with the Project Schedule. The Design-Builder shall describe Project issues, problems or concerns that the Town should be made aware of and how the Design-Builder proposes to address them in each Monthly Progress Report. The Monthly Progress Report shall include a description of the work planned for the next three months. The Monthly Progress Report shall also include cash flow reports and forecasts that satisfy the Town's reporting requirements for the Grants. The Town's and the Owner Representative's receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not bind the Town in any manner. Thus, the Town's and the Owner Representative's receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not imply the Town approval or consent to any of the matters set forth therein and shall not limit or otherwise affect the Design-Builder's obligations to achieve Substantial Completion by the Scheduled Substantial Completion Date and Final Completion by the date specified in Section 8.4 (Final Completion).

ARTICLE 5

PRELIMINARY SERVICES

SECTION 5.1. SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The Design-Builder shall render and perform the Phase 1a Preliminary Services to and for the Town in accordance with Appendix 2 (Preliminary Services) and the terms and conditions of this Design-Build Contract. The Design-Builder shall render and perform the Phase 1b Preliminary Services to and for the Town in accordance with Appendix 2 (Preliminary Services), the Health and Safety Plan and the Quality Management Plan, and the terms and conditions of this Design-Build Contract. The parties acknowledge that the Town may desire to expand the scope of the Preliminary Services performed by the Design-Builder under this Design-Build Contract at any time, in its discretion, beyond those services included in the Phase 1a Preliminary Services and the Phase 1b Preliminary Services based on the recommendations of the Design-Builder, to be delivered in additional phases of the Preliminary Services, to be defined sequentially as Phase 1c, Phase 1d, etc. The Design-Builder and the Town shall enter into a Contract Amendment to provide for such additional phase of Preliminary Services, the scope of the base preliminary services for such phase, the fee for such base preliminary services and the preliminary services schedule for such phase. The Design-Builder's responsibility to perform the Preliminary Services shall include the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preliminary Services, and the performance of all services reasonably inferable from the Contract Documents.

(B) Phase 1a Base Preliminary Services; Notice to Proceed. The Design-Builder acknowledges that the Phase 1a Base Preliminary Services are divided into discrete Preliminary Services Tasks identified in Appendix 2 (Preliminary Services) and associated with the advancement of the Phase 1a Base Preliminary Services. The Design-Builder shall commence performing a discrete Preliminary Services Task of the Phase 1a Base Preliminary Services only upon the issuance by the Town Contract Representative of a Notice to Proceed with such discrete Preliminary Services Task of the Phase 1a Base Preliminary Services. In no event shall the Design-Builder be entitled to compensation for the performance of any Preliminary Services Task of the Phase 1a Base Preliminary Services prior to the issuance by the Town of a Notice to Proceed with such discrete Preliminary Services Task of the Phase 1a Base Preliminary Services.

(C) Phase 1b Base Preliminary Services. The parties acknowledge and agree that the not-to-exceed limit for the Phase 1b Preliminary Services Fee was not proposed by the Design-Builder as part of the Statement of Qualifications, and therefore not included in this Design-Build Contract as executed on the Contract Date. The Town shall have the discretion to authorize the Phase 1b Base Preliminary Services pursuant to this Section.

(1) Phase 1b Base Preliminary Services Submittal. Concurrently with delivery of the Basis of Design Report delivered to the Town as part of the Phase 1a Base Preliminary Services, the Design-Builder shall recommend the scope of the Phase 1b Base Preliminary Services and the discrete Preliminary Services Tasks thereof, the amount of the Phase 1b Preliminary Services Fee and the Phase 1b Preliminary Services Schedule to the Town Contract Representative through the performance of the Phase 1a Base Preliminary Services, based on a Phase 1b Base Preliminary Services submittal (the "Phase 1b Base Preliminary Services Submittal"). If not already included in the Basis of Design Report delivered to the Town as part of the Phase 1a Base Preliminary Services, the

scope of the Phase 1b Base Preliminary Services described in the Phase 1b Base Preliminary Services Submittal shall include the milestones at which the Design-Builder recommends review and update of the Baseline Cost Model and the Baseline Design and Construction Phasing Plan and Schedule (non-guaranteed). The Phase 1b Base Preliminary Services Submittal shall include recommendations of the Design-Builder with respect to the GMP Submittal Design Level for the Phase 1b Base Preliminary Services. The scope of the Phase 1b Base Preliminary Services described in the Phase 1b Base Preliminary Services Submittal shall also include development of the design of the Project to the GMP Submittal Design Level. The Phase 1b Base Preliminary Services Submittal shall be completed and submitted to the Town on a timely basis as required in this Section 5.1(C), and shall remain a firm offer by the Design-Builder for at least 90 days. The Design-Builder shall not condition the Phase 1b Base Preliminary Services Submittal by inclusion of any requirement that a Phase 1b Base Preliminary Services Amendment be entered into by the parties or that a Notice to Proceed with a discrete Preliminary Services Task of the Phase 1b Base Preliminary Services be issued by the Town prior to the expiration of such 90-day period.

(2) No Material Change to Design Set Forth in Basis of Design Report. The Design-Builder acknowledges the Town's material interest in each provision of the Basis of Design Report, and agrees that, subject to Section 5.1(C)(3), no material change to the design of the Project set forth in the Basis of Design Report shall be made except with the consent of the Town, which may be withheld or conditioned in its discretion.

(3) Permitted Change to Design Set Forth in Basis of Design Report Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance after the Basis of Design Report, the Design-Builder shall promptly proceed, subject to the terms, conditions and procedures set forth in Article 14 (Uncontrollable Circumstances) and subject to the Town's approval, to make or cause to be made all changes to the design of the Project set forth in the Basis of Design Report reasonably necessary to address the Uncontrollable Circumstance. The Design-Builder shall consult with the Town concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance. The parties shall use all reasonable efforts to address all changes to the design of the Project set forth in the Basis of Design Report required due to Uncontrollable Circumstances in a manner that will not impact the critical path of planned Phase 1b Base Preliminary Services in the Phase 1b Preliminary Services Schedule.

(4) Phase 1b Base Preliminary Services Amendment. The agreement of the parties as to the scope of the Phase 1b Base Preliminary Services and the discrete Preliminary Services Tasks thereof, the amount of the Phase 1b Preliminary Services Fee and the Phase 1b Preliminary Services Schedule, as well as to any permitted change to the design of the Project set forth in the Basis of Design Report, shall be effectuated through a Contract Amendment authorizing the Phase 1b Base Preliminary Services (a "Phase 1b Base Preliminary Services Amendment"). In the event the parties elect to execute the Phase 1b Base Preliminary Services Amendment, the date of execution and delivery thereof shall constitute the "Phase 1b Base Preliminary Services Amendment Date" hereunder. All work performed pursuant to a Phase 1b Base Preliminary Services Amendment shall constitute Preliminary Services hereunder and shall be performed in accordance with Appendix 2 (Preliminary

Services), the Health and Safety Plan and the Quality Management Plan, and the terms and conditions of this Design-Build Contract.

(D) Phase 1b Base Preliminary Services; Notice to Proceed. The Design-Builder acknowledges that the Phase 1b Base Preliminary Services are divided into discrete Preliminary Services Tasks identified in Appendix 2 (Preliminary Services) and associated with the advancement of the Phase 1b Base Preliminary Services. The Design-Builder shall commence performing a discrete Preliminary Services Task of the Phase 1b Base Preliminary Services only upon the issuance by the Town Contract Representative of a Notice to Proceed with such discrete Preliminary Services Task of the Phase 1b Base Preliminary Services. In no event shall the Design-Builder be entitled to compensation for the performance of any Preliminary Services Task of the Phase 1b Base Preliminary Services prior to the issuance by the Town of a Notice to Proceed with such discrete Preliminary Services Task of the Phase 1b Base Preliminary Services.

(E) No Obligation of Town to Enter Into a Phase 1b Preliminary Services Amendment. Notwithstanding the intent of the parties as expressed in Section 5.1(C) (Phase 1b Base Preliminary Services) and (D) (Phase 1b Base Preliminary Services; Notice to Proceed), the Town has no obligation whatsoever to negotiate with the Design-Builder to enter into a Phase 1b Base Preliminary Services Amendment. The Town, in its discretion, may elect not to commence or continue negotiations and not to enter into and execute a Phase 1b Base Preliminary Services Amendment for any reason. The Design-Builder acknowledges and agrees that no failure by the Town to negotiate or to enter into a Phase 1b Base Preliminary Services Amendment shall entitle the Design-Builder to make any claim for damages or compensation as a result of any such failure, and all such claims are hereby waived and released by the Design-Builder. The Design-Builder acknowledges and agrees that neither the intent of the parties to negotiate and enter into a Phase 1b Base Preliminary Services Amendment, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect the Town's right to off-ramp or terminate this Design-Build Contract for its convenience at any time as provided in Section 12.6 (Town Convenience Termination Rights).

SECTION 5.2. CHANGES TO THE SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The Town shall have the right to make changes to the scope of the Phase 1a Preliminary Services or the Phase 1b Preliminary Services set forth in Appendix 2 (Preliminary Services) at any time, in its discretion, by written notice to the Design-Builder, subject to the terms and conditions of this Section. Changes to the scope of the Phase 1a Preliminary Services or the Phase 1b Preliminary Services may be made by the Town to account for an Uncontrollable Circumstance or any other reason determined by the Town.

(B) Additional Preliminary Services.

(1) Except as otherwise specifically provided in this Section, the Design-Builder shall be entitled to an equitable adjustment to the maximum amount of the Phase 1a Preliminary Services Fee (as stated in Appendix 2 (Preliminary Services)) and the Phase 1a Preliminary Services Schedule in the event of any expansion of the scope of the Phase 1a Base Preliminary Services pursuant to this Section (the "Additional Phase 1a Preliminary Services"). Any expansion of the scope of the Phase 1a Base Preliminary Services under this subsection (B) and the corresponding equitable adjustment to the maximum amount of the Phase 1a Preliminary Services Fee and the Phase 1a Preliminary Services Schedule shall be reflected in a Change Order or a Contract Amendment. The Design-Builder shall not be entitled to compensation for any Phase 1a Additional Preliminary Services beyond the scope of the Phase 1a Base

Preliminary Services unless, prior to the performance of any such Phase 1a Additional Preliminary Services, the Design-Builder shall have received express written authorization from the Town to perform the Phase 1a Additional Preliminary Services. In the absence of any the Town-directed change to the scope of the Phase 1a Base Preliminary Services reflected in a Change Order or a Contract Amendment, the Design-Builder shall have no obligation to perform work outside the scope of the Phase 1a Base Preliminary Services.

(2) Except as otherwise specifically provided in this Section, the Design-Builder shall be entitled to an equitable adjustment to the maximum amount of the Phase 1b Preliminary Services Fee (as stated in Appendix 2 (Preliminary Services)) and the Phase 1b Preliminary Services Schedule in the event of any expansion of the scope of the Phase 1b Base Preliminary Services pursuant to this Section (the “Additional Phase 1b Preliminary Services”). Any expansion of the scope of the Phase 1b Base Preliminary Services under this subsection (B) and the corresponding equitable adjustment to the maximum amount of the Phase 1b Preliminary Services Fee and the Phase 1b Preliminary Services Schedule shall be reflected in a Change Order or a Contract Amendment. The Design-Builder shall not be entitled to compensation for any Phase 1b Additional Preliminary Services beyond the scope of the Phase 1b Base Preliminary Services unless, prior to the performance of any such Phase 1b Additional Preliminary Services, the Design-Builder shall have received express written authorization from the Town to perform the Phase 1b Additional Preliminary Services. In the absence of any the Town-directed change to the scope of the Phase 1b Base Preliminary Services reflected in a Change Order or a Contract Amendment, the Design-Builder shall have no obligation to perform work outside the scope of the Phase 1b Base Preliminary Services.

(C) Additional Preliminary Services Resulting From Delay.

(1) Except as otherwise set forth in Section 6.5 (Permitting Responsibilities and Schedule), extra costs resulting from delays caused by Uncontrollable Circumstances, shall be deemed to be costs resulting from Additional Phase 1a Preliminary Services, provided the Design-Builder demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Phase 1a Base Preliminary Services, (2) were incurred by Design-Builder as a direct result of the delay and not otherwise within the scope of the Phase 1a Base Preliminary Services, and (3) are documented to the Town’s reasonable satisfaction.

(2) Except as otherwise set forth in Section 6.5 (Permitting Responsibilities and Schedule), extra costs resulting from delays caused by Uncontrollable Circumstances, shall be deemed to be costs resulting from Additional Phase 1b Preliminary Services, provided the Design-Builder demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Phase 1b Base Preliminary Services, (2) were incurred by Design-Builder as a direct result of the delay and not otherwise within the scope of the Phase 1b Base Preliminary Services, and (3) are documented to the Town’s reasonable satisfaction.

(D) Exclusions from Additional Preliminary Services. Additional Preliminary Services shall not include work or services necessary because of errors, omissions or conflicts of any type in the Design-Builder’s plans and specifications or other Preliminary Services Deliverable Material. All such work or services shall constitute Phase 1a Base Preliminary Services or Phase 1b Base Preliminary Services, as applicable, and shall be performed at no

cost to the Town, and shall include any required corrections or revisions to reports, plans or specifications.

(E) Changes that Reduce the Scope of the Preliminary Services. The Town shall have the right to reduce the scope of the Phase 1a Preliminary Services or the Phase 1b Preliminary Services at any time by written notice to the Design-Builder. Changes to the Phase 1a Preliminary Services or the Phase 1b Preliminary Services that reduce the scope of the Phase 1a Preliminary Services or the Phase 1b Preliminary Services shall be effective upon the delivery of the written notice by the Town pursuant to this subsection (E). Any reduction in the scope of the Phase 1a Preliminary Services or the Phase 1b Preliminary Services shall result in an appropriate reduction in the Phase 1a Preliminary Services Fee or the Phase 1b Preliminary Services Fee, as applicable, and an adjustment to the Phase 1a Preliminary Services Schedule or the Phase 1b Preliminary Services Schedule, as appropriate, which shall be reflected in a Change Order or a Contract Amendment.

SECTION 5.3. PRELIMINARY SERVICES SCHEDULE.

The Phase 1a Preliminary Services Schedule is set forth in Attachment 2B-1 (Phase 1a Preliminary Services Schedule) and shall be updated as provided in Appendix 2 (Preliminary Services). The Design-Builder acknowledges that time is of the essence with respect to major milestones and in relation to days from completion of all prerequisites in the performance of the Phase 1a Preliminary Services and agrees to complete the Phase 1a Preliminary Services in a diligent, efficient and timely manner in accordance with Good Engineering and Construction Practice and in any event in accordance with the Phase 1a Preliminary Services Schedule.

As part of the Phase 1b Preliminary Services Amendment, the Phase 1b Preliminary Services Schedule will be set forth in Attachment 2B-2 (Phase 1b Preliminary Services Schedule) and shall be updated as provided in Appendix 2 (Preliminary Services). The Design-Builder acknowledges that time is of the essence in the performance of the Phase 1b Preliminary Services and agrees to complete the Phase 1b Preliminary Services in a diligent, efficient and timely manner in accordance with Good Engineering and Construction Practice and in any event in accordance with the Phase 1b Preliminary Services Schedule.

SECTION 5.4. COORDINATION WITH TOWN.

(A) Meetings and Reports Generally. The Design-Builder shall hold periodic meetings and conferences with the Town during the Preliminary Services Period, in accordance with Appendix 2 (Preliminary Services), to verify and confirm that the development of the Project (1) has the full benefit of the Town's experience and knowledge of existing needs and facilities, (2) is consistent with the Town's current policies and standards, and (3) is proceeding in accordance with the Preliminary Services Schedule. The Design-Builder shall also keep the Town regularly informed as to the progress of the Preliminary Services through the submittal of Monthly Progress Reports in accordance with the requirements set forth in Section 4.9 (Monthly Progress Reports) and Appendix 2 (Preliminary Services). The Monthly Progress Report shall present Project budget information and indicate amounts billed by Preliminary Services Task by the Design-Builder for the past month, cumulatively to date and the amount of funds remaining. The Monthly Progress Report shall include a section on the progress of the design and list any concerns, actions, changes, and reviews and approvals from the Town that the Design-Builder requires. The Design-Builder shall indicate any Governmental Body, UPRR or Utility requirements and issues that the Town should be aware of.

(B) Information Provided by the Town. The Town shall make available for the Design-Builder's use in the performance of the Preliminary Services all existing plans, maps, field notes, statistics, computations, and other data in the Town's possession relating to

the Project, as reasonably requested in writing by the Design-Builder, at no cost to the Design-Builder. All such information is provided to the Design-Builder for the sole purpose of the Design-Builder's convenience and for use in relation to the performance of the Preliminary Services, may not be relied upon by the Design-Builder, and must be verified by the Design-Builder as provided in subsection (C) of this Section. The Design-Builder shall promptly notify the Town in writing when it reasonably believes or suspects that information provided by the Town is not accurate or cannot be checked. Any and all information provided by the Town shall remain the property of the Town and shall be returned promptly to the Town upon written request.

(C) Required Design Information. Notwithstanding the provisions of subsection (B) of this Section, the Design-Builder shall be responsible for obtaining and verifying all information required as further described in Appendix 2 (Preliminary Services) in order to properly design the Project so that it is designed, constructed and performs in accordance with Applicable Law and the Contract Standards.

(D) Revisions to Drawings and Specifications. Notwithstanding anything in this Design-Build Contract to the contrary, the Design-Builder shall, at no additional expense to the Town, provide reasonable minor revisions to any and all drawings and specifications provided to the Town, whether or not previously reviewed and accepted by the Town, as may be required to satisfy the Preliminary Services established by this Design-Build Contract. It is agreed and understood that the scope of each of the Preliminary Services Tasks in Appendix 2 (Preliminary Services) (Preliminary Services) may require some reasonable minor revisions to drawings and specifications provided to the Town, as the scope of the Project is refined, and that such reasonable minor revisions are included within the existing Preliminary Services under this Design-Build Contract. The Design-Builder shall make, without additional expense to the Town, such reasonable minor revisions or corrections to the Preliminary Services Deliverable Material as may be required.

SECTION 5.5. PROJECT DESIGN.

(A) Design Considerations. The design for the Project undertaken and performed by the Design-Builder shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Design-Build Contract, and the Design-Builder shall appoint a design team that:

(a) Is so qualified;

(b) Includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) Has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set out in this Design-Build Contract;

(2) Include specific consideration of "constructability" and "life cycle" cost issues at all stages of design, as appropriate; and

(3) Include consideration of efficient and cost-effective operation and maintenance.

(B) Design-Builder Assumption of Full Design Liability. The Design-Builder acknowledges and agrees that, as provided in Section 6.7 (Final Design Responsibilities and Risk Assumption), if and when a GMP Amendment is executed by the parties (and with respect to any Early Work Package work, when an Early Work Package Amendment is executed by the parties), the Design-Builder will have the sole and exclusive responsibility and liability for the design, construction and performance of the Project in accordance with and subject to the terms and conditions of the Contract Documents. Accordingly, the Design-Builder shall have the right and the responsibility to develop and provide the Preliminary Design Documents and to perform the Preliminary Services under this Design-Build Contract in a manner that would permit a design-build contractor, acting reasonably and having the experience and qualifications required to successfully undertake and complete the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Design-Builder shall not propose or agree to any element of the Baseline Design Documents or other work product to be incorporated in any GMP Amendment or Early Work Package Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

SECTION 5.6. EARLY WORK PACKAGES.

(A) Early Work Packages. The parties anticipate that there may be some phases of the Design-Build Work that are ready for commencement before it is appropriate to arrive at an overall agreed-upon Base Guaranteed Maximum Price in accordance with Section 5.7 (GMP Submittal). The Design-Builder shall recommend such phases or elements of the Design-Build Work (“Early Work Packages”) to the Town Contract Representative, as appropriate, through the performance of the Preliminary Services, based on Early Work Package submittals (“Early Work Package Submittals”). The Town shall have the discretion to authorize the commencement of Design-Build Work associated with an Early Work Package pursuant to this Section. The agreement of the parties as to an Early Work Package shall be effectuated through a Contract Amendment authorizing the Design-Build Work associated with the Early Work Package and specifying the terms and conditions of compensation payable to the Design-Builder and the completion dates associated with such Design-Build Work (an “Early Work Package Amendment”). All work performed pursuant to an Early Work Package Amendment shall constitute Design-Build Work hereunder and shall be performed in accordance with the Contract Standards. The Town shall have no obligation to enter into an Early Work Package Amendment. All Early Work Package Amendments agreed upon in accordance with this subsection (A) shall be taken into consideration in the preparation of the GMP Submittal submitted in accordance with Section 5.7 (GMP Submittal). The Design-Builder shall furnish a Performance Bond and a Payment Bond with a penal sum equal to the guaranteed maximum price or lump sum amount applicable to the Early Work Package, in compliance with the requirements set forth in Section 16.1 (Bonds) prior to the Town’s issuance of a construction NTP for the Early Work Package.

(B) Early Work Package Submittals. An Early Work Package Submittal shall include and be based upon the applicable Baseline Design Documents and all other specifications, information, analysis, findings and reports developed by the Design-Builder during the performance of the Preliminary Services as developed to the date of submittal, and shall be prepared in accordance with the Contract Standards. An Early Work Package Submittal shall include the following:

Price Submittal:

(1) a proposed lump sum or guaranteed maximum price, as authorized by the Town, including the terms and conditions of payment, focused solely on the Design-Build Work associated with the Early Work Package and prepared in accordance with

subsection (E) of this Section, together with a description of how such price will impact overall Project costs;

Technical Submittal:

(2) A detailed description of the Design-Build Work associated with the Early Work Package Submittal and the associated Baseline Design Documents;

(3) A proposed schedule for completion of the Design-Build Work associated with the Early Work Package, together with a description of how such work will impact the Project Schedule;

(4) A listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing the Early Work Package Submittal that are material to any part thereof, including a statement as to what information supplied by the Town (if any) the Design-Builder proposes to use as the basis of any portion of its Early Work Package Submittal; and

(5) Any other information reasonably requested by the Town prior to the due date for the Early Work Package Submittal as necessary or appropriate to negotiate and complete the Early Work Package Amendment.

(C) Early Work Package Submittal Revisions. The Design-Builder shall provide the Town with at least seven days' notice prior to submitting an Early Work Package Submittal for review. The Town will act reasonably in considering any proposed Early Work Package in light of the schedule requirements under this Design-Build Contract. In the event the Early Work Package Submittal does not comply with the Contract Standards, the Town may provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. In such event, the Design-Builder, without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required.

(D) Negotiation and Execution. If the Town agrees to authorize the commencement of a portion of the Design-Build Work under an Early Work Package Submittal, the Design-Builder and the Town shall negotiate and enter into an Early Work Package Amendment. An Early Work Package Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection (B) of this Section, and shall contain any other commercial terms and conditions specific to the Early Work Package, including the rights of the Town to terminate the work being performed pursuant to the Early Work Package Amendment and the right of the Town to direct the Design-Builder to continue performance of the Early Work Package in the event the parties do not enter into a GMP Amendment. Early Work Packages may be structured in a manner that provides for the commencement of the related Design-Build Work at any time determined by the parties.

(E) Complete Early Design-Build Work Package Pricing. It is the intention of the parties that each Early Work Package Submittal, and any associated Early Work Package Amendment, include complete pricing for the Design-Build Work to be performed thereunder, including: (1) the maximum cost of the Design-Build Work described in the Early Work Package Submittal excluding the Design-Builder Fee, the General Conditions Fee and contingency; (2) the Design-Builder Fee, attributable to the Design-Build Work described in the Early Work Package Submittal; (3) the General Conditions Fee attributed to the Design-Build Work described in the Early Work Package Submittal; and a contingency amount for such Design-Build Work to be administered in the same manner as the Design-Builder Contingency. Alternatively, an Early Work Package Submittal may include pricing for all or part of the Design-Build Work on a firm, fixed price basis.

(F) Compensation Payable in Connection With Early Work Packages. The Town shall pay the Early Work Package Price to the Design-Builder for Design-Build Work properly performed and completed pursuant to the terms of the Early Work Package Amendment in accordance with, and subject to the limitations contained in, Appendix 8 (Design-Build Price), notwithstanding the fact that no GMP Amendment will be in effect at the time the parties execute an Early Work Package Amendment.

(G) Design-Builder Representations in an Early Work Package Amendment. The execution of any Early Work Package Amendment will be deemed to constitute representations by the Design-Builder with respect to the Early Work Package to the same effect as the representations made in Section 5.8(H) (Design-Builder Representations in a GMP Amendment) with respect to the GMP Amendment, with references to Design-Build Work referring to the Early Work Package and references to the Base Guaranteed Maximum Price referring to the Early Work Package Price.

(H) Limited Authorization to Proceed; Commencement of Early Work Package. If the parties agree to an Early Work Package Amendment, the Town shall issue a limited Notice to Proceed with the Design-Build Work associated with the Early Work Package, subject to this Section. Notwithstanding the issuance of a limited Notice to Proceed with an Early Work Package, the Design-Builder shall not commence any Construction at the Project Sites in connection with such Early Work Package until the Design-Builder has satisfied the following requirements:

(1) The Design-Builder shall have provided a Performance Bond and a Payment Bond for the Early Work Package, and certified that such Performance Bond and Payment Bond are in full force and effect and in compliance with the requirements set forth in Section 16.1 (Bonds);

(2) The Design-Builder shall have provided the Town with certificates for all Required Insurance in accordance with Section 13.1 (Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 (Insurance) and Appendix 10 (Insurance Requirements);

(3) The Design-Builder shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and shall have obtained all Governmental Approvals required for the commencement of the Construction of the Early Work Package Design-Build Work as well as Governmental Approvals that the Town has determined in its discretion must be obtained prior to the commencement of Construction and provided copies of such Governmental Approvals to the Town. All such Governmental Approvals shall be in full force and effect; and

(4) The Design-Builder shall have provided the Town with the final, approved Health and Safety Plan in accordance with the Contract Standards.

The foregoing requirements are in addition to any other preconditions to the commencement of Construction established by the Contract Documents.

SECTION 5.7. GMP SUBMITTAL.

(A) Preliminary Services and GMP Submittal. As part of the Preliminary Services, the Design-Builder is obligated to develop the design of the Project to the GMP Submittal Design Level. The GMP Submittal, as described in the Preliminary Services set forth in Appendix 2 (Preliminary Services), shall be completed and submitted to the Town on a timely basis as required under Appendix 2 (Preliminary Services), and shall remain a firm offer by the Design-Builder for at least 90 days; provided that the Town shall respond to the Design-Builder

regarding the GMP Submittal in accordance with Appendix 2 (Preliminary Services). The Design-Builder shall not condition the GMP Submittal by inclusion of any requirement that a GMP Amendment be entered into by the parties or that the Notice to Proceed with Design-Build Period Work in accordance with Section 6.1(A)(1) (Notice to Proceed) or a Limited Notice to Proceed pursuant to subsection 6.1(A)(2) (Limited Notice to Proceed) be issued by the Town prior to the expiration of such 90 day period. The GMP Submittal shall include and be based upon the Baseline Design Documents, Substantial Completion Standards and all other information, analysis, findings and reports developed by the Design-Builder during the performance of the Preliminary Services, and shall be prepared in accordance with the Contract Standards. Without limiting the requirements of Appendix 2 (Preliminary Services), the GMP Submittal shall include a price submittal, a technical submittal and an additional information submittal, as follows:

Price Submittal:

- (1) A proposed Base Guaranteed Maximum Price, to be incorporated in Section 8.7.2 of Appendix 8 (Design-Build Price), together with all supporting information required by subsection (B) of this Section;
- (2) A proposed Anticipated Design-Build Period Work Cost Schedule and a proposed Design-Builder Contingency and a proposed Specified Project Risk Contingency, to be prepared in accordance with, and attached as part of Attachment 8D (Anticipated Design-Build Period Work Cost Schedule and Design-Builder Contingency) to Appendix 8 (Design-Build Price);
- (3) If applicable and requested by the Town, a list of any proposed allowance items (including a proposed Town Allowance), alternate prices and unit prices;

Technical Submittal:

- (1) Proposed Baseline Design Documents, to be incorporated in and to constitute Appendix 4 (Baseline Design Documents) of this Design-Build Contract;
- (2) The final and complete list of required Governmental Approvals for the Project (including Governmental Approval Application Dates and Assumed Approval Issuance Dates, all as required by Appendix 2 (Preliminary Services)) to be incorporated in Appendix 3 (Governmental and Non-Governmental Approvals) of this Design-Build Contract;
- (3) A description of any Change-in-Law that has occurred between the Contract Date and the date of the GMP Submittal;
- (4) An updated and finalized description of the Project alignment and the Project Sites;

Commercial Terms Submittal:

- (1) A proposed Design-Build Period Work Schedule including the Scheduled Substantial Completion Date (expressed as the number of calendar days following the GMP Amendment Date by which Substantial Completion shall be achieved); and
- (2) A proposed delay liquidated damages amount to be inserted in Section 8.3(C) (Delay Liquidated Damages).

Additional Information Submittal:

- (1) A proposed final Subcontracting Plan;
- (2) The names of additional proposed Subcontractors (other than any existing Approved Subcontractors) and descriptions of their roles for approval by the Town as Approved Subcontractors;
- (3) A description of the manner in which any Early Work Packages will be integrated into the final Design-Build Work, including price, schedule and performance considerations;
- (4) A letter from a surety qualified under Section 16.1 (Bonds) confirming the intent of the surety to provide the Payment Bond and Performance Bond required under such Section on the GMP Amendment Date;
- (5) A description of the manner in which the Design-Builder will comply with the skilled and trained workforce requirements of Section 22172(b) of the California Public Contract Code;
- (6) A listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing its GMP Submittal that are material to any part thereof, including a statement as to what information supplied by the Town (if any) the Design-Builder proposes to use as the basis of any portion of its GMP Submittal; and
- (7) Any other information reasonably requested by the Town prior to the due date for the GMP Submittal as necessary or appropriate to negotiate and complete the GMP Amendment.

(B) Derivation of Proposed Base Guaranteed Maximum Price. The GMP Submittal shall include a detailed and comprehensive description of how the proposed Base Guaranteed Maximum Price was derived and the material factors on which it was based, all in compliance with the requirements for establishing the Base Guaranteed Maximum Price set forth in Appendix 2 (Preliminary Services), together with any other related information required pursuant to this Section. All costs, bids, quotes, estimates and other information supporting the GMP Submittal shall be made available to the Town upon request. The proposed Base Guaranteed Maximum Price and the other elements of the GMP Submittal shall be based upon the risk allocation established by this Design-Build Contract as of the Contract Date, unless the Town, in its discretion, agrees to changes in such risk allocation.

(C) Preliminary Services Fee, Design-Builder Fee and General Conditions Fee. The parties acknowledge and agree that the not-to-exceed amount of the Phase 1a Preliminary Services Fee and the Design-Builder Fee were proposed by the Design-Builder as part of the Statement of Qualifications, negotiated by the parties prior to the Contract Date and included in this Design-Build Contract as executed on the Contract Date, and shall not be subject to increase in any Early Work Package, the GMP Submittal or the GMP Amendment.

(D) Early GMP Submittal. The parties may agree, each in its discretion, that the GMP Submittal may be made, and the GMP Amendment negotiated, prior to the GMP Submittal Design Level stage. In such event, any Preliminary Services that have not been completed at the time of an early GMP Amendment shall be performed as part of the Design-Build Work and the compensation therefor paid as part of the Design-Build Price.

SECTION 5.8. GMP AMENDMENT.

(A) Non-Compliant GMP Submittal. In the event the GMP Submittal does not comply with the requirements of this Design-Build Contract, the Town shall provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. In such event, the Design-Builder, at its cost and expense, and without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Design-Builder to furnish the Preliminary Services and provide the GMP Submittal in accordance with the Contract Standards shall be a material breach of this Design-Build Contract.

(B) Negotiation and Execution of the GMP Amendment. The Town and the Design-Builder acknowledge and agree that each intends to negotiate and enter into a Contract Amendment for the performance of all Construction and all other Design-Build Work necessary to achieve Final Completion (the “GMP Amendment”) based on the GMP Submittal and the completion of the other Preliminary Services. The principles for negotiating the Base Guaranteed Maximum Price are set forth in subsection (C) of this Section. The GMP Amendment at a minimum shall incorporate and definitively address all of the items identified in Section 5.7(A) (Preliminary Services and GMP Submittal). In the event the parties elect to execute the GMP Amendment, the date of execution and delivery thereof shall constitute the “GMP Amendment Date” hereunder, and thereupon the Design-Build Period shall commence. Without limiting anything set forth in this Design-Build Contract, the parties may enter into a GMP Amendment that includes a fixed lump sum price for completion of the Design-Build Work in lieu of a Base Guaranteed Maximum Price, and such GMP Amendment shall include modifications to the terms and conditions specified herein necessary to effectuate payment for Design-Build Work based upon the fixed lump sum price. In addition, without limiting anything set forth in this Design-Build Contract, the parties may enter into a GMP Amendment that includes fixed lump sum prices for completion of portions of the Design-Build Work and a Base Guaranteed Maximum Price for completion of the balance of the Design-Build Work, and such GMP Amendment shall include modifications to the terms and conditions specified herein necessary to effectuate payment for Design-Build Work based upon such fixed lump sum prices and Base Guaranteed Maximum Price. The parties acknowledge and agree that the GMP Amendment shall be reflected in an amendment and restatement of this Design-Build Contract, and will not be effective except upon approval by the Town Council.

(C) Base Guaranteed Maximum Price Negotiating Principles. Each party acknowledges that it intends to negotiate the Base Guaranteed Maximum Price taking into account the following:

(1) The reasonably estimated costs of completing the design and construction of the Project (including costs payable under Early Work Packages) and achieving Substantial Completion and Final Completion in accordance with the Contract Standards and the cost elements set forth in Appendix 2 (Preliminary Services). Considerations of risk shall be taken into account separately, pursuant to item (2) below. Such costs shall be the basis of the items constituting the Anticipated Design-Build Period Work Cost Schedule.

(2) An amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred should the risks assumed by the Design-Builder in performing the Design-Build Work occur. Such costs shall be the basis of establishing the Design-Builder Contingency. The risks assumed by the Design-Builder shall be identified in the risk register prepared as part of the Preliminary Services, and include:

(a) The risks identified as excluded from the definitions of “Uncontrollable Circumstances”;

(b) The risk of Subcontractor delay or non-performance;

(c) Changes in the scope or cost of Design-Build Work that may occur as the design is advanced from the level set forth in the Baseline Design Documents to a fully complete level;

(d) The risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Design-Build Work will exceed the level assumed by the parties in establishing the Base Guaranteed Maximum Price under item (1) above;

(e) The risk that it may be necessary to incur additional capital and operating expenses in order to meet the Substantial Completion Standards and achieve Substantial Completion; and

(f) Any other risk specifically referred to herein as a risk to be borne by the Design-Builder in performing the Design-Build Work.

(3) The fact that costs associated with Uncontrollable Circumstances are separately compensable from the Design-Build Period Costs that are limited by the Base Guaranteed Maximum Price. Such costs shall be borne by the Town as and to the extent provided in Article 14 (Uncontrollable Circumstances) and shall not be included in the Design-Builder Contingency.

(D) Obligations of the Design-Builder Relating to the GMP Amendment. In connection with a potential GMP Amendment, the Design-Builder shall be obligated (1) to make a complete bona-fide GMP Submittal in accordance with this Section and Section 5.7 (GMP Submittal), and (2) to negotiate in good faith toward a GMP Amendment based on the GMP Submittal, if and to the extent the Town elects pursuant to subsection (E) of this Section to enter into and continue such negotiations. The Preliminary Services do not include negotiating a GMP Amendment, and the Design-Builder represents that the Preliminary Services Fee does not include consideration for the costs and expenses of negotiating the GMP Amendment. The Design-Builder shall bear all such negotiating costs and expenses, whether paid or incurred concurrently with or upon completion of the performance of the Preliminary Services and the preparation and delivery of the GMP Submittal.

(E) No Obligation of the Town to Enter Into a GMP Amendment. Notwithstanding the intent of the parties as expressed in subsection (B) of this Section, the Town has no obligation whatsoever to negotiate with the Design-Builder to enter into a GMP Amendment. The Town, in its discretion, may elect not to commence or continue negotiations and not to enter into and execute a GMP Amendment for any reason. The Design-Builder acknowledges and agrees that no failure by the Town to negotiate or to enter into the GMP Amendment shall entitle the Design-Builder to make any claim for damages or compensation as a result of any such failure, and all such claims are hereby waived and released by the Design-Builder. The Design-Builder acknowledges and agrees that neither the intent of the parties to negotiate and enter into the GMP Amendment, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect the Town’s right to terminate this Design-Build Contract for its convenience at any time as provided in Section 12.6 (Town Convenience Termination Rights).

(F) Elective Continuance of the Project by the Parties on Other Bases. The Town at any time may request a proposal from the Design-Builder or the lead design

Subcontractor acting as Engineer-of-Record to provide professional engineering and other services necessary to advance the design of the Project (either partially or to the fully complete level) so that the Project may be procured and constructed on a design-bid-build or other alternative basis. The Design-Builder shall make a bona fide proposal to enter into such services on terms and conditions substantially identical to the terms and conditions of this Design-Build Contract pertaining to the design services element of the Preliminary Services, and to negotiate in good faith to enter into a Change Order with the Town to provide such services. At the Town's request, the Design-Builder shall cause the lead design Subcontractor to make such proposal and to negotiate in good faith to enter into a separate agreement with the Town to provide such services.

(G) Elective Continuance of the Project by the Town with Other Contractors; Project Documents. The Town shall have the right at any time in its discretion to proceed to develop and implement the Project with other contractors and service providers. The Town may exercise such right during the performance of the Preliminary Services, upon termination of this Design-Build Contract or upon any failure of the parties to execute a GMP Amendment. The Town shall have the further right in connection therewith, based on its ownership of the Preliminary Services Deliverable Material as provided in Section 4.8 (Ownership and Use of Documents and Information), to use any Preliminary Services Deliverable Material in any manner it chooses to complete the design and construction of the Project. In such event, the Design-Builder shall be liable for the Preliminary Services Deliverable Material solely to the extent of errors or omissions in the Preliminary Services Deliverable Material, as determined based on the developmental stage of the Preliminary Services Deliverable Material at the time of transfer to the Town and Good Engineering and Construction Practice. This limitation as to the Design-Builder's liability for the Preliminary Services Deliverable Material is applicable only to the extent the Town determines not to enter into the GMP Amendment or otherwise terminates this Design-Build Contract and is intended to recognize the Town's investment in the Preliminary Services Deliverable Material and to provide the Town with a meaningful alternative for the design and construction of the Project in such circumstances, while recognizing that the Design-Builder will not have control over the use of the Preliminary Services Deliverable Material in such circumstances and that the Preliminary Services Deliverable Material may not be complete, final, appropriately stamped and/or signed. The Design-Builder acknowledges and agrees that such limitation will have no applicability if the parties enter into the GMP Amendment and proceed with the Design-Build Period Work.

(H) Design-Builder Representations in a GMP Amendment. In the event the parties execute a GMP Amendment, the GMP Amendment shall be deemed to constitute a representation by the Design-Builder that:

- (1) It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Design-Build Work;
- (2) It has thoroughly reviewed and verified all information provided to or obtained by the Design-Builder through the performance of the Preliminary Services, including:
 - (a) Reports of explorations and tests of subsurface conditions at or contiguous to the Project Sites and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Sites which have been identified or made available by the Town; and
 - (b) Reports as to Regulated Substances, if any, at the Project Sites which have been identified or made available by the Town;

- (3) It has become familiar with and is satisfied as to the general, local, and Project Sites conditions that may affect cost, progress, and performance of the Design-Build Work;
- (4) It is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Design-Build Work;
- (5) It is aware of the nature of the Related Projects and is satisfied that the Design-Build Work can be performed in accordance with the requirements concerning the Related Projects, as set forth in the Contract Documents;
- (6) It has considered the information known to the Design-Builder, including information commonly known to designers and contractors doing business in the locality of the Project Sites; information and observations obtained from visits to the Project Sites; and the Project Sites-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
- (a) The cost, progress, and performance of the Design-Build Work;
 - (b) The means, methods, techniques, sequences, and procedures of construction to be employed by the Design-Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and
 - (c) Design-Builder's health and safety precautions and programs;
- (7) Based on all of the foregoing and the performance of the Preliminary Services, the Project Sites constitute acceptable and suitable sites for the performance of the Design-Build Work;
- (8) It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the GMP Amendment for the performance of the Design-Build Work for the Base Guaranteed Maximum Price on or before the Scheduled Substantial Completion Date, and in accordance with the other terms and conditions of this Design-Build Contract;
- (9) The Baseline Design Documents are sufficient to enable the Design-Builder to determine the Base Guaranteed Maximum Price; and
- (10) Subject to the terms and conditions of this Design-Build Contract, the Design-Build Work can be completed in accordance with the Contract Standards for the Base Guaranteed Maximum Price by the Scheduled Substantial Completion Date.
- (I) Performance Bond and Payment Bond. The Design-Builder, as provided in Section 5.6(A) (Early Work Packages) and in Section 16.1 (Bonds), shall provide the Performance Bond and the Payment Bond concurrently with the execution of the GMP Amendment.

SECTION 5.9. APPROVALS REQUIRED PRIOR TO DESIGN-BUILD PERIOD.

The parties acknowledge that the Design-Builder and the Town will be obtaining Governmental and Non-Governmental Approvals during the Preliminary Services Period. The parties further acknowledge that the Town does not intend to execute a GMP Amendment until

all Governmental and Non-Governmental Approvals listed in Appendix 3 (Governmental and Non-Governmental Approvals) have been obtained, unless waived in writing by the Town.

ARTICLE 6

DESIGN-BUILD WORK

SECTION 6.1. DESIGN-BUILD PERIOD WORK GENERALLY.(A) Authorization to Proceed; Commencement and Completion of the Design-Build Period Work.

(1) Notice to Proceed. The Town shall issue the Notice to Proceed with the Design-Build Period Work concurrently with or promptly following the occurrence of the GMP Amendment Date, and following issuance of the Notice to Proceed with Design-Build Period Work the Design-Builder shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards; provided, however, that the Design-Builder shall not commence Construction of the Project until the Construction Commencement Date. The Design-Builder shall be paid the Design-Build Price pursuant to Article 9 (Contract Compensation) as its entitlement to payment of portions of the Design-Build Price arise thereunder.

(2) Limited Notice to Proceed. The Town, in its discretion, may issue a Limited Notice to Proceed with Construction and the specific terms and conditions under which the Design-Builder is authorized to proceed with Construction shall be specified in such Limited Notice to Proceed, and following issuance of such Limited Notice to Proceed the Design-Builder shall promptly proceed to undertake, perform and complete such Design-Build Period Work identified in such Limited Notice to Proceed Construction under the specific terms and conditions specified in the Limited Notice to Proceed and otherwise in accordance with the Contract Standards.

(B) Elements of the Design-Build Period Work. In performing the Design-Build Period Work generally, the Design-Builder shall, in accordance with the Contract Standards:

(1) Apply for, obtain and maintain any Design-Builder Managed Approvals or any Design-Builder Managed Non-Governmental Approvals required for the Design-Build Period Work not obtained as of the GMP Amendment Date, and assist the Town in obtaining the Town Managed Governmental Approvals and the Town Managed Non-Governmental Approvals which have not been obtained as of the GMP Amendment Date;

(2) Perform all necessary Project Sites preparation and excavation activities;

(3) Demolish and remove any existing improvements at the Project Sites, as and to the extent required by the Baseline Design Documents;

(4) Modify, re-route, repair or replace or cause the modification, re-routing, repair, or replacement of, any Utilities, as and to the extent required by the Contract Documents;

(5) Remove from the Project Sites and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom, as well as water from de-watering activities, in an environmentally safe manner;

- (6) Complete the design and construct the Project;
- (7) Restore the surface of the Project Sites to the condition prior to construction and consistent with the standards and requirements set forth in Appendix 4 (Baseline Design Documents);
- (8) Achieve Substantial Completion; and
- (9) Achieve Final Completion,

all so that the Project is suitable and adequate for the purposes hereof.

(C) Sequencing and Staging of Design-Build Period Work. The Design-Builder shall not be limited in the sequencing or staging of the Design-Build Period Work, except to the extent that: (1) the Contract Standards impose limitations, and (2) the Town's issuances of Limited Notices to Proceed impose limitations. The Town understands and acknowledges that the Design-Builder intends to complete the Design-Build Period Work in stages, whereby particular segments of the Design-Build Period Work will be designed and built prior to the completion of the design of the Project as a whole. Although this Design-Build Contract does not require the Design-Builder to fully complete the entire design of the Project prior to proceeding with particular segments of the Construction of the Project, the Design-Builder shall comply with all requirements of Applicable Law in performing the Design-Build Work and shall further comply with the design submittal requirements set forth in Section 6.7(C) (Town Review and Comment on Final Design Documents).

(D) Construction Work Hours. Without limiting any other requirement hereunder, the Design-Builder shall not perform Construction work outside of the hours authorized for construction for such location under the applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants for such location of the applicable Governmental Body with jurisdiction over such location (which may be the Town), or under any applicable Governmental Approvals, or on Sundays or holidays without specific permission from the applicable Governmental Body (which may be the Town). The parties acknowledge that compliance with the Project Schedule is critical, and the Town agrees to act reasonably and cooperate with the Design-Builder in an effort to accommodate reasonable Design-Builder requests to perform Construction work outside the hours specified in the preceding sentence to the extent consistent with Applicable Law.

(E) Laydown Areas. Laydown and staging areas for construction materials required for the Design-Build Work shall be located off-Project Site at locations identified and provided by the Design-Builder and shall be identified in the Baseline Design Documents. Without limiting any other requirement hereunder, all such laydown and staging areas for construction materials required for the Design-Build Work shall comply with all requirements of Applicable Law (including any applicable utility laydown yard ordinance) for such location of the applicable Governmental Body with jurisdiction over such location (which may be the Town).

(F) Design-Build Period Work Schedule and Reports. The initial Design-Build Period Work Schedule shall be prepared in accordance with Appendices 2 and 5 during performance of the Preliminary Services. Throughout the Design-Build Period, the Design-Builder shall further update and maintain the Design-Build Period Work Schedule in accordance with Appendix 5 (General Design-Build Work Requirements). The Design-Builder shall provide Monthly Progress Reports, which shall include updates to the Design-Build Period Work Schedule, in accordance with the requirements set forth in Section 4.9 (Monthly Progress Reports) and Appendix 5 (General Design-Build Work Requirements). The Design-Builder acknowledges and agrees that it has a material obligation to provide the Town with, and to

update, maintain and revise, the Design-Build Period Work Schedule throughout the Design-Build Period in accordance with the Contract Standards.

(G) On-Site Meetings and Design and Construction Review. During the Design-Build Period, the Design-Builder, the Town and the Owner Representative shall conduct regular progress and management meetings as set forth in Appendix 5 (General Design-Build Work Requirements). Such meetings shall take place in a field office to be provided by the Design-Builder in accordance with Appendix 5 (General Design-Build Work Requirements) or as otherwise directed by the Town. The Monthly Progress Report shall be prepared by the Design-Builder and provided to the Town and the Owner Representative at least five days prior to each monthly meeting.

(H) Construction Utilities. The Design-Builder shall provide, make all arrangements necessary to secure the availability of all Utilities necessary for the performance of the Design-Build Work. The Design-Builder shall be responsible for the payment of all Utility bills in a timely manner in connection with all Design-Build Work performed from the issuance of the Notice to Proceed with Design-Build Period Work until the Substantial Completion Date.

(I) Quality Assurance and Quality Control. The Design-Builder shall have full responsibility for quality assurance and quality control for the Design-Period Work, including compliance with the Quality Management Plan. Without limiting any other requirement hereunder, the Design-Builder shall perform quality control inspection and testing services to confirm compliance with the Contract Standards.

(J) Title and Risk of Loss. Title to the pipes, structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the Town upon incorporation in the Project or payment therefor by the Town, whichever first occurs, free and clear of all Encumbrances as provided in subsection (K) of this Section. Except to the extent provided in Section 6.19(E) (Payment for Restoration Work and Uninsured Costs), however, the Design-Builder shall bear all risk of loss concerning such pipes, structures, improvements, fixtures, machinery, equipment and materials until the Substantial Completion Date, regardless of the extent to which the loss was insured or the availability of insurance proceeds. The procedures set forth in Section 6.19 (Property Damage During the Design-Build Period) shall be applicable in the event of any damage to, loss or the destruction of the Design-Build Work at the Project. Notwithstanding anything set forth in this subsection (J) or Section 6.19 (Property Damage During the Design-Build Period), the Design-Builder shall bear all risk of loss concerning any pipes, structures, improvements, fixtures, machinery, equipment or materials required for the Design-Build Work and stored at any location other than the Project, regardless of whether the Town has paid for any such structures, improvements, fixtures, machinery, equipment or materials.

(K) Encumbrances. The Design-Builder shall not directly or indirectly create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance or Lien (other than Permitted Encumbrances) arising in relation to the Project or the Design-Build Work. The Design-Builder's Subcontracts with all materialmen, suppliers, and Subcontractors shall provide that the sole recourse for such materialmen, suppliers, and Subcontractors for non-payment shall be against the Payment Bond.

(L) Notice of Default. The Design-Builder shall provide to the Town, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, Subcontract, Security Instrument or other transaction agreement pertaining to the Contract Obligations.

(M) Required Project Manager Certification. Any notice, certification, report or application delivered by the Design-Builder to the Town in connection with the Design-Build Work, or payment therefor, under this Article 6, Article 8 (Substantial Completion and Final Completion), Article 9 (Contract Compensation) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed certificate of the Project Manager affirming the accuracy thereof to the best of his or her knowledge. The form of certification required pursuant to this subsection (M) shall comply with all requirements of Applicable Law.

(N) Partnering Requirements. The Design-Build Work shall be subject to the Town's formal partnering requirements, as set forth in Appendix 5 (General Design-Build Work Requirements).

(O) Temporary Project Sites Facilities. The Design-Builder shall be responsible for ensuring that adequate temporary facilities are provided as necessary to enable Subcontractors to perform their work and that provisions have been made for all Project Sites facilities necessary for the Design-Builder to manage, inspect and supervise the Design-Build Work, including all facilities and services the cost of which constitutes a General Conditions Cost.

(P) Sensitivity to Stakeholders. It is the intention of the Town to be sensitive to the needs and concerns of the stakeholders, including the residents of the Town. It is the Design-Builder's responsibility to adhere to this intent to the best of its ability and in accordance with the approved Stakeholder Outreach Plan to be developed as part of the Phase 1b Preliminary Services. The Design-Builder shall, whenever possible, address stakeholder inquiries about the Project in coordination with the Town, provide to citizens lodging complaints the names and numbers of the Town personnel with whom they can follow up (as provided by the Town), immediately inform the Town of any citizen complaints, and provide for continuous access to all private property affected by the Design-Build Work.

(Q) Utility Coordination and Relocation. The parties acknowledge the existence of underground Utility facilities along the alignment of the Project. The Design-Builder shall use good faith efforts to prepare a design that avoids or minimizes conflicts with existing Utility facilities to the extent practicable. The Design-Builder is responsible for coordination with the Utilities and implementing the measures identified in the Utility Relocation Plan developed by the Design-Builder as part of the Phase 1b Preliminary Services and approved by the Town. Such measures shall be carried out in a manner which will avoid or minimize any delays to the Project. In undertaking excavation and tunneling, the Design-Builder shall comply with California Government Code Section 4216 et seq. Prior to conducting any excavation or trenching, the Design-Builder shall contact the appropriate regional notification center as required by California Government Code Section 4216 et seq. Since the Design-Builder is performing the engineering design work for the Project and the Town is not preparing and providing detailed plans and specifications to the Design-Builder, the parties acknowledge and agree that California Government Code Section 4215 (concerning potential Town responsibility for the removal, relocation or protection of existing main or trunkline Utility facilities) does not apply to the Design-Build Work. The Design-Builder shall provide all Utilities with reasonable notification of the need for the Utility to adjust or relocate any facilities. With respect to Utilities identified in the Utility Relocation Plan prepared as part of the Phase 1b Preliminary Services, such Utilities shall be notified promptly following the finalization of the draft Utility Relocation Plan pursuant to Appendix 2 (Preliminary Services) and in any event shall be provided a minimum of [____] days' notice of the need for the relocation. With respect to Utilities discovered following the commencement of the Construction work, the Design-Builder shall notify the Town of the need for the Utility relocation and shall meet with the Town to discuss potential "work arounds" so as to minimize any schedule disruption and associated additional costs. If the parties agree that the best course of action is to seek a Utility relocation, the Design-Builder shall notify the Utility on

behalf of the Town of the required action. In the event that a Utility is uncooperative or notifies the Design-Builder that it is unable to comply with the notice provided by the Design-Builder, the Design-Builder shall immediately notify the Town so that the Town can exercise any legal rights it may have. To the extent that the discovery of the need for the Utility relocation constitutes a Differing Site Condition, the Design-Builder shall be entitled to Uncontrollable Circumstance relief pursuant to Section 6.3(D) (Relief for Differing Site Conditions); provided, however, that the Design-Builder shall not be entitled to recover costs associated with a delay for the first [____] days of delay caused by the need for a Utility relocation.

SECTION 6.2. CONSTRUCTION COMMENCEMENT DATE.

(A) Construction Commencement Date Generally. Except with respect to Early Work Packages as provided in Section 5.6 (Early Work Packages) and except as authorized in a Limited Notice to Proceed as provided in Section 6.1(A)(2) (Limited Notice to Proceed), in no event shall the Design-Builder commence with the Construction of the Project prior to the “Construction Commencement Date”. The Construction Commencement Date shall not occur prior to the satisfaction of the following “Construction Commencement Date Conditions,” each of which must be and remain satisfied as of the Construction Commencement Date:

(1) The Design-Builder shall have certified that it has completed all Preliminary Services and pre-construction requirements set forth in Appendix 5 (General Design-Build Work Requirements) and shall have provided the Town with an updated Design-Build Period Work Schedule in accordance with Appendix 5 (General Design-Build Work Requirements) and the Health and Safety Plan.

(2) The Design-Builder shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and all Governmental Approvals and Non-Governmental Approvals set forth in Appendix 3 (Governmental and Non-Governmental Approvals) and as otherwise required for the commencement of the Construction of the Project (unless waived by the Town) shall have been obtained, and the Design-Builder shall have provided copies of all Design-Builder Managed Governmental Approvals and Design-Builder Managed Non-Governmental Approvals to the Town. All such Governmental and Non-Governmental Approvals shall be in full force and effect.

(3) The Design-Builder shall have provided the Town with certificates for all Required Insurance in accordance with Section 13.1 (Insurance) and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 (Insurance) and Appendix 10 (Insurance Requirements).

(4) The Design-Builder shall have complied with the design submittal requirements set forth in Section 6.7(C) (Town Review and Comment on Final Design Documents) to the extent necessary to commence with the Construction of the Project.

(5) The Design-Builder shall have held pre-construction conferences with the Town and its representatives in accordance with Appendix 5 (General Design-Build Work Requirements).

(6) The Design-Builder shall have provided the Town with the Performance Bond and the Payment Bond in accordance with Section 5.6(A) (Early Work Packages), Section 5.8(I) (Performance Bond and Payment Bond) and Section 16.1 and certified that such bonds are in full force and effect and in compliance with the requirements of Section 16.1 (Bonds).

(7) The Town has acquired all easements or rights of way necessary for the Design-Builder to construct the Project.

(8) The Design-Builder shall have received written notice from the Town that the Town has received satisfactory evidence of the binding commitments from the California Department of Housing and Urban Development and the Division of Financial Assistance of the California State Water Resources Control Board regarding the availability of Grant funding.

The foregoing requirements are in addition to any other preconditions to the commencement of Construction established by the Contract Documents.

(B) Establishment of the Construction Commencement Date. In no event shall the Construction Commencement Date be established prior to the satisfaction of the Construction Commencement Date Conditions. The Design-Builder shall provide 10 days' written notice to the Town as to the satisfaction of the Construction Commencement Date Conditions and the date it proposes to establish as the Construction Commencement Date hereunder. The Town shall issue the Notice to Proceed with Design-Build Period Work on the Construction Commencement Date proposed by the Design-Builder upon satisfaction of the Construction Commencement Date Conditions. In the event the Town determines that the Construction Commencement Date Conditions have not been satisfied, notwithstanding the Design-Builder's notice pursuant to this subsection, the Town Contract Representative, by written notice to the Design-Builder delivered not later than three days prior to the Construction Commencement Date proposed by the Design-Builder, shall notify the Design-Builder of the Town's determination and state which conditions have not been satisfied. Without limiting any of the foregoing, the Town, in its discretion, may waive (in writing) a Construction Commencement Date Condition or issue a Limited Notice to Proceed as set forth in Section 6.1(A)(2) (Limited Notice to Proceed) above.

(C) Effect of the Establishment of the Construction Commencement Date. Upon the issuance by the Town of the Notice to Proceed establishing the Construction Commencement Date, the Design-Builder shall have the right to proceed with the Construction of the Project. Absent the occurrence of Uncontrollable Circumstances (including a delay by the Town in obtaining Grant funding or obtaining Town Managed Governmental Approvals beyond those time periods or dates set forth in the Design-Builder's critical path schedule previously approved by the Town as and to the extent provided in this Design-Build Contract, no delay in the establishment of the Construction Commencement Date shall entitle the Design-Builder to any price, schedule or performance relief hereunder.

SECTION 6.3. DIFFERING SITE CONDITIONS.

(A) Preliminary Services Relating to Differing Site Conditions. The Design-Builder shall review all available information and undertake all soils, groundwater, utility locations, facilities and other site conditions investigations required with respect to the Project Sites as required by the Preliminary Services, and shall furnish the Town with the reports identified in Appendix 2 (Preliminary Services).

(B) Commencing Subsurface Excavations. Prior to commencing any trenching or excavations, the Design-Builder shall, taking into account the information in the Reference Documents and reports developed as part of the Preliminary Services and in compliance with Good Engineering and Construction Practice, conduct further site investigations in accordance with Appendix 5 (General Design-Build Work Requirements), including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include, but are not limited to, all sewer, water, gas, and other piping,

and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Project Sites. The Design-Builder shall carefully sustain in their places and support, or if necessary relocate or causes to be relocated, all underground and surface structures located within or adjacent to the Project Sites and as required by the party owning or controlling such structure. Existing surface facilities which are temporarily removed to facilitate installation of the Design-Build Work shall be replaced and restored to their original condition. The Design-Builder shall notify the Town at least five Business Days in advance of any work that might impact utilities of business or residents in the area surrounding the Project Sites so that the Town can notify such businesses or residents of such work. As set forth in Section 6.1(Q) (Utility Coordination and Relocation), the Design-Builder shall comply with all requirements set forth under Applicable Law, including California Government Code Section 4216 et seq. prior to and during undertaking such excavations or tunneling.

(C) Discovery of Differing Site Conditions. Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, the Design-Builder shall immediately, after taking appropriate measures to secure the affected Design-Build Work: (1) stop work in and secure the affected area; and (2) notify the Town of the alleged Differing Site Condition. The Design-Builder's notice to the Town shall be issued by telephone or in person and followed no later than by the end of the next Business Day thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. Promptly upon receipt of the Design-Builder's notice, the Town will investigate the Project Site conditions. Such notice shall describe the specific ground conditions encountered and the measures taken to deal with the ground conditions. Notwithstanding anything set forth in Section 6.3 (Differing Site Conditions) or in Article 14 (Uncontrollable Circumstances), no Uncontrollable Circumstance relief shall be allowed for any alleged Differing Site Condition unless the Design-Builder provides the Town with notice in accordance with this subsection.

(D) Relief for Differing Site Conditions. If the Design-Builder establishes that the actual conditions encountered during Construction: (1) meet the criteria for a Differing Site Condition, and (2) directly and materially impact the Design-Builder's cost or time of performance, then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Section 14.4 (Schedule Relief and Related Price Relief). The Design-Builder shall not be provided relief for any conditions of which it should have been aware.

SECTION 6.4. REGULATED SITE CONDITIONS.

(A) Design-Builder Responsibilities. The parties recognize that in performing the Design-Build Work, the Design-Builder may encounter various Regulated Site Conditions. In performing the Design-Build Work, the Design-Builder shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Design-Builder or becomes actually known by the Design-Builder through Preliminary Services or physical observation. Notwithstanding anything to the contrary in this Section, the Design-Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to:

(1) Any Regulated Substance present at, on, in or under, or migrating or emanating to or from the Project Sites, that was generated by or brought or caused to be brought on the Project Sites by any act or omission of the Design-Builder or any Subcontractor; and

(2) The creation of any Regulated Site Condition due to Design-Builder Fault, or the exacerbation of any Regulated Site Condition due to Design-Builder Fault once the location and existence of such Regulated Site Condition becomes actually known to the Design-Builder.

All remediation costs resulting from Regulated Substances or Regulated Site Conditions for which the Design-Builder bears responsibility pursuant to this subsection (A) shall constitute Unallowable Costs borne solely by the Design-Builder. The Design-Builder shall indemnify, defend and hold harmless the Town Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense resulting from Regulated Substances or Regulated Site Conditions for which the Design-Builder bears responsibility pursuant to this subsection (A).

(B) Cultural Resources. The Design-Builder shall not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If the Design-Builder discovers any of these items, the Design-Builder shall immediately notify the Town Contract Representative and comply with the Archaeological Construction Monitoring, Mitigation and Preservation Plans and all Applicable Law.

(C) Endangered Species. Should either threatened or endangered plant or animal species (as determined under Applicable Law) be encountered in the performance of the Design-Build Work, the Design-Builder shall cease work immediately in the area of encounter, notify the Town Contract Representative and comply with all Applicable Law. The Design-Builder shall not resume Design-Build Work in the affected area until authorized to do so by the Town Contract Representative.

(D) Encountering of Regulated Substances. If the Design-Builder encounters any materials or substances at the Project Site that it reasonably believes to be Regulated Substances, it shall immediately notify the Town and comply with the Contaminated Media Management Plan and all Applicable Law.

(E) Uncontrollable Circumstance Relief. Without limiting the Design-Builder's obligations under subsection (D) of this Section, if the Design-Builder establishes that the actual conditions encountered during Construction:

- (1) Meet the criteria for Regulated Site Conditions;
- (2) Directly and materially impact the Design-Builder's cost or time of performance; and
- (3) Were not known or could not have been reasonably discovered through the Design-Builder's performance of the Preliminary Services including the preparation of the Archaeological Construction Monitoring, Mitigation and Preservation Plans and the Contaminated Media Management Plan, review of Reference Documents or reasonable diligence;

then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances). The Design-Builder acknowledges that the Reference Documents and Preliminary Services have identified the presence of Regulated Substances on the Project Sites and the Base Guaranteed Maximum Price is intended to include all costs associated with such identified Regulated Substances. No Uncontrollable Circumstance relief will be granted due to the presence of Regulated Substances that were disclosed to the Design-Builder as of the Baseline Date.

(F) Generator Liability. Nothing contained herein is intended to identify the Design-Builder as the generator of any pre-existing Regulated Substance, except as provided by Applicable Law. Except with respect to those Regulated Substances identified in subsection (A) of this Section as to which the Design-Builder bears responsibility, the Town shall execute, as generator, Hazardous Waste manifests required in order for the Design-Builder to fulfill its obligations under this Section, as and to the extent required under Applicable Law.

SECTION 6.5. PERMITTING RESPONSIBILITIES AND SCHEDULE.

(A) Design-Builder Governmental and Non-Governmental Approval Responsibility Generally. The Design-Builder shall obtain and maintain all Design-Builder Managed Governmental Approvals and all Design-Builder Managed Non-Governmental Approvals necessary to commence, continue and complete the Design-Build Work and achieve Substantial Completion. In connection therewith, the Design-Builder shall:

- (1) Prepare and complete all required filings, applications and reports;
- (2) Develop and furnish all necessary data, information, plans, documentation and supporting material;
- (3) Familiarize itself with all applicable terms and conditions;
- (4) Attend all required meetings and hearings;
- (5) Pay all required permit and filing fees; and
- (6) Take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms of all Design-Builder Governmental and Non-Governmental Approvals.

The Design-Builder shall be responsible for identifying, obtaining and maintaining any Governmental and Non-Governmental Approvals required for the performance of the Design-Build Work that are not the Town Managed Governmental Approvals.

(B) Application Process. The Town shall be notified by the Design-Builder prior to any application, data submittal, or other communication by the Design-Builder with any Governmental Body regarding Governmental Approvals. The Design-Builder shall not knowingly take any action in any application, data submittal or other communication with any entity regarding Governmental or Non-Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or unreasonable burden on the Town or that would materially contravene any Town policies with respect to the matters contained therein. The Town reserves the right, after reasonable notification and consultation with the Design-Builder, to modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Design-Builder which would have the effect described in the preceding sentence. The final terms and conditions of any Governmental Approval and Non-Governmental Approval shall be subject to the Town's approval, which approval shall not be unreasonably withheld or delayed. The Design-Builder shall deliver to the Town, promptly after the Design-Builder's receipt, a copy of each Governmental Approval and Non-Governmental Approval, and shall provide a listing of the status of all Governmental Approvals and Non-Governmental Approval in its Monthly Progress Report.

(C) Town Managed Governmental Approval Responsibility. The Town shall:

- (1) Be responsible for obtaining the Town Managed Governmental Approvals, subject to the Design-Builder's obligations under subsection (D) of this Section;

(2) Cooperate with and, upon the reasonable request of the Design-Builder, provide reasonable assistance to the Design-Builder in obtaining from Governmental Bodies the Design-Builder Governmental Approvals (including any modifications, renewals and extensions of existing Design-Builder Governmental Approvals from Governmental Bodies) required to be obtained by the Design-Builder under this Section;

(3) Where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Governmental Approval and within a reasonable period of time after being requested to do so by the Design-Builder:

(a) Execute Governmental Approval application and related documents, either in its own name or jointly with the Design-Builder, as and to the extent required under Applicable Law or the administrative practices of the applicable Governmental Body;

(b) Provide for attendance by appropriate Town staff at public hearings and meetings of applicable Governmental Bodies; and

(c) Provide the Design-Builder with existing relevant data and documents that are within the Town's custody or control or are reasonably obtainable by the Town and which are reasonably required for such purpose.

To the extent Applicable Law or the administrative practice of the applicable Governmental Body requires that Governmental Approvals that are required to be obtained by the Design-Builder pursuant to this Section be applied for or issued in the Town's name or that the Town directly coordinates with such Governmental Bodies, the Design-Builder shall, at its own cost and expense, provide all necessary support and efforts to apply for and obtain such Governmental Approvals, including preparing all application and related documents for execution by the Town. The Town's obligation to assist and cooperate pursuant to this Section shall be subject to the Design-Builder's obligations under this Section and shall not require the Town to:

(1) Staff the Design-Builder's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Governmental Approvals required to be obtained by the Design-Builder hereunder;

(2) Take a position which it believes to be inconsistent with the Contract Documents, the Contract Standards, or the Town policy (except policies that are incompatible with the contracting methodology associated with this Design-Build Contract or are inconsistent with the express obligations of the Town hereunder);

(3) Take a position that is not usual and customary for the Town to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the contracting methodology associated with this Design-Build Contract or are inconsistent with the express obligations of the Town hereunder); and

(4) Refrain from concurring with a position taken by Governmental Body if the Town believes that position to be correct.

(D) Design-Builder Responsibility For the Town Managed Governmental Approvals and Town Managed Non-Governmental Approvals. In connection with the Town Managed Governmental Approvals and the Town Managed Non-Governmental Approvals, the Design-Builder shall cooperate with and assist the Town in carrying out any of the Town's

responsibilities hereunder with respect to the Town Managed Governmental Approvals and the Town Managed Non- Governmental Approvals, including:

- (1) Preparing and completing all required filings, applications and reports;
- (2) Developing and furnishing all necessary data, information, plans, documentation and supporting material;
- (3) Familiarizing itself with all applicable terms and conditions;
- (4) Attending all required meetings and hearings; and
- (5) Take all other action reasonably necessary in accordance with Good Engineering and Construction Practice to assist the Town in obtaining, complying with, maintaining, renewing, and extending all of the Town Managed Governmental Approvals and the Town Managed Non-Governmental Approvals.

(E) No Relief for Delays or Conditions in Design-Builder Managed Governmental Approvals or Design-Builder Managed Non-Governmental Approvals. The parties acknowledge that the Town is taking responsibility for the Town Managed Governmental Approvals and the Town Managed Non-Governmental Approvals and as such, is taking responsibility for obtaining most, if not all, environmental permits for the Project and that the Design-Builder is taking responsibility for the Design-Builder Managed Governmental Approvals and the Design-Builder Managed Non-Governmental Approvals and as such, is taking responsibility for obtaining routine construction permits. Therefore, the Design-Builder will not be afforded schedule or price relief in the event of any delay in the issuance of a Design-Builder Managed Governmental Approval or a Design-Builder Managed Non-Governmental Approval or such Design-Builder Managed Governmental Approval or Design-Builder Managed Non-Governmental Approval imposes unanticipated terms and conditions.

(F) Adjustment to Scheduled Substantial Completion Date Based on Delays in Obtaining Town Managed Governmental Approvals or Town Managed Non-Governmental Approvals. In the event any delay in the issuance of a Town Managed Governmental Approval or a Town Managed Non-Governmental Approval materially delays the achievement of Substantial Completion, an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to an adjustment to the Scheduled Substantial Completion Date as and to the extent provided, and upon compliance with the procedures set forth in Article 14 (Uncontrollable Circumstances), except to the extent the Design-Builder fails to comply with its obligations with respect thereto under this Section, under the Governmental and Non-Governmental Approvals Table, or under Section 17.9 (General Duty to Mitigate). Schedule relief shall be granted under this subsection only if the delay in issuance of a Town Managed Governmental Approval or a Town Managed Non-Governmental Approval materially affects the Design-Build Schedule's critical path. In the event any such delay constitutes an Uncontrollable Circumstance, the Design-Builder shall be entitled to a Base Guaranteed Maximum Price Adjustment as and to the extent set forth in Article 14 (Uncontrollable Circumstances).

(G) Relief Based on Certain Permitting Terms and Conditions. In the event that a Governmental Body imposes terms and conditions in connection with a Town Managed Governmental Approval following the execution of the GMP Amendment that require material changes to the Technical Specifications or the Substantial Completion Standards, an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to a Base Guaranteed Maximum Price Adjustment as and to the extent provided in Article 14 (Uncontrollable Circumstances).

SECTION 6.6. INTERFACE AND COORDINATION WITH OTHER ENTITIES.

As set forth in Section 6.5(C) (Town Managed Governmental Approval Responsibility), the Town is responsible for obtaining the Town Managed Governmental Approvals and the Town Managed Non-Governmental Approvals and may require assistance and cooperation from the Design-Builder in connection with the Town's efforts in obtaining, complying with, maintaining, renewing, and extending all of such approvals from the following entities:

(A) City of Chico. The parties acknowledge that the Town has entered into the Inter-Municipal Agreement with the City of Chico that defines the procedures and terms and conditions for the Town's use of the Chico Sanitary Sewer System at the connection to the Chico WPCP. The Design-Builder shall cooperate with and assist the Town in carrying out any of the Town's responsibilities under the Inter-Municipal Agreement. The Design-Builder shall perform the Contract Services in a manner that does not violate the Inter-Municipal Agreement. If in the performance of the Contract Services hereunder it becomes necessary for the Design-Builder to coordinate any of its activities with the City of Chico, the Design-Builder shall only interface with the City of Chico with the prior approval and participation of the Town.

(B) Butte County. The parties acknowledge that Construction of the Project requires coordinate with Butte County. If in the performance of the Contract Services hereunder it becomes necessary for the Design-Builder to coordinate any of its activities with Butte County, the Design-Builder shall only interface with Butte County with the prior approval and participation of the Town.

(C) UPRR. The parties acknowledge that Construction of the Project requires a Non-Governmental Approval from UPRR for the UPRR crossing. If in the performance of the Contract Services hereunder it becomes necessary for the Design-Builder to coordinate any of its activities with UPRR, the Design-Builder shall only interface with UPRR with the prior approval and participation of the Town.

(D) Caltrans. The parties acknowledge that Construction of the Project requires a Non-Governmental Approval from Caltrans for the Highway 99 crossing. If in the performance of the Contract Services hereunder it becomes necessary for the Design-Builder to coordinate any of its activities with Caltrans, the Design-Builder shall only interface with Caltrans with the prior approval and participation of the Town.

SECTION 6.7. FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION.

(A) Performance of the Design Work. Following the issuance of the Notice to Proceed with Design-Build Period Work, the Design-Builder agrees to undertake, perform, and complete the designs and plans for the Project in accordance with the Contract Standards and to prepare all Final Design Documents necessary or appropriate to carry out and complete the Design-Build Period Work. All Design-Builder working design documents and Final Design Documents shall comply with the Baseline Design Documents and shall provide that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Baseline Design Documents. The Design-Builder shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Final Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Baseline Design Documents or the Final Design Documents.

(B) Sole Responsibility and Liability. The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction, and performance capability of the Project hereunder in accordance with the Contract Standards, (1) notwithstanding the fact that the RFQ included certain design criteria, requirements and performance standards for the Design-Build Work, and (2) the Town's role in defining the nature and extent of the Preliminary Services, reviewing and commenting on the Preliminary Services Deliverable Material, and negotiating and agreeing upon the GMP Amendment. The Design-Builder acknowledges that, in the RFQ process, the performance of the Preliminary Services, the delivery of the GMP Submittal and the negotiation of the GMP Amendment, the Design-Builder had the unrestricted right and opportunity not to submit its Statement of Qualifications and not to execute this Design-Build Contract or the GMP Amendment if the Design-Builder had determined that such design criteria and requirements or the establishment of the Contract Standards would in any manner or to any degree impair the Design-Builder's ability to perform the Design-Build Work in compliance herewith. Without limiting the Design-Builder's right to claim relief in the event of Uncontrollable Circumstances as and to the extent provided in this Design-Build Contract, all risks relating to the design, construction and performance capability of the Project, including all risks of design defects, constructability and efficacy, have been transferred to the Design-Builder under this Design-Build Contract.

(C) Town Review and Comment on Final Design Documents. The Town shall have the right to review and comment on all Final Design Documents within the time frames specified in Appendix 7 (Design-Build Work Review Procedures) in order to confirm the compliance and consistency of the Final Design Documents with the Contract Documents. In no event shall the Design-Builder proceed with the Construction of any particular segment of the Design-Build Work without first complying with the requirements of Appendix 7 (Design-Build Work Review Procedures). The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in Appendix 7 (Design-Build Work Review Procedures), to any comments delivered by the Town or its representatives as to the Design-Builder's design submittals. Neither compliance by the Design-Builder with the Baseline Design Documents, nor review and comment by the Town or the Owner Representative on the Design-Builder's Preliminary Design Documents or Final Design Documents, nor any failure by the Town or the Owner Representative to comment on any design submittals shall in any way relieve the Design-Builder of full responsibility for the design, construction and performance capability of the Project, as demonstrated through the Substantial Completion Test, in accordance with the Contract Standards. The parties acknowledge and agree that the review and comment rights of the Town under this subsection (C) are intended for the informational purposes of the Town and for the Town to determine whether the Final Design Documents comply with the Baseline Design Documents.

(D) Documents at the Project Site. The Design-Builder shall maintain at the Project Site all Final Design Documents, including a complete set of record drawings, in accordance with the Contract Standards. These documents shall be available to the Town for reference, copying and use, and a complete set thereof shall be delivered to the Town upon completion of the Design-Build Work.

SECTION 6.8. CHANGES TO THE BASELINE DESIGN DOCUMENTS AT DESIGN-BUILDER REQUEST.

(A) Town Consent Required. The Design-Builder acknowledges the Town's material interest in each provision of the Baseline Design Documents, and agrees that, subject to Section 6.9 (Other Changes to the Baseline Design Documents), no material change to the Baseline Design Documents shall be made except with the consent of the Town, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Amendment or Change Order, as applicable.

(B) Notice and Information as to Proposed Change. Without limiting anything under subsection (A) of this Section, the Design-Builder shall give the Town written notice of, and reasonable opportunity to review and approve, any Baseline Design Requirements Change proposed to be made at the Design-Builder's request. The notice shall contain sufficient information for the Town to determine that the proposed Baseline Design Requirements Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Design-Builder to fulfill its obligations under this Design-Build Contract; and
- (4) Is feasible.

SECTION 6.9. OTHER CHANGES TO THE BASELINE DESIGN DOCUMENTS.

(A) Changes Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance after the GMP Amendment Date, the Design-Builder shall promptly proceed, subject to the terms, conditions and procedures set forth in Article 14 (Uncontrollable Circumstances) and subject to the Town's approval, to make or cause to be made all Baseline Design Requirements Changes reasonably necessary to address the Uncontrollable Circumstance. The Design-Builder shall consult with the Town concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance. The parties shall use all reasonable efforts to address Baseline Design Requirements Changes required due to Uncontrollable Circumstances in a manner that will not impact the critical path of planned Design-Build Work in the Design-Build Period Work Schedule. The Design-Builder shall be entitled to schedule and price relief resulting from any such Baseline Design Requirements Change to the extent provided in Article 14 (Uncontrollable Circumstances). Without limiting the right of the Town to issue a Work Change Directive under Section 6.11 (Work Change Directives), any Baseline Design Requirements Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of the Contract Documents, shall be reflected in a Change Order.

(B) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval after the issuance of the Notice to Proceed with Design-Build Period Work that require a Baseline Design Requirements Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, the Design-Builder shall promptly proceed, subject to the Town's approval, to make or cause to be made all Baseline Design Requirements Changes reasonably necessary to comply with such additional terms and conditions, or the Town may elect to contest any such additional terms and conditions if such terms and conditions are not acceptable to the Town; provided that, if such contest by the Town delays the performance of the Design-Build Work, the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances). As set forth in Section 6.5(G) (Relief Based on Certain Permitting Terms and Conditions), the Town shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Without limiting the right of the Town to issue a Work Change Directive under Section 6.11 (Work Change Directives), any such Baseline Design Requirements Change and any related

change in the terms and conditions of this Design-Build Contract shall be reflected in a Change Order.

(C) Changes Required by the Town. The Town shall have the right to require the Design-Builder to make Baseline Design Requirements Changes at any time prior to Final Completion in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Design-Build Contract so long as the Design-Builder's rights are protected as provided in this subsection (C). The Design-Builder shall be entitled to a Change Order providing appropriate price, schedule, performance and other relief in the event of a Baseline Design Requirements Change made at the direction of the Town under this subsection (C); provided, however, that the Design-Builder shall not be entitled to any such price, schedule, performance or other relief to the extent that any such Baseline Design Requirements Change is required due to Design-Builder Fault. The Town shall have no obligation to make any Baseline Design Requirements Change on account of its rights under this subsection (C).

SECTION 6.10. CHANGE PROCEDURES.

(A) Generally. The sole means of providing for an adjustment to the Scheduled Substantial Completion Date, the Contract Compensation or a Base Guaranteed Maximum Price Adjustment, or any other price, performance or schedule relief under this Design-Build Contract shall be through the issuance of a Change Order or Work Change Directive. All work authorized or modified pursuant to a Change Order shall constitute Design-Build Work hereunder and shall be completed in accordance with the Contract Standards. Each Change Order shall be specific and final as to prices and extensions of time with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order, except as provided in subsection (C) of this Section with respect to actual costs subject to Cost Substantiation. Price determinations associated with Change Orders and Work Change Directives shall be made in accordance with Section 9.7 (Changes in Design-Build Price). The Design-Builder is not authorized to proceed with any contemplated change in the Design-Build Work prior to the Design-Builder's receipt of a Change Order or Work Change Directive.

(B) Design-Builder Change Order Proposal. The Town Contract Representative may, in anticipation of possibly issuing a Change Order, request the Design-Builder to prepare a proposal of cost and time to perform the contemplated changes in the Design-Build Work, along with any other proposed changes to this Design-Build Contract. The Design-Builder's written proposal shall be prepared in accordance with the Contract Standards on a proposal request form approved by the Town Contract Representative and shall be transmitted to the Town Contract Representative promptly, but not later than seven days (unless the Town Contract Representative agrees to a longer duration, in writing) after the Design-Builder's receipt of the Town Contract Representative's written request, and shall remain a firm offer for a period not less than 15 Business Days after receipt thereof by the Town Contract Representative, unless the parties agree to a longer duration, in writing.

(C) Negotiation of Proposed Change Order. The Design-Builder shall consult with the Town and the Owner Representative concerning possible means of addressing any proposed Change Order, and the Design-Builder and the Town shall cooperate in order to minimize any delay and lessen any additional cost associated with the Change Order. The Town may negotiate the written proposal delivered pursuant to subsection (B) of this Section. If the Town accepts such written proposal without adjustment to its terms, the Town may issue a Change Order for the written proposal within the firm-offer period specified in subsection (B) of this Section, and the parties' signing of the written proposal shall be deemed equivalent to signing the Change Order. Change Orders may provide for a Base Guaranteed Maximum Price Adjustment based on (1) unit prices included in the GMP Amendment or otherwise agreed to by

the parties; (2) negotiated lump sum pricing; (3) actual costs subject to Cost Substantiation in accordance with Section 9.8 (Interest on Overdue Obligations); or (4) a combination of the foregoing. A Change Order that reduces the scope of the Design-Build Work shall provide for a Base Guaranteed Maximum Price Adjustment reducing the Guaranteed Maximum Price, as determined in the same manner as provided for any increase to the Guaranteed Maximum Price. Except as otherwise directed by the Town pursuant to Section 6.14 (Suspension of Work), the Design-Builder shall, pending the negotiation of any Change Order, diligently proceed with the performance of all Design-Build Work not subject to such proposed Change Order.

(D) Effect of Design-Builder's Signature. The signing of a Change Order by the Design-Builder indicates the Design-Builder's acceptance and approval thereof, including any adjustment to the Scheduled Substantial Completion Date or the Contract Compensation or other price, performance or schedule relief or change provided for therein. The signing of any Change Order by the Design-Builder shall constitute an acknowledgement and agreement that:

(1) Any compensation paid in conjunction with the terms of a Change Order shall comprise the total compensation due the Design-Builder for the work or the change defined in the Change Order;

(2) The stipulated compensation includes all payment for the Design-Build Work authorized by the Change Order, including all payment for the interruption of schedules, stop work orders, extended overhead, delay, or any other impact, claim or ripple effect;

(3) The Change Order constitutes full accord and satisfaction for the change in the Design-Build Work;

(4) The Design-Builder reserves no right to pursue any subsequent claim concerning the Change Order; and

(5) All necessary amendments to this Design-Build Contract, including all necessary Baseline Design Requirements Changes, are reflected in the Change Order and no subsequent claim or amendment to the Contract Documents will arise out of or as a result of the Change Order.

SECTION 6.11. WORK CHANGE DIRECTIVES.

(A) Town Right to Issue. The parties intend to negotiate the terms of any Change Order providing for a Baseline Design Requirements Change prior to the Design-Builder incurring any costs with respect to any such change or adjustment. However, notwithstanding the foregoing, the Town shall have the right to issue a written order directing a Baseline Design Requirements Change or other change to the Design-Build Work pursuant to this subsection (A), which order shall specify any appropriate price, performance or schedule relief, if any, associated with any such change (a "Work Change Directive"). No Work Change Directive shall be made that would be contrary to Applicable Law. Upon receipt of a Work Change Directive, the Design-Builder shall promptly proceed with the performance of any change in the Design-Build Work as instructed and shall promptly advise the Town in writing of the Design-Builder's agreement (or disagreement) with any price, performance or schedule relief, if any, as may be proposed by the Town in the Work Change Directive. If the Design-Builder receives a written communication signed on behalf of the Town, which the Design-Builder believes is a Work Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work until it receives written confirmation from the Town that such communication is in fact a Work Change Directive. A Work Change Directive

that is signed by the Design-Builder and approved by the Town in accordance with its procurement rules and regulations, reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order.

(B) Disagreement with Terms of a Work Change Directive. If the Design-Builder disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Work Change Directive, the Design-Builder may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution). In such case, the Design-Builder shall proceed with the performance of the Design-Build Work in accordance with the Work Change Directive and shall keep and present, in such form as the Town may request, an itemized accounting to go with the appropriate supporting data with respect to the Design-Builder's position, including all information necessary to substantiate any cost claimed by the Design-Builder. The Design-Builder shall provide notice of any disagreement pursuant to this subsection (B) within 15 days after receipt of the Work Change Directive. The failure of the Design-Builder to provide notice of any such disagreement in accordance with this subsection (B) shall constitute a waiver of any further right to dispute the terms and conditions of a Work Change Directive.

SECTION 6.12. DESIGN-BUILD PERIOD WORK DELIVERABLE MATERIAL.

As the Design-Build Work progresses (or upon the termination of the Design-Builder's right to perform the Design-Build Work), the Design-Builder shall deliver to the Town all Design-Build Period Work Deliverable Material. The provisions of Section 17.7 (Property Rights) shall apply to any Design-Build Period Work Deliverable Material used by the Design-Builder in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. The Town shall have the right from and after the Contract Date to use (or permit use of) all such Design-Build Period Work Deliverable Material, all oral information received by the Town in connection with the Design-Build Work, and all ideas or methods represented by such Design-Build Period Work Deliverable Material, without additional compensation; provided, however, that the Town shall not publish, distribute, or sell such Design-Build Period Work Deliverable Material to third parties not employed by or under contract to the Town, except as required by Applicable Law with respect to public records requests or in connection with requests for proposals to perform construction work or design, or consulting services on behalf of the Town and in connection with the performance of such work. The Town's use of any such Design-Build Period Work Deliverable Material for any purpose other than the Project shall be at its own risk and the Design-Builder shall have no liability therefor.

SECTION 6.13. INTERFACE AND COORDINATION WITH TOWN, UTILITIES AND OTHER CONTRACTORS.

(A) Maintenance of Operations During Construction. The Design-Builder shall undertake and execute the Design-Build Work in a manner which does not interfere with or impair the ongoing operations of the Town utility systems or private utilities. The Design-Builder shall comply with the requirements of the Utility Relocation Plan developed as part of the Phase 1b Preliminary Services and shall arrange and/or provide for all necessary bypasses and other measures necessary to maintain utility services. The Design-Builder shall coordinate all Design-Build Work with the Town in accordance with the Contract Standards, including the approved Utility Relocation Plan.

(B) Related Projects Generally. The Design-Builder acknowledges that the Town may be undertaking other projects at the Project Sites and, without limiting any other obligation under this Design-Build Contract, agrees to coordinate the Design-Build Work with the work associated with such other projects in accordance with the Contract Standards. Any other project being undertaken at or in the vicinity of the Project Sites, are referred to herein as

the “Related Projects”. Nothing in this Design-Build Contract shall be interpreted as granting the Design-Builder exclusive occupancy of the Project Sites. The Design-Builder must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by the Town in relation to its overall capital improvement program or other Related Project, of which the Design-Builder becomes aware. The Design-Builder shall cause the Design-Build Work to be performed without damaging the work or property of any Separate Contractor and so as not to cause any unnecessary hindrance or delay to any Separate Contractors working at the Project Sites. The Design-Builder agrees to reasonably cooperate and coordinate its activities with those of the Town and all Separate Contractors so that the Project and any Related Project can be completed in an orderly and coordinated manner without unreasonable disruption. The Design-Builder agrees that it shall not be entitled to any price, performance or other Uncontrollable Circumstance relief hereunder due to any delay or hindrance to the extent caused by a failure of any Design-Builder Person to cooperate or coordinate its work with the work of any Separate Contractor.

(C) Interrelated Work. If part of the Design-Build Work depends on proper execution of construction or operations by the Town or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Design-Build Work, inspect the other work and promptly report to the Town Contract Representative any apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Design-Build Work. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances) in the event that defects in the work of the Town or any Separate Contractor render the work unsuitable for the proper execution or result of any part of the Design-Build Work. However, failure of the Design-Builder to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that the Town’s or the Separate Contractor’s completed or partially completed construction is fit and proper to receive the Design-Build Work, except as to discrepancies or defects not then reasonably discoverable pursuant to Good Engineering and Construction Practice.

(D) Disputes Associated with Separate Work. If the performance of any work by the Town or a Separate Contractor under contract with the Town is likely to be interfered with by the simultaneous performance of some other contract or contracts, the Town shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors may proceed simultaneously. Any decision by the Town to halt or delay the performance of the Design-Build Work by the Design-Builder pursuant to this Section shall be made in accordance with Section 6.14 (Suspension of Work), and the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided therein.

SECTION 6.14. SUSPENSION OF WORK.

The Town may, through a written notice executed by the Town Contract Representative, order the Design-Builder to suspend, delay or interrupt all or any part of the Design-Build Work for such period of time as the Town Contract Representative may determine to be appropriate for the coordination of the Related Projects or otherwise for the convenience of the Town. The Design-Builder shall have no entitlement to relief hereunder or any adjustment to the Scheduled Substantial Completion Date or the Contract Compensation under circumstances of the Town ordering the Design-Builder to suspend, delay or interrupt all or any part of the Design-Build Work due to Design-Builder Fault, including any failure of compliance by any Design-Builder Person with the Design-Builder’s obligations under this Design-Build Contract in respect of the maintenance of operations during Construction, coordination in respect of Related Projects, maintenance of Required Insurance or any health and safety requirement. However, if the Town exercises its right to suspend, delay or interrupt all or any part of the Design-Build Work pursuant to this Section under circumstances other

than Design-Builder Fault, an Uncontrollable Circumstance shall be deemed to have occurred, subject to the terms and conditions of Article 14 (Uncontrollable Circumstances).

SECTION 6.15. CONSTRUCTION PRACTICE.

(A) Exclusive Responsibility of Design-Builder. The Design-Builder shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by the Contract Documents. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Design-Builder to provide the following construction requirements: supervision, tools, implements, machinery, labor, materials and accessories necessary and proper for the purpose; installation, periodic inspection, and removal of temporary site lighting, including specific task lighting and emergency lighting; temporary offices and construction trailers; installation, daily inspection, and removal of miscellaneous temporary barricades, fencing, partitions, and other means of temporary separation/isolation on the site during construction, including any temporary covered wooden walkways for sidewalks; required design certifications; required approvals; weather protection; dust control; noise abatement, barriers, etc.; miscellaneous de-watering requirements; clean-up and housekeeping of the Project Sites; construction trade management; temporary parking; vehicle traffic; health, safety and first aid facilities and equipment; correction of defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Sites; temporary Utilities; Utility relocations necessary or convenient to its performance of the Design-Build Work; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination. The use of explosives in connection with the performance of the Design-Build Work is permitted solely to the extent permissible under Applicable Law and with the prior written approval of the Town, acting reasonably.

(B) Project Sites Debris, Trash and Waste. The Design-Builder shall keep the Project Sites reasonably free from debris, trash and construction wastes to permit the Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas and without causing complaints from Separate Contractors, adjacent property owners, local public officials or members of the public. The Design-Builder shall be responsible for the maintenance of grass, shrubbery and trees located on the Project Sites, including any right of way. Prior to Final Completion, the Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Design-Build Work or applicable portions thereof (and not otherwise incorporated into the Project in accordance with the Contract Documents).

SECTION 6.16. RESPONSIBILITY FOR SAFETY AND SECURITY.

(A) Safety Manager. The Design-Builder assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Design-Build Work. The Design-Builder shall, prior to commencing construction, designate an individual with the qualifications and experience necessary under Good Engineering and Construction Practice to supervise the implementation and monitoring of all health and safety precautions and programs related to the Design-Build Work (the "Safety Manager"). The Safety Manager shall be an individual stationed at the Project Sites.

(B) Precautions and Protection; Project Sites Security. The Design-Builder shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (1) All employees on the Project Sites and all other persons who may be affected thereby;
- (2) All the Design-Build Work, whether in storage on or off the Project Sites, under the care, custody or control of Design-Builder or any of its Subcontractors. Machinery and equipment shall have proper guards in place and all hazards shall be eliminated in accordance with the latest health and safety provisions of the OSHA Construction Industry Regulations 29 CFR, Parts 1910 and 1926; and
- (3) Other property at the Project Sites or adjacent thereto, including plant facilities, trees, shrubs, lawns, walks, pavements, roadways, structures and Utilities not designated for removal, relocation or replacement in the course of construction.

The Design-Builder shall develop and administer a security program for the Project Sites in coordination with the Town. The Design-Builder shall cooperate with the Town in connection with the Town's program for the badging of all personnel and vehicles that require authorization for entry to the Project Sites.

(C) Health and Safety Inspections and Meetings. The Design-Builder is solely responsible to inspect, survey, and assess the Project Sites and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. The Design-Builder's Project Sites assessment shall begin upon the initiation of Design-Build Work and continue throughout the duration of the Design-Build Period. The Design-Builder shall comply with all health and safety requirements imposed by Applicable Law, including 29 CFR 1910.146, in the performance of the Design-Build Work. The Safety Manager shall make routine daily inspections of the Project Sites and shall hold weekly health and safety meetings with the Design-Builder's personnel, Subcontractors and others as applicable. The Design-Builder shall provide minutes of each health and safety meeting to the Town within five days of such meeting.

(D) Health and Safety Compliance Requirements. The Design-Builder shall, and shall cause all Subcontractors to, shall comply with:

- (1) All Applicable Law relating to safety;
- (2) The Health and Safety Plan; and
- (3) Any the Town-specific health and safety requirements provided to the Design-Builder.

The Design-Builder shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Design-Build Work to the Town and, to the extent mandated by Applicable Law, to all Governmental Bodies having jurisdiction over health and safety-related matters involving the Project. Where any dangerous condition or nuisance exists in and around the Project Sites, including equipment and supply storage areas or other areas in any way connected with the performance of the Contract Obligations, the Design-Builder shall provide and maintain reasonable warning of such danger or nuisance. The Design-Builder shall not create excavation, obstructions, or any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this Design-Build Contract unless necessary to its performance, and in that event the Design-Builder shall provide and maintain at all times reasonable means of warning of any danger or nuisance created. The duties of the Design-Builder in this Section shall be non-delegable, and the Design-Builder's compliance with any specific recommendations or requirements of the Town as to the means of warning shall not excuse the Design-Builder from the faithful performance of these duties should such

recommendations or requirements not be adequate or reasonable under the circumstances. The Town, through the Town Contract Representative, shall have the right to suspend any or all Design-Build Work if the Design-Builder fails to comply with its obligations hereunder without any requirements of providing the Design-Builder with Uncontrollable Circumstance relief hereunder.

(E) Emergencies. The Design-Builder shall develop an emergency response plan in accordance with the requirements set forth in Appendix 5 (General Design-Build Work Requirements). The emergency response plan shall be subject to the approval of the Town and shall establish the protocols for the Design-Builder in dealing with emergencies impacting the performance of the Design-Build Work. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, the Design-Builder shall act immediately to prevent threatened loss, damage, injury or death. The Design-Builder shall notify the Town of the situation and all actions taken immediately thereafter. If, in the opinion of the Design-Builder, immediate action is not required, the Design-Builder shall notify the Town of the emergency situation and proceed in accordance with the Town's instructions. However, if any loss, damage, injury or death occurs that could have been prevented by the Design-Builder's prompt and immediate action, Design-Builder shall be fully liable for all costs, damages, claims, actions, suits, attorneys' fees and all other expenses arising therefrom or relating thereto. Prior to commencing its Design-Build Work and at all times during the performance of the Design-Build Work, the Design-Builder shall provide the Town with two 24 hour emergency phone numbers where its representatives can be contacted.

(F) Traffic Control. In the performance of Construction, the Design-Builder shall comply with all traffic related requirements of Applicable Law and shall comply with the traffic control requirements set forth in the Traffic Control Plan.

SECTION 6.17. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observations and Design-Build Work Review Protocol. During the progress of the Design-Build Work through Final Completion, the Design-Builder shall at all times during normal working hours afford the Town and its designated representatives, including the Owner Representative, every reasonable opportunity for observing all Design-Build Work at the Project Sites, and shall comply with the Design-Build Work review procedures set forth in Appendix 7 (Design-Build Work Review Procedures). The Design-Builder shall provide sufficient, safe and proper facilities at all reasonable times for the observation and inspection of the Design-Build Work by the Town and its designated representatives. During any such observation and inspection, all representatives of the Town shall comply with all reasonable health and safety and other rules and regulations applicable to presence in or upon the Project Sites, and shall in no material way interfere with the Design-Builder's performance of any Design-Build Work. The right of access provided for under this subsection (A) shall extend to all storage facilities associated with the Design-Build Work, whether located on or off the Project Sites.

(B) Factory Fabrication, Inspection and Testing. The Town reserves the right to have its designated representatives, including the Owner Representative, witness any factory fabrication, inspection or testing. The Design-Builder shall provide the Town with its anticipated schedule for such fabrication, inspection and testing at the initial Project meeting and shall provide 30 days' advanced written notice of any actual factory fabrication, inspection or test. The Town shall provide the Design-Builder with reasonable advance notice (at least 14 days) of its intention to witness any factory fabrication, inspection or test pursuant to this subsection (B), which notice shall indicate the identity and number of designated representatives of the Town who will witness the fabrication, inspection or test.

(C) Design-Builder Tests. The Design-Builder shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Design-Builder shall give the Town and the Owner Representative reasonable advance notice (consistent with the approved Quality Management Plan prepared in accordance with Appendix 6 (Design-Build Quality Assurance and Quality Control Requirements)) of tests or inspections required by the Contract Standards prior to the conduct thereof. In no event shall the inability, failure, or refusal of the Town or any of its representatives to attend or be present at or during any such test or inspection delay the conduct of such test or inspection, delay the performance of the Design-Build Work, or otherwise serve as the basis for relief from the Design-Builder's obligations hereunder. The Engineer-of-Record shall conduct or witness any such test or inspection to the extent required by the Contract Standards. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the Town, which approval shall not be unreasonably withheld or delayed.

(D) Certificates and Reports. The Design-Builder shall secure and deliver to the Town promptly all required certificates of inspection, test reports, work logs, or approvals with respect to the Design-Build Work as and when required by the Contract Standards.

(E) Town Tests, Observations and Inspections. The Town, its employees, agents, representatives and contractors (which may be selected in the Town's discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the Town deems necessary or desirable to ascertain whether the Design-Build Work complies with the Contract Standards. The Design-Build Period Costs incurred in connection with any of such test, observation or inspection shall result in a Change Order unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with the Contract Documents or Applicable Law, in which event the costs and expenses of such observation, inspection or test shall be Unallowable Costs borne solely by the Design-Builder. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 (Uncontrollable Circumstances) in the event that any requested test, observation or inspection causes a delay in the critical path of the Design-Build Period Work Schedule, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(F) Notice of Covering Design-Build Work. The Design-Builder shall give the Town notice in the Monthly Progress Report of its upcoming schedule with respect to the covering and completion of any Design-Build Work regarding the Chico WPCP Connection or structures, and shall update such notice, if necessary, within a reasonable time period (at least seven days) before such covering and completion. The Town shall give the Design-Builder reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion. If the Town provides such notice, the Design-Builder shall afford the Town a reasonable opportunity to conduct such tests or inspections, which the Town shall promptly complete. At the Town's written request, the Design-Builder shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the Town's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the Town as to whether the disputed Design-Build Work complies with the requirements of the Contract Documents. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall:

(1) Be Unallowable Costs borne solely by the Design-Builder, if such Design-Build Work was covered prior to any observation or test required by the Contract

Standards or for which the Town was not provided reasonable advance notice hereunder, or prior to the date on which the Town was to conduct any observation or test as to which the Town has provided notice of its intention to conduct in accordance with this subsection (F); and

(2) In all other cases, as follows:

(a) Be Unallowable Costs borne solely by the Design-Builder, if such observation or test reveals that the Design-Build Work does not comply with the Contract Documents; or

(b) Be Design-Build Period Costs, if such observation or test reveals that the Design-Build Work complies with the Contract Documents, and shall result in a Change Order.

In the event such Design-Build Work does comply with the Contract Documents and the associated costs are determined to be Design-Build Period Costs pursuant to this subsection, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be costs for the account of the Town in accordance with Article 14 (Uncontrollable Circumstances).

SECTION 6.18. CORRECTION OF WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Design-Builder shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work that does not conform with the Contract Standards. The Design-Builder shall be solely responsible at its cost for the removal of defective work. In the event of a failure of the Design-Builder to correct any such nonconforming Design-Build Work in a timely manner, the Town shall have the right, but not the obligation, to correct or provide for the correction of such nonconforming Design-Build Work and the costs and expenses reasonably incurred by the Town in connection therewith shall be reimbursed by the Design-Builder to the Town. The Town shall provide the Design-Builder with seven days' advance written notice prior to exercising its right to correct or provide for the correction of any nonconforming Design-Build Work pursuant to this subsection (A).

(B) Election to Accept Non-Conforming Design-Build Work. The Town may elect by Change Order, at the Design-Builder's request, to accept non-conforming Design-Build Work and charge the Design-Builder (through a Base Guaranteed Maximum Price Adjustment) for the amount agreed upon by the parties as reflecting the reduction in value of the Design-Build Work. The Town shall have no obligation to accept non-conforming Design-Build Work pursuant to this subsection (B).

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Design-Builder's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Design-Builder under this Design-Build Contract. This Section is intended to supplement (and not to limit) the Design-Builder's obligations under any other provisions of this Design-Build Contract or Applicable Law.

SECTION 6.19. PROPERTY DAMAGE DURING THE DESIGN-BUILD PERIOD.

(A) Damage Prevention. In performing the Design-Build Work, the Design-Builder shall use care and diligence, and shall take all appropriate precautions in accordance

with the Contract Standards to protect the Design-Build Work from loss, damage or destruction.

(B) Restoration. During the Design-Build Period, in case of damage to the Design-Build Work, and regardless of the extent thereof or the estimated cost of restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Design-Builder shall promptly undertake and complete restoration of the damage to the Design-Build Work to the character and condition existing immediately prior to the damage and in accordance with the procedures set forth herein, as applicable, regarding Uncontrollable Circumstances, Change Orders and Work Change Directives. The Town shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Design-Builder in accordance with this Article 6. If the Design-Builder fails to undertake restoration of the damage, or having so commenced fails to complete restoration in accordance with the Contract Documents, the Town may (but shall not be obligated to) undertake or complete restoration at the Design-Builder's expense to the extent applicable in accordance with this Section. The Town shall provide the Design-Builder with seven days' advance written notice prior to exercising its right to undertake or complete restoration pursuant to this subsection (B). Notwithstanding any of the foregoing, to the extent that Uncontrollable Circumstances cause damage to the Design-Build Work and insurance proceeds or other third-party payments are not sufficiently available to pay for restoration work pursuant to this subsection (B), the Design-Builder's obligation to perform such restoration work shall be subject to the receipt of reasonable assurances from the Town of its ability to pay the costs for which it is financially responsible under this Section.

(C) Notice and Reports. In addition to the notification requirements set forth in Section 6.16(E) (Emergencies), the Design-Builder shall notify the Town and the insurers under any applicable policy of Required Insurance of any incident causing property damage to the Design-Build Work in excess of \$5,000 or of any OSHA recordable injury accident on the Project Sites related to the Design-Build Work, as promptly as reasonably possible after the Design-Builder learns of any such damage or accident. As soon as practicable after learning of any such incident or accident (but in no event later than 72 hours), the Design-Builder shall submit a written report to the Town. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to the Town. The Design-Builder shall also submit to the Town copies of all accident and other reports filed with (or given to the Design-Builder by) any insurance company, adjuster, or Governmental Body or otherwise prepared or filed in connection with the damage or accident.

(D) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist each other in exercising such rights as it may have to effectuate such recovery. Each party shall provide the other with copies of all relevant documentation, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection (D) to provide the other party with documents subject to the attorney-client privilege under the laws of the State.

(E) Payment for Restoration Work and Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Design-Build Work, including proceeds from all policies of Required Insurance, shall be for the benefit of the Town. The Town shall pay the Design-Builder for restoration work required pursuant to this Section with such proceeds and recoveries and, as necessary, other funds of the Town obtained pursuant to the Change Order provisions of this Article 6 and the payment provisions of Article 9 (Contract Compensation), as applicable. All costs not covered

by insurance proceeds or third-party payments shall constitute Design-Build Period Costs; provided, however, that such costs shall be Unallowable Costs borne solely by the Design-Builder to the extent the loss, damage or destruction was caused by Design-Builder Fault or to the extent insurance proceeds are not available due to a failure of the Design-Builder to obtain or maintain any applicable policy of Required Insurance.

(F) Repair of the Town and Private Property. The Design-Builder shall promptly at its sole cost and expense repair or replace all the Town Property and all private property damaged by the Design-Builder or any officer, director, employee, representative, agent or Subcontractor of the Design-Builder in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacement work shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage. Nothing in this subsection (F) is intended to waive any rights of recovery under applicable policies of insurance.

SECTION 6.20. OPERATIONS AND MAINTENANCE MANUAL.

The Design-Builder shall develop a comprehensive Operations and Maintenance Manual in accordance with the Contract Standards, including the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements). The Operations and Maintenance Manual shall contain a detailed description of the means and methods of properly operating and maintaining the Project; shall integrate all equipment and systems service manuals; shall document standard operating procedures and predictive, preventive and corrective maintenance procedures, practices and schedules; and shall otherwise be sufficiently detailed to permit the Project to be operated and maintained by operations and maintenance personnel by or on behalf of the Town. The Design-Builder shall submit preliminary, interim, pre-final and final versions of the Operations and Maintenance Manual for the Town's review, comment and approval in accordance with Appendix 5 (General Design-Build Work Requirements). A pre-final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements) shall be submitted to and approved by the Town as a condition precedent to the achievement of Substantial Completion in accordance with Section 8.1 (Substantial Completion Date Conditions). A final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements) shall be submitted to and approved by the Town as a condition precedent to the achievement of Final Completion in accordance with Section 8.4 (Final Completion).

SECTION 6.21. PUNCH LIST ITEMS.

(A) Punch List Requirements. The Design-Builder shall submit a proposed Punch List to the Town and the Owner Representative when the Design-Builder believes that the Design-Build Work has achieved the requirements for Substantial Completion in compliance with the Contract Documents. The "Punch List" shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Design-Builder's opinion:

(1) The Design-Builder can complete before the date specified in subsection (B) of this Section, and with minimal interference to the occupancy, use and lawful operation of the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 0.3% of the portion of the Guaranteed Maximum Price applicable to the construction of the Project (unless the Town determines, in its discretion, that a higher percentage is acceptable, as evidenced by the written approval of the Town Contract Representative).

The Town shall have the right to approve the Punch List in its discretion.

(B) Completion of Punch List Items. The Design-Builder shall complete all items on the Punch List within 60 days following the Substantial Completion Date. All work associated with the Punch List items shall constitute Design-Build Work hereunder and shall be performed by the Design-Builder in accordance with the Contract Standards.

ARTICLE 7

MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 7.1. MANAGEMENT.

(A) Project Manager. The Design-Builder has designated an employee of the Design-Builder, as the “Project Manager” to oversee all Preliminary Services and all Design-Build Period Work. When the Design-Builder or any Subcontractor is performing Construction Work, the Construction Superintendent (or designee reasonably acceptable to the Town) shall be present at the Project Sites. The Project Manager shall, among other things:

- (1) Be familiar with the Contract Obligations and all requirements of the Contract Documents;
- (2) Coordinate the Contract Obligations and give the Contract Obligations regular and careful attention and supervision;
- (3) Maintain a daily status log of the Design-Build Work when being performed; and
- (4) Attend all Project meetings (including meetings concerning scope, review, pre-bid, pre-construction, and construction matters) with the Town and its representatives.

The Design-Builder represents and warrants that the Project Manager shall be vested with the authority to act on behalf of the Design-Builder in connection with the performance of the Contract Obligations and to bind the Design-Builder with respect to any certification required under this Design-Build Contract to be made by the Project Manager. If the Design-Builder is comprised of two or more persons functioning as a joint venture, the Design-Builder shall have the authority to represent and act for the joint venture. The Design-Builder may change the person assigned as the Project Manager solely in accordance with the provisions of subsection (B) of this Section.

(B) Town Rights With Respect to Key Personnel. The Design-Builder acknowledges that the identity of the Project Manager and the other key management and supervisory personnel proposed by the Design-Builder and its Subcontractors in its Statement of Qualifications was a material factor in the selection of the Design-Builder to perform this Design-Build Contract. Such personnel, their affiliations and their anticipated roles in the performance of the Contract Obligations are set forth in Appendix 11 (Key Personnel and Approved Subcontractors). The Design-Builder shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the Design-Builder or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, resignation or any job protected leave available under Applicable Law. In the event of any such permissible unavailability, the Design-Builder shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to the Town with reasonable advance notice for its review and approval, which shall not be unreasonably withheld or delayed. The Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Contract Obligations if the Town, acting reasonably, determines that an unworkable relationship has developed between the Town and the individual.

SECTION 7.2. LABOR.

(A) Personnel Performance. The Design-Builder shall enforce discipline and good order at all times among the Design-Builder's employees and all Subcontractors. All persons engaged by the Design-Builder for performance of the Contract Obligations shall have requisite skills for the tasks assigned. The Design-Builder shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Contract Obligations. The Design-Builder shall cause all persons performing Contract Obligations, including all Subcontractors, to comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise under Applicable Law, including Design-Builder and Subcontractor employees.

(B) Training of Design-Builder and Subcontractor Employees. The Design-Builder shall provide training for all individuals employed by the Design-Builder or Subcontractors as a prerequisite to their entry to the Project Sites. The Design-Builder's training program for such employees shall include orientation training, safety and awareness training, and any other training deemed necessary. In addition, the training program shall, to the extent applicable for each employee, provide training for the start-up, Commissioning and Substantial Completion Test activities, and transition management and administration of the Project.

(C) Labor Relations. The Design-Builder shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Design-Builder shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Design-Builder or its Subcontractors, whether pertaining to organization of the Design-Build Work, arrangement or subdivision of the Baseline Design Documents, employee hiring, or any other matters. The Town shall have no responsibility whatsoever for any such disputes or issues and the Design-Builder shall indemnify, defend and hold harmless the Town and the Town Indemnitees in accordance with and to the extent provided in Section 15.1 (Design-Builder's Obligation to Indemnify) from and against all Loss-and-Expense resulting from any such labor dispute.

(D) Notice of Labor Disputes. If the Design-Builder has knowledge of an actual or potential labor dispute that may affect any of the Contract Obligations, the Design-Builder shall promptly:

(1) Give notice thereof to the Town, including all relevant information related to the dispute of which the Design-Builder has knowledge; and

(2) Take all reasonable steps to avoid an impact on the performance of any of the Contract Obligations including by applying for relief to appropriate forums or courts.

(E) Federal and State Prevailing Wage Requirements. The Project requires the payment of prevailing wage rates as set forth below:

(1) Pursuant to California Labor Code Section 1770 et seq., the general prevailing wage rates in the county in which the project work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at the Town and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/DLSR/PWD>. Future effective general prevailing wage rates, which have been predetermined and are on file with the California

Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

(2) Both federal and State wage rates shall apply. Attention is directed to the Federal minimum wage rate requirements in Appendix 12 (Certain Grant Requirements and Guidelines). The Federal minimum wage rates for the Project as predetermined by the United States Secretary of Labor are set forth in the books entitled “Notice to Contractors, Special Provisions, and Contract Documents”. The Federal minimum wage rates for the Project may be obtained directly from the Department of Labor home page at www.gpo.gov/davisbacon. Click on “Browse All Determinations By State”, then click on “California”, and then click on the “[_____]” determination for Butte County. A Contract Administration Memorandum to modify the Federal minimum wage rates, if necessary, will be executed and delivered.

(3) If there is a difference between the minimum wage rates predetermined by the United States Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Design-Builder and its Subcontractors shall pay not less than the higher wage rate. The California Department of Industrial Relations will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes “helper” (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Design-Builder and its Subcontractors, the Design-Builder and its Subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

(4) The minimum wage shall be periodically increased during the Design-Build Period in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Department of Industrial Relations or the United States Secretary of Labor, as applicable. Since the Town has obtained the Grants to pay portions of the Design-Build Price, both federal and State wage rates shall apply and the Design-Builder shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by the United States Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and all applicable provisions summarized in Appendix 12 (Certain Grant Requirements and Guidelines). Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. A copy of the wage rate determination, (including any additional classification and wage rate conformed under 29 CFR 5.5a(1)(ii) and Davis-Bacon poster (WH-1321)) shall be posted at all times at the site of work in a prominent and accessible place where it can be easily seen by the workers. Notwithstanding the provisions of this Design-Build Contract when entered into by the parties (including the Davis-Bacon Act wage determination attached to Appendix 12 (Certain Grant Requirements and Guidelines)), if the applicable prevailing wage rate has increased during the Term, the rate of pay of laborers and mechanics performing Design-Build Work shall be raised accordingly. The Guaranteed Maximum Price shall not be increased due to increases in the prevailing wage rate during the Term. The Design-Builder and all Subcontractors shall also comply with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by United States Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).

(F) Labor Compliance. The Design-Builder and all Subcontractors must submit certified payrolls and labor compliance documentation starting with the first Certified Payroll Report (CPR) and every CPR thereafter.

(G) Non-Discrimination in Employment. During the performance of the Contract Services, the Design-Builder agrees as follows:

(1) The Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, gender, sexual orientation or national origin, except where religion, gender, sexual orientation or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder, and the Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

(2) The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that the Design-Builder is an equal opportunity employer;

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation, shall be deemed sufficient for the purpose of meeting the requirements of this provision; and

(4) The Design-Builder shall include the provisions of items (1), (2) and (3) above in every Subcontract of over \$10,000 so that the provisions will be binding upon every Subcontractor or vendor.

(H) Drug-Free Workplace. During the performance of this Design-Build Contract, the Design-Builder agrees to (a) provide a drug-free workplace for the Design-Builder’s employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder that the Design-Builder maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every Subcontract of over \$10,000, so that the provisions will be binding upon each Subcontractor. For the purposes of this Section, “drug-free workplace” means a site for the performance of Contract Obligations performed in conjunction with this Design-Build Contract. The Design-Builder’s employees, in accordance with this Section, are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Design-Build Contract. The Design-Builder shall adhere to and certify that its employees comply with this substance abuse program.

(I) Overtime Work. No laborer or mechanic employed at the Project Sites during the Design-Build Period shall be permitted or required to work on a Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or

mechanic receives overtime compensation for all hours worked on a Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the California Department of Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar character in the State. The Design-Builder and all Subcontractors shall also comply with the 40 U.S.C. 3702 and 3704, as supplemented by United States Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and all applicable requirements of the Grants, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines).

(J) Inclusion in Subcontracts. The Design-Builder shall include Section 7.2(E) (Federal and State Prevailing Wage Requirements) through Section 7.2(I) (Overtime Work) in every Subcontract for Design-Build Period Work.

(K) Design-Builder Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights. As a result of the federal funding that the Town is obtaining to reimburse itself for a portion of the Design-Build Price, this Design-Build Contract and employees working on the Design-Build Work will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. 4712 by Section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (FAR) 3.908. The Design-Builder shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712, as described in FAR 3.908. The Design-Builder shall insert the substance of this subsection, including this sentence, in all Subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of Subcontract award.

(L) Employee-Related Insurance Coverage. The Design-Builder is responsible for securing all employee-related insurance coverage for the Design-Builder and the Design-Builder’s employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing such insurance coverage.

(M) Applicability of Certain Grant Requirements. Nothing set forth in this Section is intended to limit the Design-Builder’s obligations as identified in Appendix 12 (Certain Grant Requirements and Guidelines). Section 1.2(R) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to any inconsistency between terms and conditions set forth in this Section and in Appendix 12 (Certain Grant Requirements and Guidelines).

(N) Skilled and Trained Workforce Requirements. The Design-Builder shall comply with the requirements of Section 22172(b) of the California Public Contract Code obligating the Design-Builder to use a skilled and trained workforce in performing the Design-Build Work, and shall report to the Town monthly on actions taken to achieve such compliance.

SECTION 7.3. SUBCONTRACTING GENERALLY.

(A) Limited Right to Subcontract. The Design-Builder may carry out the Design-Build Work and other Contract Obligations by contracting such obligations to one or more Subcontractors in accordance with the requirements of this Article 7; provided, however, that the Design-Builder shall not subcontract more than seventy percent (70%) of the Construction work on the Project unless otherwise approved by the Town. The Design-Builder

shall retain full responsibility to the Town under this Design-Build Contract for all matters related to the Contract Obligations, notwithstanding the execution of, or the terms and conditions contained in, any Subcontract. Subcontracts entered into by the Design-Builder for the performance of the Contract Obligations shall neither supersede nor abrogate any of the terms or provisions of this Design-Build Contract.

(B) Approval Required. The Subcontractors identified in Appendix 11 (Key Personnel and Approved Subcontractors) are approved by the Town for the performance of the specific Contract Obligations identified therein, subject to the rights of the Town under this Section. The Design-Builder shall retain such Subcontractors to perform such services, unless otherwise agreed to in writing by the Town. All other Subcontractors shall be subject to the approval of the Town, which approval shall not be unreasonably withheld. The Design-Builder shall replace any Subcontractor at the request of the Town, after notice and a reasonable opportunity for corrective action, in the event that the Town determines, acting reasonably, that an unworkable relationship has developed between the Town or the Design-Builder and the Subcontractor. The Town's approval of any Subcontractor performing Contract Obligations shall be subject to the terms and conditions of Section 7.4 (Self-Performance and Subcontractor Selection).

(C) Performance Failure. The Design-Builder shall retain full responsibility to the Town under this Design-Build Contract for all matters related to the Contract Obligations. No failure of any Subcontractor used by the Design-Builder in connection with the provision of the Contract Obligations shall constitute an Uncontrollable Circumstance or otherwise relieve the Design-Builder from its obligations hereunder to perform the Contract Obligations, except as provided in items (h) and (j) of the list of "Inclusions" in the definition of Uncontrollable Circumstances. The Design-Builder shall be responsible for settling and resolving with all Subcontractors all claims including those:

- (1) Arising out of delay, disruption, interference, hindrance, schedule extension caused by the Design-Builder;
- (2) Arising from the actions or inactions of the Design-Builder or a Subcontractor; or
- (3) Inflicted on the Design-Builder or a Subcontractor by the actions of another Subcontractor.

The Design-Builder shall provide to the Town, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Subcontract that may have a material and adverse effect on performance by the Design-Builder of its obligations under the Contract Documents.

(D) Restricted Persons. In providing the Contract Obligations, the Design-Builder shall not contract with, or allow any of its Subcontractors to contract with, any person that, in the reasonable opinion of the Town, is a Restricted Person.

(E) Subcontractor Licensing. All trade Subcontractors shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by the Subcontractor at the time of the Subcontract and throughout the duration of the Subcontract. Section 7.2(A) (Personnel Performance) shall be applicable to all Subcontractors performing Design Professional Services.

(F) Availability of Subcontractors and Key Personnel. At the request of the Town, the Design-Builder shall make the key representatives of Subcontractors available for

meetings between the Town and the Design-Builder concerning design review, construction progress, Substantial Completion or any other matter relating to the performance of the Design-Build Work. The Design-Builder shall provide the Town with periodic human resource allocation summary reports concerning the personnel of the Material Subcontractors, which reports shall include anticipated personnel allocations for all ongoing and planned projects and shall demonstrate human resource sufficiency.

(G) Assignability. All Subcontracts entered into by the Design-Builder with respect to the Project shall be assignable to the Town, solely at the Town's election and without cost or penalty, upon any early termination of this Design-Build Contract, including convenience termination under Section 12.6 (Town Convenience Termination Rights).

(H) Prompt Payment. The Design-Builder shall pay its Subcontractors in accordance with Applicable Law. Any reduction of retention by the Town to the Design-Builder under Article 9 (Contract Compensation) shall result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Design-Builder shall pay Subcontractors the reduced retention within 10 days after the payment of the reduction of the retention to the Design-Builder. No contract between the Design-Builder and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided herein. If the Design-Builder fails to make payments in accordance with this Section, the Town may take any one or more of the following actions and the Design-Builder agrees that the Town may take such actions:

- (1) To declare the Design-Builder in breach of this Design-Build Contract;
- (2) Withhold future payments, including retention, until proper payment has been made to Subcontractors in accordance with this Section; or
- (3) Terminate this Design-Build Contract for an Event of Default by the Design-Builder under Section 12.2(B) (Events of Default Requiring Previous Notice and Cure Opportunity for Termination).

The Design-Builder shall include prompt payment provisions consistent with this Section and the requirements of Applicable Law in every Subcontract, including procurement of materials and leases of equipment entered into in connection with this Design-Build Contract. Nothing contained in this Section or otherwise in this Design-Build Contract shall provide a basis for any Subcontractor claim against the Town.

(I) Subcontractor Claims. The Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of this Article 7. The Design-Builder acknowledges that its indemnity obligations under Article 15 (Indemnification) shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work. No Subcontractor shall have any right or claim against the Town for labor, services, materials or equipment furnished for the Contract Obligations.

(J) Design-Builder Employee Claims. The Design-Builder specifically assumes potential liability for actions brought by the Design-Builder's own employees against the Town and, solely for the purpose of this indemnification and defense, the Design-Builder specifically waives any immunity available to it under State law. The Design-Builder recognizes that this waiver was the subject of mutual negotiation.

(K) Subcontracting with Small and Minority Businesses, Women’s Business Enterprises and Labor Surplus Area Firms. In accordance with 2 CFR 200.321, the Design-Builder shall take all necessary affirmative steps to cause minority businesses, women’s business enterprises and labor surplus area firms to be used when possible in performance of the Design-Build Work. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce.

SECTION 7.4. SELF-PERFORMANCE AND SUBCONTRACTOR SELECTION.

(A) Self-Performed Construction Work Generally. A minimum of thirty percent (30%) of Construction work on the Project shall be performed by the Design-Builder, or its Affiliates unless otherwise approved by the Town. Additional Construction work may be performed by the Design-Builder, or its Affiliates, with the approval of the Town given in its discretion pursuant to subsection (G) of this Section. The parties agree that, during the performance of the Preliminary Services, specific aspects of the Construction may be proposed for self-performance by the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor. The Town agrees to approve the proposed self-performance of the required minimum of thirty percent (30%) of Construction work on the Project required by this Section 7.4(A) and to allow the proposed self-performance of Construction work on the Project in excess of such required minimum of thirty percent (30%) of Construction work on the Project if the Design-Builder demonstrates to the Town’s satisfaction that providing for such self-performance is in the best interest of the Project and that the pricing therefor will be fair, reasonable and consistent with industry standards for similar services. The Town, in its discretion, may require that any such demonstration be supported by an independent cost estimate. Notwithstanding the foregoing, the Town shall have the right in its sole discretion to require that the Design-Builder utilize a competitive procedure as set forth in Section 7.4(F) (Competitive Procedures for Construction Work) and (G) (Alternative Procedures for Construction Work) for any and all Construction work proposed to be self-performed by the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor.

(B) Subcontractor Selection Generally. Subcontractors shall be selected on a competitive basis, unless the Town approves otherwise in accordance with subsection (G) (Alternative Procedures for Construction Work) of this Section.

(C) Subcontracting Plan. A proposed final Subcontracting Plan shall be prepared during performance of the Preliminary Services and proposed by the Design-Builder

as part of the GMP Submittal, and negotiated and agreed upon by the parties as part of the GMP Amendment.

(D) Division of Work. The Design-Builder shall coordinate and develop with the Town Contract Representative bid packages and work scope descriptions for each separate bid category that represents the entirety of the scope of the Design-Build Work for each phase and stage of the Project. The Design-Builder shall be responsible for determining the Baseline Design Documents that are applicable to each Subcontractor performing Design-Build Work, including all trade Subcontractors and Suppliers. The Design-Builder shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each Subcontractor.

(E) Pre-Bid Conferences. The Design-Builder shall schedule and conduct pre-bid or pre-proposal conferences with trade Subcontractors and Suppliers for the purpose of generating interest in the Project among potential Subcontractors. The Design-Builder shall coordinate such pre-bid conferences with the Town Contract Representative and shall record and preserve conference minutes.

(F) Competitive Procedures for Construction Work. Except for Construction work approved by the Town to be self-performed by the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor pursuant to Section 7.4(A) (Self-Performed Construction Work Generally) or as may otherwise be approved in writing by the Town Contract Representative in accordance with subsection (G) of this Section, the Design-Builder shall enter into fixed-price Subcontracts for the performance of all Construction work and, in connection therewith, shall utilize a competitive bidding or competitive sealed proposal process approved by the Town. In connection with any such procurement, the Design-Builder shall, in accordance with the Contract Standards:

- (1) Develop procurement procedures in consultation with the Town Contract Representative and prepare all necessary procurement documents;
- (2) Publicly advertise and receive bids or proposals;
- (3) Open and review all bids or proposals in a manner that does not disclose the contents of the bids or proposals to persons not employed by the Design-Builder, the Town or the Owner Representative;
- (4) Evaluate the bids or proposals in accordance with the selection criteria established in the procurement documents; and
- (5) Recommend a bid or proposal for approval by the Town Contract Representative in accordance with such evaluation.

Any Subcontract awarded for the performance of Construction work shall be subject to the Town's approval and shall have terms and conditions and a risk allocation substantially identical to that established by this Design-Build Contract. The Town Contract Representative's approval of a bid or proposal recommended by the Design-Builder in accordance with this Section shall not be unreasonably withheld. Without limiting any of the foregoing, the Design-Builder acknowledges and agrees that the Town and the Owner Representative shall have the right to: (i) review and comment on all procurement documents; (ii) attend any bid or proposal openings; (iii) attend any meetings with prospective Subcontractors or Suppliers, including scope review meetings; (iv) review all bids, proposals, and other information developed or otherwise resulting from any competitive procurement, including the Design-Builder's tabulation, scoring or evaluation materials; and (v) otherwise

participate in the negotiation and contract award process. Upon contract award, the Design-Builder shall provide the Town Contract Representative with a description of the competitive process undertaken in connection with such contract award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.

(G) Alternative Procedures for Construction Work. The Design-Builder may propose to the Town Contract Representative alternative procedures for the procurement of Construction work other than Construction work approved by the Town to be self-performed by the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor pursuant to Section 7.4(A) (Self-Performed Construction Work Generally). The Town Contract Representative's approval of any such alternative procedure shall be in the Town Contract Representative's sole discretion. If the Design-Builder or any Affiliate of the Design-Builder intends to submit a competitive bid or proposal for Construction work, the Design-Builder shall notify the Town Contract Representative in writing prior to the issuance of procurement documents for the work, and the Town Contract Representative shall have the right in its sole discretion to disallow the Design-Builder or any Affiliate of the Design-Builder from submitting a competitive bid or proposal for such Construction work or to require the submittal of all bids or proposals directly to the Town (and not to the Design-Builder) for review, evaluation and selection. Any decision by the Town Contract Representative to approve the performance of Construction work without obtaining competitive bids or proposals shall be subject to an "open book" process to provide the Town Contract Representative with sufficient information to determine whether the proposed pricing of the work is fair, reasonable and consistent with industry standards for similar services.

(H) Procurement of Subcontractors Prior to the GMP Amendment Date. The Design-Builder, during the Preliminary Services Period, in the development of the proposed Base Guaranteed Maximum Price to be submitted to the Town in the GMP Submittal (1) may conduct discussions with and obtain indicative pricing information from potential Construction Subcontractors, and (2) may initiate, subject to the approval of the Town given in its discretion, the formal procurement process for selecting Construction Subcontractors. Any such formal procurement process shall be conducted in accordance with the requirements of this Section and Section 22172.3 of the California Public Contract Code. No Subcontract resulting from such procurement process shall be executed prior to the GMP Amendment Date without the Town's consent given in its discretion.

(I) Use of Approved Subcontractors; Non-Substitution. The Design-Builder acknowledges that the identity of the Subcontractors identified by the Design-Builder in the Proposal was a material factor in the decision of the Town to execute this Design-Build Contract. Such Subcontractors constitute the Approved Subcontractors. The Approved Subcontractors designated in Appendix 11 (Key Personnel and Approved Subcontractors) for the performance of Design-Build Work are deemed qualified and shall be used for the performance of the portion of the Design-Build Work indicated in Appendix 11 (Key Personnel and Approved Subcontractors). In accordance with Sections 22172.3(a) and (c) of the California Public Contract Code, no substitution of Approved Subcontractors shall be made except upon compliance with the substitution requirements set forth in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the California Public Contract Code (the "Subletting and Subcontracting Fair Practices Act").

(J) Security for Construction Subcontractor Performance. Security for the performance of Subcontractors under Construction Subcontracts shall be provided in a manner agreed to by the parties, and the costs therefor shall constitute Design-Build Period Costs.

SECTION 7.5. TERMINATION, AMENDMENT, ASSIGNMENT AND
REPLACEMENT OF MATERIAL SUBCONTRACTS.

(A) Termination, Amendment and Assignment. Unless the Design-Builder has, at its earliest practicable opportunity, submitted to the Town notice of the proposed course of action (and any relevant documentation) and the Town has consented in writing to such course of action, such consent not to be unreasonably withheld or delayed, the Design-Builder shall not:

(1) Terminate, or agree to, or permit the termination of, any Material Subcontract;

(2) Make, or agree to, or permit the making of (a) any material amendment of any Material Subcontract; or (b) any departure by any party from any material provision of any Material Subcontract; or

(3) Permit any Material Subcontract party to assign or transfer to any person any of such Material Subcontract party's rights or obligations under a Material Subcontract.

(B) Replacement. If any Subcontract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Subcontract are no longer reasonably required for the Project, the Design-Builder will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable). If at any time any amendment is made to any Material Subcontract, or a replacement Material Subcontract (or any agreement which materially affects the interpretation or application of any Material Subcontract) is entered into, the Design-Builder shall deliver to the Town a copy of each such amendment or agreement within 14 days of the date of its execution or creation, certified as a true copy by the Project Manager.

ARTICLE 8

SUBSTANTIAL COMPLETION AND FINAL COMPLETION

SECTION 8.1. SUBSTANTIAL COMPLETION DATE CONDITIONS.

(A) Substantial Completion Date Conditions. The following conditions shall constitute the “Substantial Completion Date Conditions”, each of which must be satisfied in all material respects by the Design-Builder in order for the Substantial Completion Date to occur, and each of which must be and remain satisfied as of the Substantial Completion Date:

(1) Physical Completion. All pipelines, facilities, materials and equipment for the Project have been installed in accordance with the requirements of the Contract Documents and inspected (tv'd), (each joint isolated and air tested, Mandrel test for flexible pipes), tested in accordance with Appendix 4 (Baseline Design Documents) and the Project has been cleaned out as necessary and required by the Town and Applicable Law;

(2) Project Equipment. The Project pipes and other equipment are installed in a manner that does not void any Subcontractor or Supplier warranties and such Project pipes and equipment can be operated in a safe and prudent manner;

(3) Certificates of Proper Installation. The Design-Builder has delivered to the Town certificates of proper installation for the Project;

(4) Verification of Governmental Approval Compliance. The Design-Builder shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals and Non-Governmental Approvals;

(5) No Encumbrances. There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

(6) Equipment Warranties and Manuals. The Design-Builder shall be in possession of, and shall have delivered to the Town, copies of the warranties of pipes and equipment constituting a part of the Project, together with copies of any related operating manuals supplied by the equipment supplier;

(7) Operations and Maintenance Manual. The Design-Builder has delivered to the Town and the Town has approved in writing, such approval not to be unreasonably withheld or delayed, the pre-final Operations and Maintenance Manual in accordance with the requirements set forth in Appendix 5 (General Design-Build Work Requirements);

(8) Punch List. The Design-Builder and the Town have agreed in writing upon the Punch List (or, if they are unable to agree, the Town shall have prepared and issued the Punch List to the Design-Builder within 30 days of the Design-Builder having submitted its proposed Punch List to the Town);

(9) No Event of Default. The Design-Builder shall have certified that there is no Event of Default by the Design-Builder existing under this Design-Build Contract, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Design-Builder hereunder; and

(10) Approvals. All Governmental and Non-Governmental Approvals required under Applicable Law and this Design-Build Contract to be obtained by the Design-Builder which are necessary for the continued use of the Project shall be in full force and effect and certified copies of all such Governmental and Non-Governmental Approvals shall have been delivered to the Town.

The Design-Builder shall notify the Town in writing when all of the Substantial Completion Date Conditions have been achieved and provide evidence and/or certifications to such achievement, as applicable.

SECTION 8.2. CONCURRENCE OR DISAGREEMENT WITH SUBSTANTIAL COMPLETION DATE.

(A) Substantial Completion Date Concurrence. The Substantial Completion Date shall be the day on which the Substantial Completion Date Conditions have been achieved, as determined in accordance with this Section. If the Design-Builder certifies in writing pursuant to Section 8.1 (Substantial Completion Date Conditions) that the Substantial Completion Date Conditions have been achieved, the Town shall determine, within 30 days following its receipt of such report, whether it concurs in such certification. If the Town states in writing that it concurs with the Design-Builder's certification, the Project shall be deemed to have achieved Substantial Completion and the Substantial Completion Date shall be deemed to have been established on the date of the Design-Builder's original certification.

(B) Substantial Completion Date Disagreement. If the Town determines at any time during such 30-day review period that it does not concur with the Design-Builder's certification of Substantial Completion, the Town shall immediately send written notice to the Design-Builder of the basis for its disagreement. In the event of any such non-concurrence by the Town, the parties shall meet to discuss such disagreement. Either party may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution Procedures) following such meeting if the parties are unable to resolve the disagreement.

SECTION 8.3. EFFECT OF UNEXCUSED DELAY; EXTENSION PERIOD.

(A) Schedule for Completing the Design-Build Work. The Design-Builder shall achieve Substantial Completion by the Scheduled Substantial Completion Date, as such date may be extended in accordance with this Section. In the event one or more delays in the Design-Build Work caused by an Uncontrollable Circumstance or a Change Order, occurring during the Design-Build Period, the Scheduled Substantial Completion Date shall be the date determined by adding to the Scheduled Substantial Completion Date the aggregate number of days of delay in the performance of the Design-Build Work by the Design-Builder caused by such occurrence.

(B) Unexcused Delay. It is agreed that time is of the essence in the performance of the Design-Build Work. If Substantial Completion has not occurred on or before the Scheduled Substantial Completion Date, the Design-Builder shall be entitled to complete the Substantial Completion Date Conditions in order to secure Substantial Completion of the Project, subject to the Town's right to terminate this Design-Build Contract in accordance with subsection (D) of this Section. During the Extension Period, the Design-Builder shall pay delay liquidated damages, as and to the extent provided in subsection (C) of this Section.

(C) Delay Liquidated Damages. Subject to relief in accordance with the terms and conditions of this Design-Build Contract in the event of Uncontrollable

Circumstances, if the Substantial Completion Date occurs subsequent to the Scheduled Substantial Completion Date, the Design-Builder shall pay to the Town delay liquidated damages in the amount of \$[_____] [Note: To be finalized on the GMP Amendment Date] per day for each day that the Substantial Completion Date falls after the Scheduled Substantial Completion Date.

(D) Failure to Achieve Substantial Completion by End of Extension Period. If, as of the last day of the Extension Period, the Design-Builder has not achieved Substantial Completion in accordance with this Article 8, an Event of Default by the Design-Builder shall be deemed to have occurred, notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Design-Builder thereunder, and the Town shall thereupon have the right to terminate this Design-Build Contract upon written notice to the Design-Builder. Upon any such termination, the Town shall have all of the rights provided in Article 12 (Breach, Default, Remedies and Termination) upon a termination of this Design-Build Contract for cause.

SECTION 8.4. FINAL COMPLETION.

(A) Requirements of Final Completion. The Design-Builder shall achieve Final Completion within 60 days following the Substantial Completion Date. “Final Completion” shall be deemed to have occurred when all of the following conditions have been satisfied:

(1) Design-Build Work Completed. All Design-Build Work (including the Punch List items, and all clean up and removal of construction materials, demolition debris and temporary facilities and excluding Warranty Work) is complete and in all respects is in compliance with the Contract Documents;

(2) Deliverable Material. The Design-Builder shall have delivered to the Town all Deliverable Material required by the Contract Documents;

(3) Final Record Drawings. The Design-Builder shall have delivered to the Town a final and complete reproducible set of “as-built” construction record drawings, as required by Appendix 7 (Design-Build Work Review Procedures);

(4) Final Completion Payment Requirements. The Design-Builder shall have satisfied all requirements associated with payment for Final Completion, as set forth in Section 9.5 (Payment Upon Final Completion); and

(5) Certification. The Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the Town has approved the Design-Builder’s certification, which approval shall be effective as of the date of the Design-Builder’s certification.

(B) Notice and Report of Final Completion. When the Design-Builder believes that it has achieved Final Completion, it shall deliver to the Town a written notice thereof (the “Notice of Final Completion”). The Notice of Final Completion shall contain a report in a form acceptable to the Town, and with sufficient detail to enable the Town to determine the completion by the Design-Builder of all Design-Build Work to be performed under this Design-Build Contract, including completed Punch List items, and such other information that the Town may require to determine whether Final Completion has been achieved.

(C) Achievement of Final Completion. The Town shall, in consultation with the Owner Representative, within 20 days following receipt of the Notice of Final Completion, inspect the Project, review the report submitted by the Design-Builder and either (1) deliver a written certificate to the Design-Builder stating that all conditions set forth in subsection (A) of this Section have been satisfied, or (2) notify the Design-Builder in writing that Final Completion has not been achieved, stating in detail the reasons therefor. In the event that the Town determines that Final Completion has not been achieved, the Design-Builder shall promptly take such action or perform such Design-Build Work as will achieve Final Completion and shall issue to the Town another Notice of Final Completion pursuant to subsection (B) of this Section. Such procedure shall be repeated as necessary until Final Completion is achieved. If the Town, in its written certificate delivered in accordance with this subsection, states that it concurs that all conditions set forth in subsection (A) of this Section have been satisfied, the Project shall be deemed to have achieved Final Completion and Final Completion shall be deemed to have been established on the date of the Design-Builder's most recent Notice of Final Completion.

ARTICLE 9

CONTRACT COMPENSATION

SECTION 9.1. COMPENSATION FOR PRELIMINARY SERVICES.

(A) Compensation for Base Preliminary Services.

(1) Phase 1a Base Preliminary Services. The Town shall pay the Design-Builder the Phase 1a Preliminary Services Fee in the manner and subject to the terms and conditions set forth in this Design-Build Contract including Appendix 2 (Preliminary Services). The Design-Builder agrees that the Phase 1a Preliminary Services Fee, when earned, shall be the Design-Builder's entire compensation and reimbursement for the performance of the Phase 1a Preliminary Services, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit. The Phase 1a Preliminary Services Fee shall be subject to the maximum amount set forth in Appendix 2 (Preliminary Services) which amount shall be subject to adjustment solely in accordance with Section 5.2 (Changes to the Scope of the Preliminary Services).

(2) Phase 1b Base Preliminary Services. The Town shall pay the Design-Builder the Phase 1b Preliminary Services Fee in the manner and subject to the terms and conditions set forth in this Design-Build Contract including Appendix 2 (Preliminary Services). The Design-Builder agrees that the Phase 1b Preliminary Services Fee, when earned, shall be the Design-Builder's entire compensation and reimbursement for the performance of the Phase 1b Preliminary Services, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit. The Phase 1b Preliminary Services Fee shall be subject to the maximum amount set forth in Appendix 2 (Preliminary Services) which amount shall be subject to adjustment solely in accordance with Section 5.2 (Changes to the Scope of the Preliminary Services).

(B) Compensation for Additional Preliminary Services. The Design-Builder shall be compensated for any Additional Preliminary Services on a time and materials or lump sum basis, agreed to in writing through a Change Order or a Contract Amendment executed by the Town and the Design-Builder. Compensation for Additional Preliminary Services may consist of compensation on the basis of Design-Builder's and Subcontractors' billing rates set forth in Appendix 2 (Preliminary Services) or as otherwise approved by the Town. The Change Order or Contract Amendment, as applicable, may set forth additional compensation and Payment Request requirements.

(C) Payment Requests and Payment. The Design-Builder shall provide the Town with a Payment Request for the performance of the Preliminary Services on a monthly basis in accordance with the specific requirements set forth in Appendix 2 (Preliminary Services). The Payment Request shall state the amount payable for the month and the total amount paid against the Preliminary Services Fee through the date of the Payment Request, along with a Monthly Progress Report regarding the performance of the Preliminary Services and such other information or documentation as the Town may reasonably require. The Town shall make payment to the Design-Builder of all properly supported invoiced amounts within 45 days of receipt of the Payment Request, subject to the terms and conditions of this Design-Build Contract. Payments of the Preliminary Services Fee shall not be subject to retainage holdback or, except as provided in subsection (E) of this Section, offset.

(D) Non-Compliant Preliminary Services. Nothing contained in this Design-Build Contract shall require the Town to pay for any unsatisfactory or duplicative Preliminary Services or for Preliminary Services that are not in compliance with the terms and conditions of this Design-Build Contract. The Town shall not be required to pay the Preliminary Services Fee to the Design-Builder at any time the Design-Builder is in breach or default under this Design-Build Contract.

(E) Billing Statement Disputes. If the Town disputes in good faith any Payment Request for Preliminary Services, the Town shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Design-Builder with a written objection indicating the amount being disputed and the reasons then known to the Town for the dispute. In the event that the Design-Builder disputes any amounts offset by the Town, it shall provide the Town with a written objection indicating the amount being disputed and the reasons then known to the Design-Builder. If the Design-Builder is unable to reach agreement with the Town as to the payment dispute, the Design-Builder may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution Procedures). When any billing dispute is finally resolved, if payment by the Town to the Design-Builder of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 9.9 (Interest on Overdue Obligations) of this Design-Build Contract.

SECTION 9.2. DESIGN-BUILD PRICE.

The Town shall pay the Design-Builder the Design-Build Price for properly performed and completed Design-Build Work during the Design-Build Period. The Design-Build Price and the components thereof are defined in Appendix 8 (Design-Build Price). The Town's obligation to pay the Design-Build Price is subject to the Guaranteed Maximum Price and the terms and conditions of this Article 9 and Appendix 8 (Design-Build Price). Except with respect to (1) payments of the Preliminary Services Fee in accordance with Section 9.1 (Compensation for Preliminary Services), (2) Design-Build Work performed pursuant to an Early Work Package Amendment and (3) Design-Build Work authorized in a Limited Notice to Proceed pursuant to Section 6.1(A)(2) (Limited Notice to Proceed), the Design-Builder shall not be entitled to any compensation for costs or expenses incurred, or Design-Build Work performed, prior to the issuance by the Town of the Notice to Proceed with Design-Build Period Work. Any amount payable for Design-Build Work performed pursuant to an Early Work Package shall, upon the GMP Amendment Date, be part of the Design-Build Price and subject to the Guaranteed Maximum Price and all other terms and conditions of this Article 9 and Appendix 8 (Design-Build Price).

SECTION 9.3. DESIGN-BUILD PRICE PAYMENT PROCEDURE.

(A) Payments. The Design-Builder shall be paid the Design-Build Price in accordance with the final agreed upon Anticipated Design-Build Period Work Cost Schedule of the direct cost of the Design-Build Period Work and the terms and conditions of this Section. The Design-Builder shall prepare and submit to the Town for its approval preliminary and final drafts of the Anticipated Design-Build Period Work Cost Schedule in accordance with the Contract Standards. After the final Anticipated Design-Build Period Work Cost Schedule is accepted by the Town, it shall be used to assist in the tracking of actual Design-Build Period Costs against the anticipated costs and for keeping track of line item savings and the use of Contingency. The use of line item savings and use of the Design-Builder Contingency will be subject to any conditions or limitations imposed by the Grants.

(B) Payment Request. Subject to subsection (C) of this Section, the Design-Builder shall be entitled to submit Payment Requests to the Town on a monthly basis and to receive from the Town the payments, which (1) shall be made on a cost substantiated basis; (2) shall be subject to the Guaranteed Maximum Price limitations; and (3) shall be subject to the conditions to payment set forth in this Article 9. Each Payment Request shall be in a form reasonably acceptable to the Town and must be accompanied by a monthly requisition report, which shall include:

(1) A reasonably detailed description of all Design-Build Period Work actually completed to date;

(2) Revisions to the Design-Build Period Work Schedule, which shall reflect changes in the Design-Builder's critical path schedule since the date of the last Payment Request;

(3) An update to the Anticipated Design-Build Period Work Cost Schedule indicating the amount invoiced against each line item in such month;

(4) The amount of the Design-Builder Contingency utilized in such month, the specific uses thereof and the balance of the Design-Builder Contingency remaining after such use;

(5) A certificate of the Project Manager and the Design-Builder Contract Representative certifying (a) the portion of the Design-Build Price payable to the Design-Builder for completed Design-Build Work; (b) that the Design-Builder is neither in default under this Design-Build Contract nor in breach of any material provision of this Design-Build Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default; and (c) that all items applicable to the Design-Build Period Work entitling the Design-Builder to the requested payment have been completed in accordance therewith and with the Contract Documents;

(6) Notice of any Encumbrances which have been filed together with evidence that the Design-Builder has discharged any such Encumbrances or made timely notification to the Payment Bond Surety regarding such Encumbrances;

(7) A verified statement setting forth the information required under any Applicable Law and all applicable requirements of the Grants, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines) pertaining to prevailing wages; and

(8) Any other documents or information relating to the Design-Build Work or this Design-Build Contract reasonably requested by the Town or the Owner Representative or as may be required by Applicable Law, this Design-Build Contract or generally accepted accounting practices or principles, including payrolls, receipts, fully detailed invoices with check vouchers or other evidence of Design-Build Period Costs incurred which the Town or the Owner Representative deems necessary to support the amount requested in the Payment Request.

The General Conditions Fee shall be shown as a separate line item on each Payment Request in accordance with Appendix 8 (Design-Build Price). The Design-Builder Fee shall also be shown as a separate line item on each Payment Request. The Design-Builder shall identify the dollar amount of the total expected Design-Builder Fee and General Conditions Fee in each Payment Request based on the total expected Design-Build Period Costs to which the Design-Builder Fee and General Conditions Fee applies in accordance with Appendix 8 (Design-Build Price). The

amount requested for the Design-Builder Fee and General Conditions Fee in each Payment Request shall be in the same proportion to the total expected Design-Builder Fee and General Conditions Fee as the amount requested for the applicable Design-Build Period Costs bears to the total expected Design-Build Period Costs to which the Design-Builder Fee and General Conditions Fee applies, subject to the Guaranteed Maximum Price.

(C) Online Project Management System. The Design-Build Work shall be administered through the internet-based project management e-Builder system [_____] [Note: To be determined as part of the Phase 1a Base Preliminary Services] (hereinafter referred to as the “Project Online System”). The Design-Builder shall conduct all of its invoicing and billing to the Town through the Project Online System, and the Design-Builder shall perform all contract and billing related functions using the Project Online System to submit and process all documentation to be generated, received or used in the performance of the Contract Obligations, including Payment Requests and processing of payments for the Contract Obligations. The [Design-Builder]/[Town] [Note: To be determined as part of the Phase 1a Base Preliminary Services] shall administer the Project Online System software. The software shall be accessible via the internet to all Town designated personnel and Design-Builder Project team members. The Design-Builder shall designate a member of its key personnel to be the sole responsible party for the Design-Builder for receiving and implementing all software updates and to manage all Project documentation through the Project Online System. The Design-Builder will schedule training sessions with Town’s designated personnel on the Project Online System.

(D) Review and Payment. Prior to submitting a Payment Request for the Design-Build Price to the Town, the Design-Builder shall submit a draft Payment Request to the Town Contract Representative and the Owner Representative, including all information required pursuant to this Section. The Owner Representative shall have no fewer than 10 days to review each draft Payment Request. Within such 10-day period, the Owner Representative shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Design-Builder’s certification that the Design-Builder has achieved the level of progress indicated and is entitled to payment. If the Owner Representative determines that the Design-Build Work has progressed as indicated in the draft Payment Request, the Owner Representative shall notify the Town and the Design-Builder, and the Design-Builder shall submit a final, certified Payment Request to the Town, which may not contain any material change from the draft Payment Request reviewed by the Owner Representative, in accordance with subsection (C) of this Section. The Town shall pay the Design-Builder the requisitioned amount included in the final, certified Payment Request within 60 days following receipt, subject to subsection (E) of this Section and the Town’s rights to withhold payments under Section 9.4. Disputes regarding payments of the Design-Build Price shall be resolved in accordance with subsection (E) of this Section. Any undisputed amounts of the Design-Build Price shall be paid within 60 days after receipt of the Design-Builder’s final, certified Payment Request.

(E) Payment Dispute Procedures. If the Town determines that the Design-Build Period Work required for any payment has not progressed as indicated by the Design-Builder in the draft Payment Request, or otherwise disputes any Payment Request, the Town shall provide prompt written notice to the Design-Builder as to the Town’s reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Design-Builder may make the necessary corrections and resubmit the Payment Request, or the Town may agree on a revised amount, in which case the Design-Builder shall promptly submit a final, certified Payment Request to the Town as to any undisputed amount. If the Design-Builder is unable to reach agreement with the Town as to the progress of the Design-Build Work or the payment dispute, the Design-Builder may exercise its right to contest the Town’s determination in accordance with the dispute resolution

procedures set forth in Section 11.1 (Dispute Resolution Procedures). Any proceedings undertaken to resolve a dispute arising under this subsection (E) shall immediately terminate if (1) the Design-Builder demonstrates to the Town that the Design-Build Period Work has progressed as indicated in the Payment Request giving rise to the dispute and that the disputed Payment Request is correct, and (2) the Town concurs with such demonstration. The Design-Builder shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection (E); provided, however, that the Town shall pay all requisitioned amounts which are not in dispute in accordance with subsection (C) of this Section. In the event that upon resolution of any such dispute, it is determined that the Design-Builder was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Design-Builder shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount as and to the extent provided under Section 9.9 (Interest on Overdue Obligations).

(F) Retainage. Pursuant to California Public Contract Code Section 7201, the Town will withhold five percent (5%) from each payment to the Design-Builder until Final Completion. The Town will release such retention amount to the Design-Builder forty-five (45) days after Final Completion has been achieved. [Note: During the Phase 1a Preliminary Services, the Town will endeavor to discuss mechanisms to accelerate retainage payments with the agency providing the Grant for construction.] Subject to approval of and coordination with the applicable Granting Agencies, pursuant to California Public Contract Code Section 22300, for monies earned by the Design-Builder and withheld by the Town to secure the performance of this Design-Build Contract, the Design-Builder, may, at its option, choose to substitute securities meeting the requirements of said California Public Contract Code Section 22300. Such securities shall be valued by the Town Treasurer, whose decision shall be final. Securities not listed under California Public Contract Code Section 22300 or California Government Code Section 16430 must be pre-qualified by the Town Treasurer before bid opening in order to be accepted by the Town as security.

(G) Cost Control and Reporting. The Design-Builder shall implement a Cost/Schedule Status Report (CSSR) program for Design-Build Period Work cost control, which system shall be disclosed to and reviewed and approved by the Town and the Owner Representative prior to the GMP Amendment Date. The Design-Builder shall develop cash flow reports and forecasts that comply with the Document Management Plan and that satisfy the Town's reporting requirements for the Grants and as otherwise reasonably requested or required by the Town and the Owner Representative, including a good faith calendar quarterly estimate of payments of the Design-Build Price throughout the Design-Build Period, specifying the range of minimum and maximum monthly payments, which shall not exceed the Guaranteed Maximum Price. The Design-Builder shall promptly (within seven days) after acquiring such information, identify and report to the Town and the Owner Representative all variances between estimated costs and actual costs of the Design-Build Period Work, including any proposed corrective action to be taken by the Design-Builder.

(H) Certification of Amounts Due. Whenever requested by the Town or the Owner Representative, the Design-Builder shall submit a sworn statement certifying all amounts then due (or yet to become due) the Design-Builder for the Design-Build Period Work (or any portion thereof) and describing any payment or other dispute which may exist between the Design-Builder and any Subcontractor.

SECTION 9.4. PERMISSIBLE WITHHOLDINGS.

(A) Permissible Withholdings. In addition to the amounts required to be retained pursuant to Section 9.3(F) (Retainage), the Town may disapprove and withhold and

retain all or any portion of any payment requested in any Payment Request for Design-Build Period Work in an amount equal to the sum of:

- (1) Any liquidated damages or reimbursement payments which are due and owing to the Town hereunder;
- (2) Any indemnification amounts which are due and owing to the Town hereunder and with respect to which a claim has been filed against a the Town Indemnitee by a third party in accordance with Applicable Law;
- (3) Any premiums or amounts paid to procure Required Insurance or similar insurance coverage paid by the Town pursuant to Section 13.1(E) (Maintenance of Insurance Coverage) and Appendix 10 (Insurance Requirements);
- (4) Any other deductions which are required by Applicable Law;
- (5) Any payments with respect to which documents to be delivered in connection therewith are not correct and complete;
- (6) Any payments to the extent that the Design-Build Period Work covered by such Payment Request (or any previous Payment Request) does not comply with this Design-Build Contract;
- (7) Damage to the work of a Separate Contractor to the extent caused by the Design-Builder or any Subcontractor;
- (8) Any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Design-Builder in performing the Design-Build Work and such Lien remains unreleased or unbonded;
- (9) All requisitioned payments if an Event of Default of the Design-Builder has occurred under Section 12.2 (Events of Default by the Design-Builder); and
- (10) In the event the Design-Builder fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Design-Builder authorizes the Town to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

In addition, the Town may withhold payment for persistent and uncured Design-Builder noncompliance with the administrative provisions of this Design-Build Contract. In the event of any permissible withholding under this Section, the Town shall notify the Design-Builder in writing at least seven days prior to the date payment is otherwise due. The notice shall indicate the specific amounts the Town intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Design-Builder must take to rectify the Town's concerns. Any dispute associated with any such withholding shall be handled in accordance with Section 9.3(E) (Payment Dispute Procedures).

SECTION 9.5. PAYMENT UPON FINAL COMPLETION.

(A) Final Completion Payment Request. In connection with the achievement of Final Completion in accordance with Section 8.4 (Final Completion), the Design-Builder shall prepare and submit to the Town and the Owner Representative a Final Completion Payment Request. The Final Completion Payment Request shall enclose:

(1) A notarized affidavit in duplicate stating under oath that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Design-Build Period Work have been fully paid or satisfactorily secured; and if requested by the Town, the Design-Builder shall submit further proof including waiver or release of lien or claims from any Subcontractors or Suppliers;

(2) A certificate of the Surety for both the Performance Bond and the Payment Bond certifying that the Surety consents to payment for Final Completion and agrees that such payment shall not relieve the Surety of any of its obligations under the Performance Bond or the Payment Bond;

(3) A general release executed by the Design-Builder waiving, upon receipt of payment for Final Completion, all claims arising out of or resulting from the Design-Build Period Work, except those claims made in writing to the Town and remaining unsettled at the time of such payment, which claims shall be specifically listed in an attachment to the general release, identifying the claimant and the nature of the claim; and

(4) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of this Design-Build Contract.

(B) Final Completion Payment. If based on the Owner Representative's (1) observation of the Design-Build Work, (2) final inspection, and (3) review of the Final Completion Payment Request and other documents required by subsections (A) and (C) of this Section and Section 8.4 (Final Completion), the Owner Representative is satisfied that the conditions for Final Completion have been achieved, the Owner Representative shall, within 15 days after receipt of the Final Completion Payment Request, furnish to the Town and the Design-Builder the Owner Representative's recommendation of payment for Final Completion. If the Owner Representative is not satisfied, the Owner Representative shall return the Final Completion Payment Request to the Design-Builder, indicating in writing the reasons for not recommending payment, in which case the Design-Builder shall either (1) exercise its right to contest the Owner Representative's determination in accordance with Section 9.3(E) (Payment Dispute Procedures), or (2) make the necessary corrections and resubmit the Final Completion Payment Request.

(1) Town Concurrence. If the Town concurs with the Owner Representative's recommendation of payment for Final Completion, the Town shall, within 15 days, file a written notice of Final Completion and notify the Design-Builder of such concurrence. As soon as reasonably practicable (but in no event later than [45] days after the Town's original receipt of the Design-Builder's Final Completion Payment Request, subject to the Town's right to dispute payment in accordance with this Design-Build Contract and Applicable Law) after filing such notice, the Town shall pay to the Design-Builder the balance of the Design-Build Price, subject to any withholdings and any other provisions governing final payment specified herein.

(2) Town Non-Concurrence. If the Town does not concur with the Owner Representative's determination, the Town shall return the Payment Request to the Design-Builder, indicating in writing its reasons for refusing payment for Final Completion. The Design-Builder shall promptly make the necessary corrections and resubmit the Payment Request to the Town and the Owner Representative. The Town's written determination shall bind the Design-Builder, unless the Design-Builder delivers to the Town written notice of a claim within 30 days after receipt of the Town's determination.

Payment for Final Completion does not constitute a waiver by the Town of any rights relating to the Design-Builder's obligations under this Design-Build Contract. Except as specifically provided in subsection (A) of this Section with respect to exceptions taken in the Design-Builder's general release, payment for Final Completion constitutes a waiver of all claims by the Design-Builder against the Town, including all claims associated with Uncontrollable Circumstances, relating to the Design-Build Period Work, the payment of the Design-Build Period Costs or otherwise in connection with the Design-Build Period.

(C) Final Determination and Approval of Design-Build Price.

Notwithstanding any of the foregoing, the Town shall have no obligation to make payment for Final Completion hereunder until a final accounting of the Design-Build Period Costs has been submitted by the Design-Builder and has been verified by the Town and the Owner Representative. Such accounting shall be provided by the Design-Builder in connection with the Final Completion Payment Request. The aggregate total of payments to the Design-Builder with respect to the Design-Build Price (including amounts retained pursuant to Section 9.3(F) (Retainage)) shall not exceed the total of the actual Design-Build Period Costs, as verified by the Town and the Owner Representative from the Design-Builder's final accounting, plus the Design-Builder Fee and the General Conditions Fee, which together shall not exceed the Guaranteed Maximum Price. If payments to the Design-Builder exceed that which is due and owing the Design-Builder pursuant to this Article 9, the Design-Builder shall promptly refund the excess to the Town. The Design-Builder acknowledges and agrees that the Town shall have the right to withhold and retain amounts from payment for Final Completion in accordance with Section 9.4 (Permissible Withholdings).

(D) Completion of Design-Build Period Work.

Notwithstanding payment for Final Completion pursuant to this Section, the Design-Builder acknowledges and agrees that the performance of the Design-Build Period Work is not complete until the expiration of the Warranty Period, and that the Design-Builder shall have the continuing obligation to perform Warranty Work pursuant to the terms and conditions of Article 10 (Project Warranties) until the expiration of the Warranty Period. To the extent the Design-Builder is entitled to payment of any amount retained by the Town pursuant to Section 9.3(F) (Retainage) upon expiration of the Warranty Period, the Design-Builder shall provide the Town with a final Payment Request in a form reasonably acceptable to the Town, and the Town shall pay the amount due within 30 days following receipt of the final Payment Request.

SECTION 9.6. NO SUBSTANTIAL COMPLETION, WAIVER OR RELEASE.

Unless other provisions of this Design-Build Contract specifically provide to the contrary, none of the following, without limitation, shall be construed as (i) the Town's acceptance of any Design-Build Work which is defective, incomplete, or otherwise not in compliance with this Design-Build Contract, (ii) the Town's release of the Design-Builder from any obligation under this Design-Build Contract, (iii) the Town's extension of the Design-Builder's time for performance, (iv) an estoppel against the Town, or (v) the Town's acceptance of any claim by the Design-Builder:

(1) The Town's payment to the Design-Builder or any other person with respect to performance of the Design-Build Work;

(2) The review, consent, approval or acceptance, as applicable, of any submissions, permit applications, punch lists, other documents, certifications, or Design-Build Work of the Design-Builder or any Subcontractor by the Town, the Owner Representative or any other person;

(3) The review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design-Build Work by the Town, the Owner Representative or any other person;

(4) The entry at any time on the Project Site (including any area in which the Design-Build Work is being performed) by the Town, the Owner Representative or any other person;

(5) Any observation, inspection or testing of (or failure to observe, inspect or test) any Design-Build Work (whether finished or in progress) by the Town, the Owner Representative or any other person;

(6) The failure of the Town, the Owner Representative or any other person to respond in writing to any notice or other communication of the Design-Builder; or

(7) Any other exercise of rights or failure to exercise rights by the Town hereunder.

SECTION 9.7. CHANGES IN DESIGN-BUILD PRICE.

(A) Determination of Base Guaranteed Maximum Price Adjustment. Without limiting any requirement of Article 14 (Uncontrollable Circumstances), any Base Guaranteed Maximum Price Adjustment included in a Change Order or Work Change Directive shall be determined as follows:

(1) Where unit prices set forth in the Contract Documents are applicable to the Design-Build Period Work that is the subject of the Change Order or Work Change Directive, by application of such unit prices to the quantities of the items involved;

(2) To the extent unit prices are not applicable, by a mutually agreed lump sum; and

(3) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump-sum value, on the basis of the actual cost of performing the applicable Design-Build Period Work (subject to Cost Substantiation and excluding any cost attributable to Design-Builder Fault), plus the Design-Builder Fee and a Subcontractor mark-up determined in accordance with this Section.

(B) Design Professional Services. Without limiting anything in subsection (C) of this Section and subject to any unit rates specified in the Contract Documents, for purposes of determining the amount payable for Design Professional Services included in any Change Order or Work Change Directive, the rates payable for Design-Builder personnel and personnel of Subcontractors providing Design Professional Services shall not exceed their then currently applicable rates for similar services on projects of similar size and scope to the Design-Build Period Work. The Design-Builder shall use commercially reasonable efforts to use available Design-Builder personnel for additional work hereunder before using Subcontractors.

(C) Construction Subcontractor's Maximum Mark-Up on Subcontracted Construction Work. The price payable to all Subcontractors for work performed under Construction Subcontracts, including Construction Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable. A Change Order or Work Change Directive may provide for a mark-up payable to Construction Subcontractors for their Subcontractor risk, profit, administration, and all other overhead where Construction work that is the subject of the Change Order or Work Change Directive is performed through such Construction

Subcontractors. Any such Construction Subcontractor mark-up shall not exceed 5% of the costs incurred by such Construction Subcontractor in respect of labor, materials, equipment, supplies and any lower-tier Construction Subcontract.

SECTION 9.8. COST SUBSTANTIATION.

(A) Required Substantiation. Without limiting anything in Appendix 8 (Design-Build Price), the Design-Builder shall substantiate any costs for which it claims compensation hereunder, other than (1) the Design-Builder Fee and (2) the General Conditions Fee, each of which was proposed and negotiated on a percentage basis, and any other costs that are part of a negotiated lump sum price. [Note: General Conditions Fee to be agreed to on the GMP Amendment Date.] In incurring costs which are or may be subject to Cost Substantiation, the Design-Builder shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing bids, quotes, proposals or estimates for costs expected to be in excess of \$[50,000]), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the Town's potential obligation to pay for it. [Note: Amount to be determined based on conditions or limitations imposed by the Grants.]

(B) Cost Substantiation Certificate. Any Payment Request for compensation relating to costs requiring Cost Substantiation shall be accompanied by a certificate stating that the Design-Build Period Costs or other costs being invoiced (1) are properly payable under this Design-Build Contract, and specifying the provisions of this Design-Build Contract under which compensation is due; and (2) are equal to amounts paid by the Design-Builder for Design-Build Work that has been properly performed. The Cost Substantiation certificate shall describe the competitive or other process utilized by the Design-Builder to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Design-Build Contract. Each Cost Substantiation certificate shall be accompanied by copies of all documentation reasonably necessary to demonstrate that the Design-Build Period Costs have been paid and are reasonable. Such documentation shall be in a format and level of detail reasonably acceptable to the Town. To the extent reasonably necessary to confirm the payment of costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, including the schedule of values for fixed price components of the Design-Build Work accompanied by documentation demonstrating the progress of such Design-Build Work shall be provided.

SECTION 9.9. INTEREST ON OVERDUE OBLIGATIONS.

Except as otherwise provided for herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 9.10. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Design-Builder shall, and shall cause its Subcontractors to, prepare and maintain proper, accurate and complete books and records regarding the Contract Obligations and all transactions related thereto, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or

arising by reason of the Contract Obligations, any Subcontract or any operations or transactions in which the Town has or may have a financial or other material interest hereunder (collectively, “Books and Records”). The Design-Builder and its Subcontractors shall produce such Books and Records for inspection, audit and reproduction within 15 days of request by the Town. All financial records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Design-Builder and its Subcontractors shall maintain such Books and Records in accordance with subsection (E) of this Section. The provisions of this Section shall survive termination of this Design-Build Contract.

(B) Town Rights to Audit and Examine Payments. All payments whatsoever by the Town to the Design-Builder and all Contract Obligations shall be subject to audit at any time by the Town, the Granting Agencies and the Federal Agencies. The Design-Builder shall provide all evidence necessary to support Cost Substantiation as required under this Design-Build Contract, and allow the Town, the Granting Agencies and the Federal Agencies access to the Design-Builder’s Books and Records. The Design-Builder shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Design-Builder and the Subcontractor. The Design-Builder shall also require all Subcontractors to include the requirements of this Section in any lower tier Subcontracts relating to the Project.

(C) Notice and Process. Upon written notice by the Town, the Design-Builder shall, and shall cause its Subcontractors to, promptly (in no event later than 15 days following the notice) make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five days’ prior notice of the examination or audit. The Town may take possession of such Books and Records by reproducing such Books and Records for off-site review or audit. When requested in the Town’s written notice of examination or audit, the Design-Builder shall provide the Town with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows the Town to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, the Design-Builder shall provide the Town with two licenses with maintenance agreements authorizing the Town to access and analyze all such Books and Records. If the Design-Builder is unable to provide the licenses, the Design-Builder shall provide the Town with access to the Design-Builder’s accounting system whereby the Town can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, man-hour reports, and the like.

(D) Selection of Auditor or Examiner and Determination of Scope. The Town has discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

(E) Preservation of Books and Records. The Design-Builder shall preserve all of its Books and Records, and the Town may examine, audit, or reproduce Books and Records, from the Contract Date until the later of five (5) years after the latest of:

- (1) Final payment under this Design-Build Contract;
- (2) Final settlement of a termination for convenience under Section 12.6 (Town Convenience Termination Rights);
- (3) The final resolution of any dispute; and

(4) The last of the notices from the Granting Agencies to the Town that the applicable Grant contract has been closed according to the record retention requirements at 2 CFR 200.334.

The failure by the Design-Builder to make available to the Town Books and Records in accordance with this Section or the Design-Builder's refusal to cooperate with a notice of audit or examination shall be deemed a material breach of this Design-Build Contract and grounds for termination.

(F) Overpayment. In the event an audit by the Town determines that the Design-Builder cannot document a cost or expense for which payment has been made, or that the Town has overpaid the Design-Builder, the Design-Builder, upon demand, shall refund to the Town the amounts overpaid or undocumented. If the overpayment exceeds 1% of the total amount that should have been properly paid by the Town during the period audited, then the Design-Builder shall, in addition, reimburse the Town for any and all fees and costs incurred in connection with the inspection or audit. Payments to the Design-Builder, or approval by the Town of any requisition for payment submitted by the Design-Builder, shall in no way affect the Design-Builder's obligation hereunder or the right of the Town to obtain a refund of any payment to the Design-Builder which is in excess of that to which it was lawfully entitled.

ARTICLE 10

PROJECT WARRANTIES

SECTION 10.1. PROJECT WARRANTIES.

(A) Project Warranties Defined. The Design-Builder warrants to the Town that the Design-Build Work, including all completed materials, equipment, systems and structures comprising the Project, shall: (i) be new, of recent manufacture and of good quality; (ii) conform to the requirements of the Contract Documents; (iii) be free of material faults or defects; and (iv) be suitable for its intended purposes, as established by the Contract Documents (the “Project Warranties”). The Project Warranties are further subject to the following:

(1) Inclusions. The Project Warranties include remedy for damage or defect caused by Substantial Completion Test performed by the Design-Builder or performed by the Town as directed by the Design-Builder.

(2) Exclusions. The Project Warranties exclude remedy for damage or defect caused by capital modifications not undertaken or executed by the Design-Builder under this Design-Build Contract. In addition, except as provided in Item (1), above, the Project Warranties exclude remedy for damage or defect caused by improper or insufficient maintenance or improper operation, or for normal wear and tear under normal usage.

(B) Term of the Project Warranties. The Project Warranties set forth in this Article 10 shall be in full force and effect for the period of time beginning on the Substantial Completion Date and, subject to Section 10.2(D) (Extension of Warranties), continuing for [one year] following the Substantial Completion Date (the “Warranty Period”). [Note: Duration of warranty period to be agreed to by parties, in any event prior to GMP Submittal.]

SECTION 10.2. WARRANTY WORK.

(A) “Call-Back” Obligations. If, at any time during the Warranty Period, the Project or any of the Design-Build Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of the Project Warranties, the Design-Builder shall correct the condition promptly after receipt of written notice from the Town to do so. The Town shall provide such notice promptly after discovery of the condition. The Design-Builder shall respond to critical or emergency service calls from the Town within four hours through teleconference discussions or virtual meetings (or other reasonable means agreed upon by the Design-Builder and the Town). The Design-Builder shall respond to non-critical or non-emergency calls within twenty-four hours by reasonable means agreed upon by the Design-Builder and the Town. If the Town determines as a result of such teleconference discussions or virtual meetings, that an onsite visit from the Design-Builder is necessary to address such critical or emergency situation, the Design-Builder shall within twelve hours of the initial response to such critical or emergency service call, inspect the Project and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Engineering and Construction Practice and the specific requirements of this subsection (A). If the Town determines as a result of such teleconference discussions or virtual meetings, that no onsite visit from the Design-Builder is necessary to address such critical or emergency situation, the Design-Builder shall nonetheless initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Engineering and Construction Practice and the specific requirements of this subsection (A). Any such response shall require that a competent representative or

representatives of the Design-Builder familiar with the Project, including its specific equipment, design and operational requirements, participate in such response. In critical or emergency situations, the correction shall be made in the minimum amount of time required in accordance with Good Engineering and Construction Practice.

(B) Right of the Town to Proceed with Corrective Action; Design-Builder Liability. If the Design-Builder fails to commence and complete the steps set forth in subsection (A) of this Section within the required time frames, in addition to any other remedies provided under this Design-Build Contract, the Security Instruments or Applicable Law, the Town may commence and complete the correction of such nonconforming Design-Build Work with its own forces or with third party contractors. If the Town does perform such corrective work, the Design-Builder shall be responsible for all costs reasonably incurred in performing such correction. The Town shall have the right to charge any cost reasonably incurred by the Town in performing corrective action pursuant to this subsection (B) against the funds retained to secure the Warranty Work pursuant to Section 9.3(F) (Retainage); provided, however, that the amount retained by the Town pursuant to Section 9.3(F) (Retainage) shall in no way be deemed to constitute a limit of liability to the Design-Builder for the performance of Warranty Work, and the Design-Builder shall be required to reimburse the Town for all costs reasonably incurred in performing corrective action pursuant to this subsection (B) to the extent such costs exceed the retained funds.

(C) No Period of Limitation on Other Obligations. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder has under this Design-Build Contract or under Applicable Law with respect to the Design-Build Work, including warranties and obligations with respect to latent defects. The Warranty Period relates only to the specific obligations of the Design-Builder to respond to notices from the Town under the Project Warranties, and has no relationship to the time within which the obligation of the Design-Builder to comply with this Design-Build Contract may be enforced, nor the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to its obligations under this Design-Build Contract.

(D) Extension of Warranties. The “call-back” obligations set forth in this Section shall apply to all Design-Build Work re-done or corrected pursuant to this Design-Build Contract. The “call-back” obligations for re-done or corrected elements of the Design-Build Work shall extend beyond the Warranty Period, if necessary, to provide a minimum one-year period following acceptance by the Town of such re-done or corrected Design-Build Work; provided, however, that in no event shall such “call-back” obligations extend beyond one year following the expiration of the Warranty Period.

(E) Manufacturers' Warranties. During the Warranty Period, the Design-Builder (or the Town) shall be permitted to enforce all warranties provided by manufacturers, suppliers and other third parties with respect to the Design-Build Work. However, as provided in Section 10.4(A) (Manufacturers' Warranties Generally), no such warranty shall relieve the Design-Builder of any obligation with respect to the Project Warranties.

(F) Performance of Warranty Work. The Design-Builder acknowledges that time is of the essence in the performance of all Warranty Work required under this Section in light of the Project's essential public purpose. Accordingly, all Warranty Work shall be performed in accordance with the Contract Standards and within the minimum amount of time required in accordance with Good Engineering and Construction Practice. The Design-Builder shall perform or cause to be performed all Warranty Work performed under this Section in a manner that will minimize interference with the ongoing operations of the Project and the Town Distribution System. The Design-Builder shall provide a written plan for all proposed Warranty Work (unless expressly waived by the Town).

(G) Responsibility for Costs. The Design-Builder shall be fully responsible for the costs associated with all Warranty Work, and shall reimburse the Town for its costs resulting from a breach of the Project Warranties, subject to the terms and conditions of this Design-Build Contract.

SECTION 10.3. PROJECT WARRANTIES NOT EXCLUSIVE.

The Design-Builder acknowledges and agrees that the Project Warranties are in addition to, and not in limitation of, any other warranties, rights and remedies available under this Design-Build Contract or Applicable Law, and shall not limit the Design-Builder's liability or responsibility imposed by this Design-Build Contract or Applicable Law with respect to the Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. The provisions of this Section shall survive the termination of this Design-Build Contract.

SECTION 10.4. MANUFACTURERS' WARRANTIES.

(A) Manufacturers' Warranties Generally. Without limiting any of the Project Warranties, the Design-Builder shall, for the protection of the Town, obtain from all Subcontractors (including vendors, suppliers and other persons from which the Design-Builder procures structures, improvements, fixtures, machinery, equipment and materials) such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Standards, each of which is hereby assigned to the Town to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Guaranteed Maximum Price or otherwise excuse the Design-Builder from the performance of any Design-Build Work or Warranty Work obligations, unless such failure is itself attributable to an Uncontrollable Circumstance.

(B) No Limitation on Third Party Warranties. Nothing in this Design-Build Contract is intended to limit any third party warranty that provides the Town with greater warranty rights than those provided under the Project Warranties, as set forth in this Design-Build Contract.

ARTICLE 11

DISPUTE RESOLUTION

SECTION 11.1. DISPUTE RESOLUTION PROCEDURES.

(A) Compliance with California Public Contract Code. Notwithstanding any other provision herein, all claims by the Design-Builder for \$375,000 or less against the Town shall be subject to the procedures set forth in Sections 20104 to 20104.6 of the California Public Contract Code. The provisions of Sections 20104 to 20104.6 of the California Public Contract Code or a summary thereof is included in Appendix 13 (Certain Provisions of the California Public Contract Code) and shall be set forth in the Issued for Construction Drawings and Specifications. Notwithstanding any other provision herein, all claims by the Design-Builder against the Town shall be subject to the procedures set forth in Sections 9201 to 9204 of the California Public Contract Code. The provisions of Sections 9201 to 9204 of the California Public Contract Code or a summary thereof is included in Appendix 13 (Certain Provisions of the California Public Contract Code) and shall be set forth in the Issued for Construction Drawings and Specifications. For any Design-Build Work-related claim by the Design-Builder of less than \$375,000, such claim shall be processed and resolved pursuant to the resolution of claims provisions set forth in California Public Contract Code Sections 20104 to 20104.6. In addition, claim filing deadlines shall be governed by the California Government Claims Act (California Government Code Sections 900 to 915.4) and California Public Contract Code Section 20104.2.

(B) Alternative Dispute Resolution Procedures. If (i) the provisions of Section 9204 of the California Public Contract Code are no longer in effect, (ii) the mediation conducted pursuant to Section 9204 of the California Public Contract Code does not resolve the parties dispute, or (iii) for any claims brought by the Town against the Design-Builder, each party shall follow the dispute resolution procedures set forth in this Section 11.1(B) (Alternative Dispute Resolution Procedures) to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to litigation, which should be a last resort.

(1) Informal Negotiations. Representatives of the Town and the Design-Builder with day-to-day involvement in the administration of this Design-Build Contract and the performance of the Contract Obligations shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Design-Build Contract. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Design-Build Contract. At the Town's request, the Design-Builder shall involve senior representatives of any of its Subcontractors in such negotiations. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation or may initiate the institution of Legal Proceedings.

(2) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of paragraph (1) of this Section 11.1(B) (Alternative Dispute Resolution Procedures), either party may request Non-Binding Mediation of any dispute arising under this Design-Build Contract, whether technical or otherwise. Non-Binding Mediation is voluntary and will not be a condition precedent to initiating the institution of Legal Proceedings by either party. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section 11.1(B) (Alternative Dispute Resolution Procedures) shall apply. The costs of such Non-Binding Mediation shall be divided equally between the Town and the Design-Builder.

(3) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(4) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Design-Build Contract. No Mediator shall be empowered to render a binding decision.

(5) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article 11 to commence judicial Legal Proceedings upon a breach of this Design-Build Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 11.2. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the parties that all Legal Proceedings related to this Design-Build Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Butte County, California, having appropriate jurisdiction therefor. The Design-Builder and the Town each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

SECTION 11.3. CONTINUANCE OF PERFORMANCE DURING DISPUTE.

Unless otherwise directed in writing by the Town, at all times during the course of any dispute resolution procedure or Legal Proceeding, the Design-Builder shall continue with the performance of the Contract Obligations in a diligent manner and in accordance with the applicable provisions of this Design-Build Contract. The Town shall continue to satisfy its uncontested payment obligations to the Design-Builder during the pendency of any such dispute, subject to the terms and conditions of this Design-Build Contract. Records of the Contract Obligations performed during such time shall be kept in accordance with the applicable provisions of this Design-Build Contract.

ARTICLE 12

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 12.1. REMEDIES FOR BREACH.

(A) Generally. The parties agree that, except as otherwise provided in this Section, in the event that either party breaches this Design-Build Contract, the other party may exercise any legal rights it may have under this Design-Build Contract and under Applicable Law. Neither party shall have the right to terminate this Design-Build Contract except as expressly provided in this Article 12.

(B) No Effect On Contract Obligations. The exercise by the Town of any of its rights under this Article 12 shall not reduce or affect in any way the Design-Builder's responsibility hereunder to perform the Contract Obligations.

(C) No Duplicative Recovery; Express Remedies. Every right to claim compensation, indemnification or reimbursement under this Design-Build Contract shall be construed so that recovery is without duplication to any other amount recoverable under this Design-Build Contract. Without prejudice to any legal right or entitlement of the Design-Builder to specific performance or injunctive relief, the Design-Builder's sole remedy in relation to matters for which an express right or remedy is stated in this Design-Build Contract shall be that express right or remedy, and the Design-Builder shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

SECTION 12.2. EVENTS OF DEFAULT BY THE DESIGN-BUILDER.

(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Design-Builder upon which the Town, by notice to the Design-Builder, may terminate this Design-Build Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Failure to Achieve Substantial Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Substantial Completion prior to the end of the Extension Period;

(2) Failure to Achieve Final Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Final Completion by the date set forth in Section 8.4(A) (Requirements of Final Completion);

(3) Security for Performance. The failure of the Design-Builder to obtain and maintain in full force and effect in accordance with the requirements of this Design-Build Contract any Security Instrument required by Article 16 (Security for Performance) as security for the performance of this Design-Build Contract;

(4) Assignment or Transfer Without Consent. The Design-Builder assigns or transfers this Design-Build Contract or any right or interest therein without the Town's prior written consent;

(5) Insolvency. The insolvency of the Design-Builder as determined under the Bankruptcy Law;

(6) Voluntary Bankruptcy. The filing by the Design-Builder of a petition of voluntary bankruptcy under the Bankruptcy Law; the consenting of the Design-Builder to the filing of any bankruptcy or reorganization petition against the Design-Builder under the Bankruptcy Law; or the filing by the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Law;

(7) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or of a major part of the property of the Design-Builder or the filing against the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Law, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing; or

(8) Abandonment. The Design-Builder suspends, ceases, stops or abandons the Design-Build Work or fails to continuously and diligently prosecute the Design-Build Work, exclusive of work stoppages due to an Uncontrollable Circumstance.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Design-Builder upon which the Town may terminate this Design-Build Contract, by notice to the Design-Builder and subject to the Design-Builder's cure rights set forth in subsection (C) of this Section, if:

(1) Any representation or warranty in this Design-Build Contract made by the Design-Builder, or in any certificate, schedule, report, instrument, agreement or other document delivered by or on behalf of Design-Builder to the Town pursuant to this Design-Build Contract, is false, misleading or inaccurate in any material respect when made or omits material information when made;

(2) The Design-Builder fails, refuses or otherwise defaults in its duty to pay any amount required to be paid to the Town under this Design-Build Contract within 60 days following the due date for such payment;

(3) The Design-Builder fails to resume performance of the Design-Build Work which has been suspended or stopped within a reasonable time after receipt of notice from the Town to do so or (if applicable) after cessation of the event preventing performance;

(4) The Design-Builder fails to comply with any Applicable Law or fails to comply with the instructions of the Town consistent with this Design-Build Contract; or

(5) The Design-Builder commits a material breach of this Design-Build Contract or otherwise fails to perform any other material obligation under this Design-Build Contract (unless such breach or failure is excused by an Uncontrollable Circumstance as and to the extent provided herein).

(C) Notice and Cure Opportunity. The Design-Builder acknowledges that the Town has an immediate termination right upon the occurrence of any of the defaults listed in subsection (A) of this Section and that the Design-Builder has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection (B) of this Section shall constitute an Event of Default giving the Town the right to terminate this Design-Build Contract for cause under this Section unless:

(1) The Town has given prior written notice to the Design-Builder stating that a specified default has occurred which gives the Town a right to terminate this

Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The Design-Builder has not initiated within a reasonable time (in any event not more than 10 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Design-Builder shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the Design-Builder shall continue with due diligence to carry out to completion all such actions.

(D) Other Remedies Upon Design-Builder Event of Default. The right of termination provided under this Section upon an Event of Default by the Design-Builder is not exclusive. If this Design-Build Contract is terminated by the Town for an Event of Default by the Design-Builder, the Town shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Design-Build Contract, under the Security Instruments and under Applicable Law. The Design-Builder shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

(E) Relationship to Liquidated Damages. Termination by the Town pursuant to this Section shall not relieve the Design-Builder or its Surety from liability for the liquidated damages provided for under this Design-Build Contract. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the Town for costs and expenses associated with unexcused delay in the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the Town might suffer in the event of a termination due to a Design-Builder Event of Default under this Article 12. Accordingly, except with respect to damages relating solely to the specific circumstances of unexcused delay for which liquidated damages are provided under this Design-Build Contract, the payment of any such liquidated damages by the Design-Builder shall not serve to limit or otherwise affect the Town's right to pursue and recover damages under subsection (D) of this Section.

SECTION 12.3. LIMITATION ON DESIGN-BUILDER LIABILITY.

(A) Design-Builder Liability Limit. Subject to subsection (B) of this Section, the Design-Builder's aggregate liability under this Design-Build Contract with respect to damages payable to the Town arising out of a breach of contract claim or suit initiated by the Town shall not exceed an amount equal to: (1) the aggregate value of Early Work Package Prices for all Early Work Packages and the Preliminary Services Fee, during the period commencing on the Contract Date and ending on the GMP Amendment Date; and (2) the sum of (i) the Preliminary Services Fee, (ii) amounts paid by the Town for Early Work Packages and (iii) the Guaranteed Maximum Price commencing on the GMP Amendment Date and at all times thereafter.

(B) Liquidated Damages Sub-Limit. The aggregate liability of the Design-Builder, with respect to any liquidated damages payable pursuant Section 8.3(C) (Delay Liquidated Damages), shall not exceed an amount equal to 10% of the Guaranteed Maximum Price.

SECTION 12.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY.

The limitation on Design-Builder liability provided for in Section 12.3 (Limitation on Design-Builder Liability) applies solely to the liability of the Design-Builder for damages to the Town arising out of the performance or unexcused nonperformance of this Design-Build Contract as a consequence of a breach of contract claim initiated by the Town. The limitation on liability provided for in Section 12.3 (Limitation on Design-Builder Liability) shall not apply in the event the Design-Builder wrongfully or intentionally abandons the Project, and does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Design-Builder in connection with this Design-Build Contract, including any of the following liabilities, losses, damages, costs or expenses:

- (1) Any loss, cost or expense sustained by the Design-Builder in the performance of the Design-Build Work or any other loss sustained by the Design-Builder or any other party in connection with this Design-Build Contract or other agreement relating to the Project (e.g. Design-Build Period Costs necessary to complete the Design-Build Work that are in excess of the Guaranteed Maximum Price);
- (2) Any fines or penalties levied or imposed by any Governmental Body in connection with the performance or nonperformance of this Design-Build Contract;
- (3) Any indemnity payment (resulting from third party claims) made by the Design-Builder to the Town;
- (4) Payment of any defense costs (including attorney's fees, to, for, or on behalf of the Town with respect to any third party claim for which the Design-Builder is responsible under the indemnity provisions of this Design-Build Contract);
- (5) Any proceeds recovered from any Required Insurance under this Design-Build Contract and the payment of any premium, deductible or self-insured retention with respect thereto; and
- (6) Any claims, losses, penalties or settlement payments paid to the Town in connection with any tort claim by the Town against the Design-Builder based on negligence, willful misconduct, fraud, misrepresentation or false claims.

SECTION 12.5. EVENTS OF DEFAULT BY THE TOWN.

(A) Events of Default Permitting Termination. The failure, refusal or other default by the Town in its duty to pay any undisputed amount required to be paid to the Design-Builder under this Design-Build Contract within 60 days following the due date for such payment shall constitute an Event of Default by the Town upon which the Design-Builder, by notice to the Town, may terminate this Design-Build Contract, subject to the terms and conditions of this Section.

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Design-Build Contract for cause under this subsection (B) unless:

- (1) The Design-Builder has given prior written notice to the Town stating that a specified default has occurred which gives the Design-Builder a right to terminate this Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The Town has neither challenged in an appropriate forum the Design-Builder's conclusion that such default has occurred nor initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Town shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the Town shall continue with due diligence to carry out to completion all such actions.

(C) Other Town Breaches Constituting Uncontrollable Circumstances. Except for the Town Events of Default described in subsection (A) of this Section, the failure of the Town to perform any other material obligation under this Design-Build Contract (unless such default is the due to Design-Builder Fault or excused by an Uncontrollable Circumstance as and to the extent provided herein), shall constitute an Uncontrollable Circumstance as and to the extent provided in Article 14 (Uncontrollable Circumstances), and the Design-Builder shall have no right to terminate this Design-Build Contract.

(D) Effect of Termination. If this Design-Build Contract is terminated by the Design-Builder for cause as a result of an Event of Default by the Town, the Town shall pay the Design-Builder the same amount which would be payable under Section 12.6 (Town Convenience Termination Rights) if this Design-Build Contract were terminated at the election of the Town for convenience and without cause based on the date of termination. The Town shall have no further liability to the Design-Builder for any Event of Default or termination under this Section.

SECTION 12.6. TOWN CONVENIENCE TERMINATION RIGHTS.

(A) Convenience Termination Right and Payment. The Town shall have the right at any time following the Contract Date, exercisable in its discretion for any reason (including the failure to agree to a GMP Amendment) upon 30 days' written notice to the Design-Builder, to terminate this Design-Build Contract.

(B) Convenience Termination Payment for Preliminary Services. In the event of a convenience termination pursuant to this Section of the Preliminary Services, the Design-Builder shall not be entitled to a convenience termination settlement payment, but shall be entitled to payment of that portion of the Preliminary Services Fee that has been earned by the terms hereof as of the Termination Date but not yet paid by the Town. No other compensation shall be payable by the Town on account of the Town's convenience termination of the Preliminary Services.

(C) Convenience Termination Payment for Design-Build Period Work. In the event of a convenience termination pursuant to this Section following issuance of a Notice to Proceed with Design-Build Period Work (including Design-Build Work performed pursuant to an Early Work Package Amendment), the Design-Builder shall be entitled to a convenience termination settlement payment in an amount equal to the sum of:

(1) The difference between, (a) the value of all such Design-Build Period Work performed up to the Termination Date, and (b) all payments already made to the Design-Builder pursuant to this Design-Build Contract for Design-Build Period Work; and

(2) Subject to subsection (E) of this Section, the reasonable costs incurred by the Design-Builder in connection with the termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts.

In the event of a termination for convenience under this Section, the Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Design-Build Period Work performed plus its settlement and closeout costs. Under no circumstances shall the Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section.

(D) Early Work Packages. If the parties have entered into any Early Work Package Amendment prior to any convenience termination pursuant to this Section, the Town shall have the right to:

(1) Terminate the Design-Builder's right to perform any Design-Build Work authorized by any such Early Work Package Amendment and, at the Town's option, require the Design-Builder to assign any Subcontracts to the Town; or

(2) Require the Design-Builder to complete performance of such Design-Build Work in accordance with the applicable Early Work Package Amendment.

If the Town elects to terminate such Design-Build Work pursuant to clause (1) of this subsection (D), (x) the Design-Builder shall be entitled to a termination settlement payment associated solely with the terminated Early Work Package Design-Build Work, as and to the extent provided in subsection (C) of this Section and (y) shall be relieved from the "call-back" obligations set forth in Section 10.2 (Warranty Work) for any uncompleted Early Work Package Design-Build Work. Nothing in this subsection (D) shall provide grounds for adjustment of any applicable Early Work Package Price or limit the Town's rights to convenience terminate Design-Build Work authorized by an Early Work Package Amendment without terminating the Preliminary Services or the Design-Build Period Work.

(E) Settlement of Subcontracts. The obligation of the Town to pay amounts due in settlement of Subcontracts under subsection (C) of this Section shall be limited to the reasonable costs incurred by the Design-Builder in settling and closing out Subcontracts that the Town does not elect to have assigned to it pursuant to Section 12.7 (Obligations of the Design-Builder Upon Termination) and shall be subject to Cost Substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in subsection (C) of this Section with respect to the convenience termination settlement payment to the Design-Builder. In no event shall the Town be responsible for anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages payable to any Subcontractor as a result of the termination of any Subcontract.

(F) Payment of Amounts Due as a Result of Convenience Termination. The Design-Builder shall submit a termination for convenience claim, in the form and with the certification prescribed by the Town, promptly following the Termination Date but in any event not later than 60 days following the Termination Date. In the event of a failure of the Design-Builder to submit a termination for convenience claim within the time allowed pursuant to this subsection (F), the Town may determine, on the basis of information available to the Town, the amount, if any, due to the Design-Builder by reason of the convenience termination and shall thereupon pay to the Design-Builder the amount so determined, if any. In no event shall the amount payable to the Design-Builder pursuant to this Section exceed the Guaranteed

Maximum Price as reduced by the amount of payments otherwise made. In addition, any amount payable to the Design-Builder pursuant to this Section shall be reduced in the amount of (1) any claim the Town may have against the Design-Builder under this Design-Build Contract, and (2) the fair value, as determined by the Town, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Town, excluding normal spoilage and except to the extent that the Town shall have otherwise expressly assumed the risk of loss with respect to such property hereunder. Any payment required to be made to the Design-Builder pursuant to this Section shall be made within 120 days following the Termination Date, subject to compliance by the Design-Builder with its obligations under Section 12.7 (Obligations of the Design-Builder Upon Termination). Any payment required to be made by the Design-Builder to the Town pursuant to this Section shall be made within 120 days following the Termination Date. In the event of a dispute between the parties as to the amount of any payment required to be made pursuant to this Section, either party may elect to initiate dispute resolution procedures in accordance with Section 11.1 (Dispute Resolution Procedures).

(G) Completion or Continuance by the Town. Without limiting any other the Town right or remedy provided for under this Design-Build Contract, after the date of any termination under this Section, the Town may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Obligations so terminated, including entering into contracts with other contractors.

(H) Convenience Termination Rights as Consideration. The right of the Town to terminate this Design-Build Contract for its convenience and in its sole discretion in accordance with this Section constitutes an essential part of the overall consideration for this Design-Build Contract, and, except with respect to the determination as to the amount due the Design-Builder pursuant to this Section, the Design-Builder hereby waives any right it may have under Applicable Law to assert that the Town owes the Design-Builder a duty of good faith dealing in the exercise of such right. The only compensation payable by the Town upon the exercise of its convenience termination option shall be any amounts specified herein in connection therewith.

SECTION 12.7. OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION.

(A) Obligations of the Design-Builder Upon Termination. Upon any termination of the Design-Builder's right to perform this Design-Build Contract, the Design-Builder shall, as applicable and subject to any written directions provided by the Town:

- (1) Stop any further Contract Obligations at the Project Sites or otherwise in connection with the Project;
- (2) Cease incurring any further obligations or liabilities pertaining to the Contract Obligations;
- (3) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities, and other property pertaining to the Project;
- (4) Vacate possession of the Project Sites and turn possession of the Project Sites over to the Town;
- (5) Clean up and remove all debris and trash from the Project Sites;

(6) Promptly remove from the Project Sites all equipment, tools, or material owned by the Design-Builder, or its Subcontractors, agents or representatives;

(7) Promptly deliver a list of all suppliers, materials, machinery, equipment, property or other pending items being fabricated or on order for delivery to the Project but not yet delivered to the Project Sites or incorporated into the Design-Build Work, and comply with the written instructions of the Town with respect to such matters;

(8) Deliver a complete copy of all books, notes, and records of the Design-Builder pertaining to Design-Build Contract performance or planned construction or design activities;

(9) Promptly provide a list of (and make available to the Town for review or copying) all files pertaining to the Design-Build Work, including any and all access and security codes, and including instructions and demonstrations that show how to open and modify such codes;

(10) Promptly deliver complete copies of all Subcontracts to the Town, together with a detailed report on the status of such Subcontracts (status of orders and work performed and not performed or delivered under each Subcontract); a record of proposals made and balances due under each Subcontract; any cancellation penalties pertaining thereto; and any further information required by the Town, and furthermore assist the Town in contacting such Subcontractors to verify such information or answer any questions of the Town;

(11) Assign to the Town any Subcontract for the design and engineering of the Project that the Town elects in writing, in its discretion, to have assigned to it, with the Town assuming, and the Design-Builder being relieved of, all obligations under the Subcontract from the date of the assignment;

(12) Assign to the Town all other Subcontracts at the request of the Town (other than those expressly agreed upon by the parties in writing that will not be subject to assignment) that the Town elects in writing to have assigned to it and cancel or terminate all Subcontracts that the Town does not elect to have assigned to the Town, in accordance with the written instructions of the Town; provided, however, in the event of a termination pursuant to Section 12.6 (Town Convenience Termination Rights), the Design-Builder shall use good faith efforts to assign such Subcontracts but shall not be in breach of its obligation under this item (12) in the event it is unable to cause such assignment despite such good faith efforts;

(13) Promptly assign and transfer to the Town all right, title, and interest of Design-Builder to any items ordered for the Contract Obligations (but not yet delivered to the Project Sites or incorporated into the Project), as requested by the Town in its discretion; provided the Town (or Surety) assumes responsibility for payment thereof;

(14) Promptly deliver and assign to the Town all warranties or guarantees by any vendor, supplier, manufacturer, or subcontractor pertaining to the Project;

(15) Promptly notify the Town (in writing) of any pending or threatened Legal Proceedings against the Design-Builder; and

(16) Promptly take such other action and execute such documents as requested by the Town, and to assist in the transition of the Contract Obligations to the Surety or the Town, or as reasonably deemed necessary or appropriate by the Town,

and avoid any action or conduct that would increase any expense or cost that would become an obligation or liability to the Town unless requested or directed by the Town Contract Representative in writing.

With respect to any of the foregoing obligations that cannot reasonably be completed by the Termination Date, the Design-Builder shall complete such obligations as promptly as is practicable, but in no event later than 30 days following the Termination Date. Compliance with these obligations shall be conditions precedent to the payment of any sums otherwise due the Design-Builder by reason of the termination. If any Subcontracts are assigned to the Town under this Section, the Town shall not be directly liable to any Subcontractors for amounts owed to such parties for Design-Build Work performed prior to termination, and the Design-Builder shall remain liable to any such parties for such amounts.

SECTION 12.8. NO WAIVERS.

No action of the Town or the Design-Builder pursuant to this Design-Build Contract (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Design-Build Contract. No course of dealing, failure or delay by the Town or the Design-Builder in exercising any right, power or remedy under this Design-Build Contract shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Town or the Design-Builder under this Design-Build Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any breach of any provision of this Design-Build Contract will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 12.9. WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES.

To the fullest extent permitted by law, and notwithstanding any other provision of the Contract Documents, in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, shall either party be liable to the other for any consequential damages (including damages for loss of use, loss of profits or anticipated profits, loss of revenue, and loss of business opportunity) or punitive damages arising out of or in connection with the performance or non-performance of its obligations under this Design-Build Contract; provided, however, that, except as provided in the next sentence, the waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between the Town and the Design-Builder and, with respect to damages payable by the Design-Builder, the waiver of consequential or punitive damages applies only to the extent such damages are in excess of consequential or punitive damages covered or required to be covered by insurance. Nothing in this Section shall limit the indemnification obligations of the Design-Builder hereunder for any consequential or punitive damages payable to third parties resulting from any act or circumstance for which the Design-Builder is obligated to indemnify the Town or the Town Indemnitees hereunder. In addition, the Design-Builder acknowledges and agrees that the foregoing waiver shall not apply to, serve as a limitation or defense in respect of, or otherwise limit any right of recovery the Town may have respecting:

- (1) Any damage, cost, loss or expense (including defense costs) to the extent (a) covered or required to be covered by the proceeds of Required Insurance, or (b) covered by the proceeds of insurance actually carried by or insuring Design-Builder under policies solely with respect to the Project, regardless of whether required to be carried pursuant to Appendix 10 (Insurance Requirements); and

(2) The Design-Builder's obligation to pay any liquidated damages specifically provided for under this Design-Build Contract.

ARTICLE 13

INSURANCE

SECTION 13.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Design-Builder shall obtain, maintain and comply with the terms and conditions of the Required Insurance in accordance with Appendix 10 (Insurance Requirements) and shall pay all premiums with respect thereto as the same become due and payable. The Required Insurance shall be provided concurrently with the execution and delivery of this Design-Build Contract (or as otherwise specified in Appendix 10 (Insurance Requirements)) and remain in effect for the periods specified in Appendix 10 (Insurance Requirements). The Design-Builder's liability insurance, including professional liability, shall not include any design-build or similar exclusions that would compromise coverages because of the design-build nature of the work to be performed pursuant to this Design-Build Contract. Appendix 10 (Insurance Requirements) also includes notice and reporting requirements for the Required Insurance, including the required workers' compensation insurance.

(B) Insurers, Deductibles and the Town Rights. All insurance required by this Section shall be obtained and maintained from insurance companies, firms or entities that comply with the applicable requirements specified in Appendix 10 (Insurance Requirements). The insurers shall be selected by the Design-Builder with the consent of the Town, which consent shall not be unreasonably withheld, and authorized to write such insurance in the State. All deductibles or self-insured retention amounts included in the Required Insurance coverage shall be subject to the reasonable approval of the Town. The Design-Builder shall be responsible for the payment of any deductible amounts. The Design-Builder shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Design-Builder hereunder. All policies of insurance, except for professional liability and workers' compensation, shall list the Town as an additional insured, and provide for:

(1) Payment of the losses to the Town, and to the Design-Builder as their respective interests may appear;

(2) At least 30 days' prior written notice of the cancellation thereof to the Town (except for cancellation resulting from non-payment of premium); and

(3) At least 10 days' prior written notice of cancellation thereof to the Town in the event of cancellation resulting from non-payment of premium.

All policies of insurance, except for professional liability and workers' compensation, provided by or on behalf of the Design-Builder shall be primary and non-contributory with respect to any insurance or self-insurance carried by the Town. The Town shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice. The Required Insurance, including any renewals thereof, shall be evidenced by certificates of insurance as provided herein and in Appendix 10 (Insurance Requirements). No later than 30 days prior to the issuance date of each policy of Required Insurance, including any renewals thereof, the Design-Builder shall provide the Town with a draft certificate of insurance for review and approval, and shall deliver the final, approved certificate of insurance to the Town promptly following its issuance. All policies of Required Insurance shall be made available for review by the Town's outside legal

counsel, who will conduct the review solely for the purposes of providing the Town legal advice as to whether the Design-Builder's policies meet Required Insurance requirements hereunder. The Design-Builder shall certify to the Town that the policies being provided for review are a complete, true and correct compilation of all relevant policies evidencing insurance required under Appendix 10 (Insurance Requirements), recognizing that the Town and its designated representatives will rely on such certification. The Town's outside legal counsel's legal advice shall be limited to only confirming whether such policies of insurance comply with the insurance requirements in this Design-Build Contract, or generally describing the nature of any deficiency observed in such policies. In its submission, the Design-Builder may claim confidentiality with respect to its insurance policies to protect the same against disclosure under the Public Information Act, and in such event the Town will take reasonable action (up to seeking an attorney general opinion regarding exceptions that may apply) to seek to preserve the confidentiality of the information about the Design-Builder's insurance policies in the possession of the Town's outside legal counsel, pursuant to the attorney client privilege and any other applicable exception to disclosure under the Public Information Act that the Town in its sole discretion determines to assert. In addition, upon conducting such review, if the Town's outside legal counsel determines that policies of Required Insurance contain deficiencies that cause such policies not to comply with the requirements of this Design-Build Contract, the Design-Builder shall remedy the defect and, without limiting any other the Town right or remedy provided for under this Design-Build Contract, in the event of a failure of compliance with the Required Insurance, the Design-Builder shall reimburse the Town for the cost and expense incurred by the Town in connection with the Town's outside legal counsel attempting to resolve such policy deficiencies by modification or endorsement thereof to achieve compliance with the requirements hereunder.

(D) Subcontractors. Whenever a Subcontractor is utilized, the Design-Builder shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 10 (Insurance Requirements).

(E) Maintenance of Insurance Coverage. If the Design-Builder fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Design-Builder fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the Town's election (but without any obligation to do so), the Town, following notice to the Design-Builder, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the Town the amount thereof shall be immediately reimbursed to the Town by the Design-Builder. The Design-Builder shall not perform Design-Build Work during any period when any policy of Required Insurance is not in effect. The Design-Builder shall comply with all Insurance Requirements and take all steps necessary to continuously insure the Project in accordance with the requirements of this Design-Build Contract. The failure of the Design-Builder to obtain and maintain any Required Insurance shall not relieve the Design-Builder of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Design-Builder shall indemnify, defend and hold harmless the Town Indemnitees in accordance with and to the extent provided in Article 15 (Indemnification) from and against all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Design-Builder's obligations under this Section shall not be a satisfaction of any Design-Builder liability under this Design-Build Contract or in any way limit, modify or satisfy the Design-Builder's indemnity obligations hereunder.

(F) Compliance with Insurer Requirements. The Design-Builder shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Design-Builder shall not knowingly do or permit anything to be

done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(G) Reductions for Insurance Proceeds. Whenever this Design-Build Contract obligates the Town to pay any amount to the Design-Builder in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Design-Builder under the Required Insurance, the amount which the Town is obligated to pay will be reduced by the amount of insurance proceeds which the Design-Builder recovers or would have been entitled to recover if it had complied with the requirements of this Design-Build Contract or any policy of Required Insurance.

ARTICLE 14

UNCONTROLLABLE CIRCUMSTANCES

SECTION 14.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Design-Builder. If an Uncontrollable Circumstance occurs, the Design-Builder may be entitled to relief from its obligations, extensions of time and compensation, as and to the extent provided in this Article 14. Such relief shall be available irrespective of whether an obligation of this Design-Build Contract expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Design-Builder is entitled under this Article 14 on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Design-Builder in compliance with its duty to mitigate under Section 17.9 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article 14 shall be interpreted as relieving the Design-Builder of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Design-Build Contract in compliance with Applicable Law.

(D) Contract Obligations Not Affected; Resumption of Performance. The occurrence of an Uncontrollable Circumstance shall not excuse the Design-Builder from performing any obligation hereunder not directly affected by the occurrence of the Uncontrollable Circumstance. Upon the occurrence of an Uncontrollable Circumstance, the Design-Builder shall promptly use all reasonable efforts to eliminate the cause thereof and resume performance of the affected Contract Obligations.

SECTION 14.2. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Design-Builder shall give notice of the occurrence of the Uncontrollable Circumstance to the Town as soon as practicable, and in any event within 14 days of the date the Design-Builder has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Design-Build Contract. The Design-Builder's notice shall include a written report:

- (1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;
- (2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
- (3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Design-Builder's obligations under this Design-Build Contract; and
- (4) Indicating the nature and scope of the Design-Builder's potential entitlement to relief.

(B) Updates. The Design-Builder shall provide the Town with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters

described in subsection (A) of this Section. In particular, the Design-Builder shall notify the Town as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Design-Builder shall submit to the Town a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief (the "Relief Request Notice"), promptly after becoming aware of such occurrence, but not more than 30 days after the Town's receipt of the notice required under subsection (A) of this Section; provided that, if the specific relief cannot reasonably be ascertained within such period, the Design-Builder shall furnish the Relief Request Notice within such longer period as is reasonably necessary to detail the event and ascertain such relief; however, in any event, such Relief Request Notice shall be submitted to the Town not more than 60 days after the Town's receipt of the notice required under subsection (A) of this Section. Each Relief Request Notice shall include all information required in this Article 14 with respect to the specific relief being requested.

(D) Delay in Notification. The Design-Builder acknowledges that any delay by the Design-Builder in submitting to the Town any Uncontrollable Circumstance notice or any information required under this Section, beyond the applicable time period required under this Section may adversely affect the Town, and agrees that the relief to be provided in respect of any Uncontrollable Circumstance shall be reduced or limited to the extent of any such adverse effect, as reasonably determined by the Town. The Design-Builder shall be deemed to have become aware of the occurrence of an Uncontrollable Circumstance if such occurrence could reasonably have been known, identified, discovered or observed by the Design-Builder through the employment of procedures consistent with Good Engineering and Construction Practice. Without limiting any of the foregoing, if the Design-Builder fails to submit a Relief Request Notice within 60 days after the Town's receipt of the notice required under subsection (A) of this Section or to notify the Town of the occurrence of an Uncontrollable Circumstance within 60 days following the occurrence, then the Design-Builder shall be deemed to have irrevocably and forever waived and released any and all claim or right with respect to the subject Uncontrollable Circumstance.

(E) Multiple and Overlapping Claims. The Design-Builder may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Design-Builder shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Design-Builder complied with its mitigation obligations under Section 17.9 (General Duty to Mitigate).

(G) Town Response. The Town may, but shall have no obligation to, respond to the Design-Builder's initial notice concerning the occurrence of an Uncontrollable Circumstance under subsection (A) of this Section. Within 15 days after receipt of a Relief Request Notice pursuant to subsection (C) of this Section, the Town shall issue a written determination as to the extent, if any, to which it concurs with the Design-Builder's request and the reasons therefor.

(H) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Design-Builder on account of an Uncontrollable Circumstance shall be evidenced by a Change Order, a Contract Amendment or other written agreement between the parties. Either party may refer any dispute for resolution in accordance with Section 11.1 (Dispute Resolution Procedures).

(I) Certifications. Each submittal made under this Section by the Design-Builder shall be accompanied by a certification of the Design-Builder Contract Representative

that the submittal is made in good faith; that the supporting data are complete and accurate at the time of the submittal to the best knowledge of the Design-Builder; and that the requested relief accurately reflects the relief to which the Design-Builder reasonably believes it is entitled hereunder. The Design-Builder shall have no entitlement to relief for uncertified claims.

SECTION 14.3. UNCONTROLLABLE CIRCUMSTANCES RELIEF.

If and to the extent that an Uncontrollable Circumstance interferes with, delays or increases the cost to the Design-Builder performing the Design-Build Work in accordance herewith, the Design-Builder shall, subject to Section 14.4 (Schedule Relief and Related Price Relief), be entitled to:

- (1) Relief from its performance obligations;
- (2) An adjustment to the Scheduled Substantial Completion Date;
- (3) An adjustment to the Contract Compensation for such costs (except as otherwise expressly provided herein); or
- (4) A Base Guaranteed Maximum Price Adjustment (except as and to the extent provided in this Section, Section 14.2 (Uncontrollable Circumstance Claim Procedures) and Article 15 (Indemnification));

or any combination thereof, each of which properly reflects the interference with performance, the time lost as a result thereof, or the amount of the increased cost, in each case only to the minimum extent necessary to compensate the Design-Builder or provide performance or schedule relief and only to the extent directly attributable to the Uncontrollable Circumstance. Any cost reduction achieved or which should have been achieved taking into consideration the Design-Builder's obligations under this Design-Build Contract (including the mitigation measures to be undertaken by the Design-Builder pursuant to Section 17.9 (General Duty to Mitigate)) shall be reflected in a reduction of the amount of the additional Contract Compensation or Base Guaranteed Maximum Price Adjustment as appropriate to reflect such mitigation measures. The Design-Builder shall not be entitled to any price relief on account of any costs incurred as the result of Design-Builder Fault or an act, event or circumstance that the Design-Builder is obligated to insure against under Article 13 (Insurance), irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder.

SECTION 14.4. SCHEDULE RELIEF AND RELATED PRICE RELIEF.

(A) Conditions to Schedule Relief.

(1) Float in the Design-Build Period Work Schedule. The parties acknowledge and agree that "float" in the Design-Build Period Work Schedule:

- (a) Means the amount of time that any given activity or logically connected sequence of activities shown on the Design-Build Period Work Schedule may be delayed before it delays the occurrence of a scheduled completion milestone; and
- (b) Is an expiring resource available to the Project for the benefit of both parties, available to each of them as needed to absorb delays in achieving the scheduled completion milestones, whether such delays are caused by Uncontrollable Circumstances or otherwise.

(2) Required Demonstration for Schedule Relief. Without limiting any other requirement of this Article 14, the Design-Builder shall not be entitled to any adjustment to the Scheduled Substantial Completion Date, the number of days allowed for the achievement of Final Completion or any other schedule adjustment under this Design-Build Contract, unless the Design-Builder demonstrates:

(a) That an Uncontrollable Circumstance has occurred and, subject to the time impact analysis requirements of Appendix 5 (General Design-Build Work Requirements), that the Uncontrollable Circumstance impacts one or more critical path activities in the Design-Build Period Work Schedule, as updated, maintained and revised by the Design-Builder in accordance with the Contract Standards, such that the Uncontrollable Circumstance will consume all available float and extend the time required to achieve the scheduled milestone from which relief is being sought;

(b) The Design-Builder, in view of all circumstances, exercised reasonable efforts to avoid the delay; and

(c) The delay was not caused by the Design-Builder or any other Design-Builder Person.

(B) Compensable Uncontrollable Circumstance Delay. The Design-Builder shall be entitled to schedule relief but shall not be entitled to price relief for schedule delays due to (i) unusually severe and abnormal climatic conditions, (ii) the existence of Differing Site Conditions, or (iii) the existence of a Regulated Site Condition. Price relief for schedule delays caused by other Uncontrollable Circumstances (including delays in the receipt of Town Managed Governmental Approvals or Town Managed Non-Governmental Approvals, a Change in Law, Town Fault or the performance or non-performance of Separate Contractors, in each case, as and to the extent such events or circumstances constitute Uncontrollable Circumstances pursuant to this Article 14) shall be limited to a reasonable and equitable Base Guaranteed Maximum Price Adjustment, which shall not exceed the sum of (i) a reasonable daily value for the Design-Builder's General Conditions Costs based upon the Design-Builder's General Conditions Fee multiplied by the number of days of compensable Uncontrollable Circumstance delay, and (ii) any additional Design-Build Period Costs attributable to such Uncontrollable Circumstance delay taking into consideration the Design-Builder's obligations under this Design-Build Contract (including the mitigation measures to be undertaken by the Design-Builder pursuant to Section 17.9 (General Duty to Mitigate)) as substantiated in accordance with Section 9.8 (Cost Substantiation).

(C) Concurrent Delay. The Design-Builder's entitlement to price relief for Uncontrollable Circumstance delays under subsection (B) of this Section shall be limited to the extent of any concurrent delay by the Design-Builder or to the extent performance was, or would have been, suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible.

SECTION 14.5. UNUSUALLY SEVERE AND ABNORMAL CLIMATIC EVENTS.

If the Design-Builder intends to seek Uncontrollable Circumstance schedule relief on the basis of unusually severe and abnormal climatic events, the Design-Builder shall, in addition to fulfilling all other requirements of this Article 14, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Project Sites.

SECTION 14.6. RELEASE.

The Design-Builder's acceptance of any performance, price or schedule adjustment under this Article 14 shall be construed as a release of the Town by the Design-Builder (and all persons claiming by, through or under the Design-Builder) from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed. Notwithstanding the foregoing, the parties may agree that any schedule, performance or price relief does not constitute the entire relief to be afforded due to such event but only to the extent set forth in a written agreement of the parties.

SECTION 14.7. UNIT PRICING.

[Note: To be developed if parties negotiate per unit charge for treatment/disposal of contaminated material that would constitute an Uncontrollable Circumstance as part of the GMP Amendment.]

ARTICLE 15

INDEMNIFICATION

SECTION 15.1. DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY.

The Design-Builder shall indemnify, defend and hold harmless the Town, and their respective elected officials, trustees, members, appointed officers, employees, representatives, agents and contractors, including the Owner Representative (each a "the Town Indemnatee"), from and against (and pay the full amount of) any and all Loss-and-Expense that any the Town Indemnatee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Town Indemnatee, to the extent arising by reason of (or alleged to result from or in connection with) any:

- (1) Design-Builder Fault;
- (2) Non-compliance by the Design-Builder or any Design-Builder Person with any of the provisions of this Design-Build Contract or any Subcontract or any document, instrument or agreement delivered to the Town as required under this Design-Build Contract;
- (3) Activities on the Project Sites, as and to the extent provided in Section 4.4(C) (Access to the Project Sites);
- (4) Non-compliance with Applicable Law, as provided in Section 4.6(C) (Fines, Penalties and Remediation);
- (5) Release of Regulated Substances by the Design-Builder or any Design-Builder Person, as provided in Section 6.4(A) (Design-Builder Responsibilities);
- (6) Labor disputes, as provided in Section 7.2(B) (Labor Relations);
- (7) Subcontractor claims, as provided in Section 7.3(I) (Subcontractor Claims);
- (8) Design-Builder Employee claims, as provided in subsection 7.3(K) (Subcontracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms);
- (9) Intellectual Property claims, as provided in Section 17.7(A) (Protection from Infringement);
- (10) Failure by the Design-Builder to advise the Town of any potential infringement or unauthorized use resulting from a the Town-directed Change Order, as provided in Section 17.7(C) (Exceptions to Infringement Protection);
- (11) Any claims of harassment arising from the conduct of the Design-Builder or any Design-Builder Person;
- (12) Breach by the Design-Builder or any Design-Builder Person of, or non-compliance by the Design-Builder or any Design-Builder Person with, any Governmental Approval or Applicable Law, or the failure of the Design-Builder or any

Design-Builder Person to obtain all necessary Governmental Approvals which it is required to obtain in accordance with this Design-Build Contract; or

(13) Any other act, event or circumstance as to which the Design-Builder is obligated to provide an indemnity hereunder.

The Design-Builder's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Design-Builder which is intended to respond to such events. Notwithstanding the foregoing, the Town Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the Town Indemnitees. This Section may be relied upon by the Town Indemnitees and may be enforced directly by any of them against the Design-Builder in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Design-Builder.

SECTION 15.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a Town Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the Town Indemnitee is, or may become entitled to, indemnification or compensation under this Design-Build Contract in respect of the entire claim, the Town Indemnitee shall give notice in writing to the Design-Builder as soon as reasonably practicable.

(B) Consolidation of Claims. If a notice of claim is given pursuant to subsection (A) of this Section by more than one the Town Indemnitee relating to the same facts or circumstances, the Design-Builder may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Design-Builder Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Design-Builder shall be entitled to dispute the claim in the name of the Town Indemnitee at the Design-Builder's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Town Indemnitee will give the Design-Builder all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Design-Builder pursuant to subsection (C) of this Section:

(1) The Design-Builder shall keep the Town Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Design-Builder shall demonstrate to the Town Indemnitee, at the reasonable request of the Town Indemnitee, that the Design-Builder has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Design-Builder shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of the Town, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of the Town and (2) be subject to the consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Design-Builder, the Town (with the approval of the Board of Trustees, given in its discretion) shall, at the sole cost and expense of the Design-Builder, cooperate with the Design-

Builder and its counsel in contesting any claim which the Design-Builder elects to contest.

(E) The Town Indemnatee Rights to Conduct Defense. A Town Indemnatee may take conduct of any defense, dispute, compromise or appeal of any claim subject to the Design-Builder's indemnification obligations hereunder, including any incidental negotiations, if

(1) The Design-Builder fails to notify the Town Indemnatee of its intention to take conduct of the relevant claim within 14 days of the notice from the Town Indemnatee under subsection (A) of this Section or notifies the Town Indemnatee that it does not intend to take conduct of the claim; or

(2) The Town Indemnatee reasonably determines that a conflict exists between it and the Design-Builder which prevents or potentially prevents the Design-Builder from presenting a full and effective defense; or

(3) The Design-Builder fails to comply in any material respect with subsection (D) of this Section in a timely manner following reasonable notice from the Town.

(F) Transfer of Conduct of Claim to the Town Indemnatee. A the Town Indemnatee may at any time, give notice to the Design-Builder that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (E) of this Section applies. On receipt of such notice the Design-Builder will promptly take all steps necessary to transfer the conduct of such claim to the Town Indemnatee, and will provide to the Town Indemnatee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(G) Design-Builder Responsibility for Costs. If the Town Indemnatee is entitled and elects to conduct its own defense pursuant to subsection (E) of this Section, all reasonable Fees and Costs incurred by the Town Indemnatee in investigating, defending and conducting the claim for which it is entitled to indemnification hereunder shall constitute an indemnified loss subject to the Design-Builder's indemnification obligations hereunder.

ARTICLE 16

SECURITY FOR PERFORMANCE

SECTION 16.1. BONDS.

(A) Performance and Payment Bonds. Performance Bonds and Payment Bonds for the Design-Build Work shall be provided as follows:

(1) Early Work Packages Bonds. If the Town authorizes an Early Work Package, then the Design-Builder shall provide to the Town, on or before the Early Work Package Amendment Date, a Performance Bond and a Payment Bond covering the Design-Builder's faithful performance of such Early Work Package Amendment and the payment of its obligations arising thereunder. The penal sum of each such bond shall be in an amount equal to the Early Work Package Price applicable to the Early Work Package. The Payment Bond shall be in the form required by California Civil Code Section 3247 as attached as Transaction Form B issued by a Surety meeting the requirements set forth in subsection (D) of this Section, and the Performance Bond shall be in the form attached as Transaction Form C issued by a Surety meeting the requirements set forth in subsection (D) of this Section. If the Town authorizes additional Early Work Packages, then the Design-Builder shall, on or before each subsequent Early Work Package Amendment Date, provide to the Town, for each subsequent Early Work Package, an amendment to the above-referenced Performance Bond and Payment Bond, executed by both the Design-Builder and the Surety, that: (a) increases the penal sum of each bond by an amount equal to the Early Work Package Price of such Early Work Package; and (b) affirmatively states that the obligations under such bonds encompass the Design-Builder's performance and payment obligations under each Early Work Package Amendment.

(2) Amendment of Early Work Package Bonds on GMP Amendment Date. If Performance and Payment Bonds have been provided pursuant to item (1) above, then the Design-Builder shall, on or before the GMP Amendment Date, provide to the Town an amendment to the Performance Bond and the Payment Bond, executed by both Design-Builder and the Surety, that: (a) increases the penal sum of each bond to an amount equal to the Base Guaranteed Maximum Price; and (b) affirmatively states that such bonds cover faithful performance of this Design-Build Contract and payment of obligations arising thereunder.

(3) New Design-Build Work Performance and Payment Bonds on GMP Amendment Date. If the Performance Bond and the Payment Bond have not been provided pursuant to item (1) above, then the Design-Builder shall, on or before the GMP Amendment Date, provide to the Town a Performance Bond and a Payment Bond that are in the penal sum of an amount equal to the Base Guaranteed Maximum Price and cover faithful performance of this Design-Build Contract and payment of obligations arising hereunder. The forms of such bonds are set forth in Transaction Forms B and C and shall be issued by a Surety meeting the requirements set forth in subsection (D) of this Section.

(4) Example Penal Sum Determination. The following example is intended to illustrate the operation of the above, on the assumption that there are two Early Work Package Amendments before the GMP Amendment:

(a) The parties enter into an Early Work Package Amendment for Scope X with a lump sum price of \$1 million. The Performance Bond and the

Payment Bond will each have a penal sum of \$1 million, and such bonds will cover the performance and payment obligations of the Design-Builder for Scope X.

(b) The parties enter into another Early Work Package Amendment for Scope Y with a lump sum price of \$1.5 million. The Performance Bond and the Payment Bond will be amended to have a penal sum of \$2.5 million, and such bonds will cover the performance and payment obligations of Design-Builder for Scope X and Y.

(c) The parties enter into the GMP Amendment, with a Base Guaranteed Maximum Price of \$10 million, inclusive of the lump sum pricing for Scopes X and Y. The Performance Bond and the Payment Bond will be amended to have a penal sum of \$10 million, and such bonds will cover all performance and payment obligations of the Design-Builder under this Design-Build Contract, inclusive of Scope X, Y and all other Design-Build Work under this Design-Build Contract.

(5) Base Guaranteed Maximum Price Adjustments. The amount of the Performance Bond and the Payment Bond shall be increased by the Design-Builder to reflect any Base Guaranteed Maximum Price Adjustments at the time such adjustment is implemented by the parties and as a condition to its entitlement to the adjustment.

(6) Term of Bonds. The Payment Bond shall be security for the payment of all persons supplying labor and material in the prosecution of the Design-Build Work and shall remain open until Final Completion. The Performance Bond shall secure the performance of the Design-Build Work and shall remain open until Final Completion.

(B) Bond Forms. Each bond given or tendered to the Town pursuant to this Design-Build Contract must be on the Town forms (Transaction Forms B and C), with no changes made by the Design-Builder or the Surety, and must be dated, executed, and accompanied by a power of attorney stating that the attorney in fact executing the bond has requisite authority to execute such bond. The bonds must be dated and must be no more than 30 days old when delivered to the Town.

(C) Delivery of Bonds. The Design-Builder shall deliver required bonds to the Town within the time limits specified in this Section.

(D) Surety Requirements. The bonds required to be provided pursuant to this Section shall be issued by a Surety:

(1) Approved by the Town having a rating of A- or better in the latest revision of the A.M. Best Company's Insurance Report;

(2) Listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies";

(3) Holding a certificate of authority to transact surety business in the State;
and

(4) In compliance with the requirements of State law.

If a bond is given or tendered to the Town pursuant to this Design-Build Contract in an amount greater than 10 percent of Surety's capital and surplus, the Surety shall provide certification that the Surety has reinsured that portion of the risk that exceeds 10 percent of the Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State. The amount reinsured by any reinsurer may not exceed 10 percent of the reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from the California Board of Insurance.

(E) Monitoring of Sureties. The Design-Builder shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing bonds under this Design-Build Contract and for making inquiries no less often than annually to confirm that each such Surety maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing Surety falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has the rights to do business in the State terminated, the Design-Builder shall promptly notify the Town of such event and shall promptly take steps to cause continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the Town agrees to accept the surety company that no longer satisfies the minimum rating level specified above, or agrees to an alternative method of assurance. Upon such notice by the Design-Builder of such an event, the Town shall not unreasonably withhold its approval of such assurance.

(F) Completion of Work. Without limiting any other right or remedy provided for under the Performance Bond, if this Design-Build Contract is terminated by the Town for an Event of Default and the Surety fails to pursue completion of the Contract Obligations with reasonable speed, the Town may arrange for completion of the Contract Obligations and deduct the cost thereof from any amount otherwise due to the Design-Builder under this Design-Build Contract, including the cost of additional the Town administration and consultant services made necessary by such default or neglect. In such event, no further payment shall then be made by the Town until all costs of completing the Contract Obligations shall have been paid.

SECTION 16.2. COSTS OF PROVIDING SECURITY INSTRUMENTS.

The cost and expense of obtaining and maintaining the Security Instruments required under this Article 16 as security for the performance of the Design-Builder's obligations hereunder shall be borne by the Design-Builder. Premiums for the Performance Bonds and the Payment Bonds shall be Design-Build Period Costs that may be requisitioned by the Design-Builder in accordance with the provisions of Appendix 8 (Design-Build Price).

ARTICLE 17

MISCELLANEOUS PROVISIONS

SECTION 17.1. OWNERSHIP OF THE PROJECT.

The Project shall be owned by the Town at all times. The Design-Builder shall perform the Contract Obligations provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Project. The Design-Builder shall not use the Project for any purpose other than the purposes contemplated by this Design-Build Contract or to serve or benefit any person other than the Town.

SECTION 17.2. RELATIONSHIP OF THE PARTIES.

The Design-Builder is an independent contractor of the Town and the relationship between the parties shall be limited to performance of this Design-Build Contract in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Design-Build Contract shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Design-Build Contract or the performance thereof.

SECTION 17.3. AFFILIATE TRANSACTIONS.

If any costs to be reimbursed by the Town to the Design-Builder under this Design-Build Contract arise from a transaction between the Design-Builder and any Affiliate of the Design-Builder, the Design-Builder shall notify the Town of the specific nature of the contemplated transaction, including the identity of the Affiliate, the nature of the work to be performed by the Affiliate and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. The Design-Builder shall not enter into any such transaction, nor incur any such cost, absent the written approval of the Town in its sole discretion.

SECTION 17.4. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the performance of this Design-Build Contract. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Design-Build Contract.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Design-Build Contract between the parties that do not require a Contract Amendment shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the Town and the

Design-Builder as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Design-Build Contract in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the Town reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Design-Builder Contract Representative and the Town Contract Representative, and, at the request of the Town, co-signed by a Senior Supervisor for the Design-Builder. The Town and the Design-Builder each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Contract Amendments and all other documents relating to the administration and performance of this Design-Build Contract.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Design-Build Contract. Any material change, alteration, revision or modification of this Design-Build Contract, however, shall be effectuated only through a formal Contract Amendment in accordance with Section 17.5 (Contract Amendments).

SECTION 17.5. CONTRACT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 17.4 (Contract Administration) but without limiting any approval authority delegated to the Town Contract Representative pursuant to Section 17.6(B) (Town Contract Representative), no material change, alteration, revision or modification of the terms and conditions of this Design-Build Contract shall be made except through a written amendment to this Design-Build Contract (a “Contract Amendment”), duly authorized, approved or ratified by the Town Council and duly authorized by the Design-Builder.

(B) Procedure. Contract Amendments shall be serially numbered, dated and signed by a Senior Supervisor for the Design-Builder and by the Town Contract Representative or an authorized signatory of the Town for the Town, as determined in accordance with Section 17.6(B) (Town Contract Representative). The Town and the Design-Builder each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Design-Build Contract.

SECTION 17.6. CONTRACT REPRESENTATIVES.

(A) Design-Builder Contract Representative and Senior Supervisors. The Design-Builder shall appoint and inform the Town in writing from time to time of the identity of (1) the individual with the responsibility and power from time to time to administer this Design-Build Contract and to bind the Design-Builder with respect to any Contract Administration Memorandum, Change Order and Contract Amendment (which may be the same or different

individual with respect to the Preliminary Services and the Design-Build Period Work) (the “Design-Builder Contract Representative”), and (2) the corporate officials of the Design-Builder with senior supervisory responsibility for the Project and the performance of this Design-Build Contract (the “Senior Supervisors”). The Design-Builder shall promptly notify the Town in writing of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the Town in any reviews of the performance of the Project Manager and the Design-Builder Contract Representative which the Town may undertake from time to time, and shall give full consideration to any issues raised by the Town in conducting such performance reviews.

(B) Town Contract Representative. The Town shall appoint an individual or individuals to act as the “Town Contract Representative” for this Design-Build Contract. Such appointment shall be in writing and include a specific description of the extent of the Town Contract Representative’s power to administer this Design-Build Contract, including specific dollar limitations of his or her authority. The Design-Builder shall be entitled to a copy of any such written appointment. The Design-Builder understands and agrees that any delegation to the Town Contract Representative may provide only limited authority with respect to the implementation of this Design-Build Contract, which may or may not include the authority to bind the Town with respect to any Change Order, Work Change Directive or Contract Amendment. Within such limitations, the Design-Builder shall be entitled to rely on the written directions of any the Town Contract Representative. The Town Contract Representative shall have the right at any time to issue the Design-Builder a written request for information relating to this Design-Build Contract. Any written request designated as a “priority request” shall be responded to by the Design-Builder within three Business Days.

(C) Town Approvals and Consents. When this Design-Build Contract requires any approval or consent by the Town to a Design-Builder submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) of this Section, be given by the Town Contract Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the Town with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Design-Build Contract, and except for requests, reports and submittals made by the Design-Builder that do not, by their terms or the terms of this Design-Build Contract, require a response or action, if the Town does not find a request, report or submittal acceptable, it shall provide written response to the Design-Builder describing its objections and the reasons therefor within 30 days of the Town’s receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the Town’s approval or consent may not be unreasonably delayed by the express terms hereof, and the Design-Builder may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the Town pursuant to some specific term of this Design-Build Contract shall be deemed acceptable to the Town if the Town shall not have objected thereto within 30 days of the receipt thereof.

SECTION 17.7. PROPERTY RIGHTS.

(A) Protection from Infringement. The Design-Builder shall pay all royalties and license fees in connection with the Contract Obligations during the Term. Except as provided in subsection (C) of this Section, the Design-Builder shall indemnify, defend and hold harmless the Town Indemnities in accordance with and to the extent provided in Section 15.1 (Design-Builder’s Obligation to Indemnify) from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Contract Obligations. The Design-Builder’s indemnity pursuant to this Section shall apply only when infringement occurs or is alleged to occur from the intended

use for which the Deliverable Material, process or equipment was provided by the Design-Builder pursuant to this Design-Build Contract.

(B) Substitutes for Deliverable Material, Process or Equipment. Except as provided in subsection (C) of this Section, in the event the Design-Builder or the Town is enjoined from using any Deliverable Material, process or equipment, the Design-Builder, at its sole cost and expense, shall:

(1) Acquire the right to legally use such infringing Deliverable Material, process or equipment (or any affected Design-Build Work) under infringed patents or copyrights; or

(2) Modify or replace such Deliverable Material, process or equipment (or any affected Design-Build Work) with un-infringed Deliverable Material, process or equipment (or any affected Design-Build Work) equivalent in quality, performance, useful life and technical characteristics and development; provided, however, that any such modification or replacement shall be subject to the Town's approval, which shall not be unreasonably withheld or delayed.

(C) Exceptions to Infringement Protection. Unless otherwise agreed to by the parties, the Design-Builder's obligations under this Section shall not apply to:

(1) Infringement resulting from the Town-directed Change Orders and Work Change Directives issued under Section 6.9(C) (Changes Required by the Town) or Section 6.11 (Work Change Directives);

(2) Infringement resulting from unauthorized additions, changes or modifications to the Deliverable Material, process or equipment made or caused to be made by the Town subsequent to delivery by the Design-Builder; or

(3) Any claimed infringement which is settled without the consent of the Design-Builder.

The Design-Builder shall promptly advise the Town as to whether any the Town-directed Change Order or Work Change Directive issued under Section 6.9(C) (Changes Required by the Town) or Section 6.11 (Work Change Directives) may result in any infringement or unauthorized use and, in the event of any failure by the Design-Builder to so advise the Town, the Design-Builder will indemnify the Town for any Loss-and-Expense resulting from any such infringement or unauthorized use.

(D) Pre-Existing Intellectual Property. The Town acknowledges and agrees that in the performance of Contract Obligations under this Design-Build Contract, the Design-Builder may use proprietary algorithms, software, hardware, databases, other background technology, and other proprietary information that the Design-Builder developed or licensed from third parties prior to the Contract Date ("Pre-Existing Intellectual Property"). Without limiting the Town's rights with respect to the Deliverable Material, the Design-Build Work or the Project, the Design-Builder will retain all right, title, and interest in such Pre-Existing Intellectual Property. However, the Town shall have the irrevocable, perpetual, and unrestricted right from and after the Contract Date to use (or permit use of) all Pre-Existing Intellectual Property incorporated in the Deliverable Material, the Design-Build Work or the Project, all oral information received by the Town in connection with the Design-Build Work, and all ideas or methods represented by Pre-Existing Intellectual Property incorporated in the Deliverable Material or the Project, in each case without additional compensation. The Design-Builder hereby licenses such irrevocable, perpetual, and unrestricted rights to the Town. The

Town's use of such license rights for any purpose other than the Project shall be at its own risk, and the Design-Builder shall have no liability for or relating to any such use. Notwithstanding any other provision of this Design-Build Contract, the Design-Builder shall retain all rights, title and interest (including all Intellectual Property rights) with respect to the following specialized equipment used in the performance of the Design-Build Work: [_____].

(E) Protection of Proprietary Rights of the Town. The Design-Builder agrees and covenants to protect any and all proprietary rights of the Town in any material provided to the Design-Builder. Such protection of proprietary rights by the Design-Builder shall include the insertion in any copy intended for publication of a copyright mark reserving all rights to the Town in any such material provided by the Town to the Design-Builder. Additionally, any materials provided to the Design-Builder by the Town shall not be released to any third party without the written consent of the Town and shall be returned intact to the Town upon completion or termination of this Design-Build Contract. The provisions of this subsection shall not apply to material in the public domain on the Contract Date or material that subsequently comes into the public domain by other than an unauthorized disclosure.

SECTION 17.8. AFFIRMATIVE ACTION REQUIREMENTS.

(A) Applicable Law. The Design-Builder shall comply at all times with the affirmative action requirements of and the anti-discrimination requirements of the Grant Requirements, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines).

(B) Affirmative Action Statement. The Design-Builder shall actively solicit the employment of minority group members. The Design-Builder shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. The Design-Builder shall furnish evidence of the Design-Builder's compliance with these requirements of minority employment and solicitation. The Design-Builder further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. As used in this Section, the term "minority business" means a business at least fifty-one percent of which is owned by minority group members. Minority group members include, but are not limited to, blacks, women, native Americans, Asians, Eskimos, Aleuts, and Hispanics. The Design-Builder and all subcontractors shall also comply with the anti-discrimination requirements of the Grant Requirements, including all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines). The Design-Builder agrees to take all steps necessary to comply with all federal, state and Town laws and policies regarding non-discrimination and equal employment opportunities. The Design-Builder, and all of its subcontractors, shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status or the presence of any sensory, mental, or physical handicap. In the event of non-compliance by the Design-Builder or its subcontractors with any of the non-discrimination provisions of this Contract, the Town, shall be deemed to have cause to terminate this Agreement, in whole or in part. The Design-Builder shall comply with all Federal and State laws, regulations and policies against discrimination.

(C) Subcontracts. The Design-Builder further agrees that the affirmative action statement in subsection (B) of this Section shall be incorporated in all Subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Design-Build Contract.

SECTION 17.9. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Design-Builder. In all cases where the Design-Builder is entitled to receive any relief from the Town or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstance or otherwise, the Design-Builder shall use all reasonable efforts to mitigate such amount required to be paid by the Town to the Design-Builder under this Design-Build Contract, or the length of the extension of time. Upon request from the Town, the Design-Builder shall promptly submit a detailed description, supported by all such documentation as the Town may reasonably require, of the measures and steps taken by the Design-Builder to mitigate and meet its obligations under this Section.

(B) Mitigation by the Town. In all cases where the Town is entitled to receive from the Design-Builder any compensation, costs or damages, but not in any other cases, the Town shall use all reasonable efforts to mitigate such amount required to be paid by the Design-Builder to the Town under this Design-Build Contract, provided that such obligation shall not require the Town to:

- (1) Take any action which is contrary to the public interest, as determined by the Town in its discretion;
- (2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) Alter the amount of liquidated damages it is entitled to receive hereunder.

the Town shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or as expressly provided in this Design-Build Contract. Upon request by the Design-Builder, the Town shall promptly submit a detailed description, supported by all such documentation as the Design-Builder may reasonably require, of the measures and steps taken by the Town to mitigate and meet its obligations under this Section.

SECTION 17.10. ASSIGNMENT OF ANTI-TRUST CLAIMS.

In accordance with Section 7103.5 of the California Public Contract Code, in entering into this Design-Build Contract, the Design-Builder offers and agrees to assign to the Town all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to this Design-Build Contract. The assignment shall be made and become effective at the time the Town tenders final payment to the Design-Builder for the Design-Build Work, without further acknowledgement by the parties.

SECTION 17.11. ACTIONS OF TOWN IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Design-Build Contract shall be interpreted as limiting the rights and obligations of the Town under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Design-Builder to bring any action against the Town, not based on this Design-Build Contract, arising out of any act or omission of the Town in its governmental capacity.

SECTION 17.12. ASSIGNMENT.

(A) By the Design-Builder. The Design-Builder shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Design-Build Contract, its right to execute the same, or its right, title or interest in all or any part of this Design-Build Contract or any monies due hereunder whatsoever prior to their payment to the Design-Builder, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the Town. Any such approval given in one instance shall not relieve the Design-Builder of its obligation to obtain the prior written approval of the Town to any further assignment. Any such assignment of this Design-Build Contract which is approved by the Town, shall require the assignee of the Design-Builder to assume the performance of and observe all obligations, representations and warranties of the Design-Builder under this Design-Build Contract which shall remain in full force and effect during this Design-Build Contract. The approval of any assignment, transfer or conveyance shall not operate to release the Design-Builder in any way from any of its obligations under this Design-Build Contract unless such approval specifically provides otherwise. In the event of any assignment or subletting without the prior written approval of the Town, the Town may, in addition to any other remedy provided herein, withhold any further payment of Contract Compensation.

(B) By the Town. The Town may not assign its rights or obligations under this Design-Build Contract without the prior written consent of the Design-Builder, which may be given or withheld in the Design-Builder's reasonable discretion. The Town may, however, assign its rights and obligations under this Design-Build Contract, without the consent of the Design-Builder, to another Governmental Body if such assignee assumes, and is legally capable of discharging the duties and obligations of the Town hereunder.

SECTION 17.13. CONFIDENTIALITY.

(A) Confidential Nature of Information. The Design-Builder shall treat all confidential information obtained from the Town in the performance of this Design-Build Contract as confidential and proprietary to the Town to the extent permitted by law. "Confidential Information", for purposes of this covenant, means any information and materials which is clearly identified or marked as being "confidential" or "proprietary" or otherwise marked in accordance with applicable federal law by the disclosing party. Confidential Information does not include information which: (1) was in the public domain at the time of a disclosing party's communication thereof to the receiving party; (2) entered the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication thereof to the receiving party; (3) was in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication thereof to the receiving party, as evidenced in the receiving parties records; (4) was rightfully communicated by a third party to a receiving party free of any obligation of confidence subsequent to the time of the disclosing party's communication thereof to the receiving party; (5) was developed by employees or agents of the receiving party independently of and without reference to any proprietary information or other information that the disclosing party has disclosed in confidence to the receiving party; (6) is approved for release by written authorization of the disclosing party; or (7) the receiving party reasonably believes on advice of legal counsel it is legally obligated to disclose by law, rule, regulation, court order, or other compulsory process of a court or other governmental body, provided, however, that in such case, the receiving party shall immediately notify the disclosing party of its intention to disclose (unless the receiving party reasonably believes based on the advice of legal counsel that providing such notice would violate applicable law, rule, regulation, court order, or other compulsory process of a court or other governmental body) so that the disclosing party can take such legal action as it deems necessary or appropriate to prevent such disclosure.

(B) Limitation on Use and Disclosure. The Design-Builder shall not use any Confidential Information obtained as a consequence of the performance of the Contract Obligations for any purpose other than the performance of the Contract Obligations in accordance with this Design-Build Contract. The Design-Builder shall not disclose any information obtained from the Town or obtained as a consequence of the performance of the Contract Obligations to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this Design-Build Contract, unless such disclosure is specifically approved in writing by the Town, which approval may be withheld in the sole and absolute discretion of the Town.

SECTION 17.14. LIMITED RECOURSE TO TOWN.

No recourse shall be had to the general fund or general credit of the Town for the payment of any amount due the Design-Builder hereunder, whether on account of the Design-Build Price or for any Loss-and-Expense or payment or claim of any nature arising from the performance or non-performance of the Town's obligations hereunder, except to the extent of pursuing payment for unpaid amounts due the Design-Builder under this Design-Build Contract for completed Design-Build Work for which the Design-Builder has not previously been paid. The sole recourse of the Design-Builder for any other amounts shall be to the proceeds of the Grants. All such Grant proceeds shall be held for the uses permitted and required by the Grant documentation and by Applicable Law, and no such amounts shall constitute property of the Design-Builder.

SECTION 17.15. BINDING EFFECT.

This Design-Build Contract shall inure to the benefit of and shall be binding upon the Town and the Design-Builder and any assignee acquiring an interest hereunder consistent with Section 17.12 (Assignment).

SECTION 17.16. AMENDMENT AND WAIVER.

(A) Contract Amendments. This Design-Build Contract may not be amended except by a written agreement signed by the parties in accordance with Section 17.5 (Contract Amendments).

(B) Waiver. Any of the terms, covenants, and conditions of this Design-Build Contract may be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 17.17. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications (unless otherwise provided in the communication plan required to be developed pursuant to Appendix 2 (Preliminary Services)) given pursuant to the terms of this Design-Build Contract shall be:

- (1) In writing and delivered in person;
- (2) Transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or

(3) Given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States Mail within two days after transmission.

Notices shall be deemed given only when actually received at the address first given below with respect to each party; provided, however, that email transmissions shall be deemed given only when the signed original of the emailed letter or other communication is received at such address. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) Town Notice Address. Notices required to be given to the Town shall be addressed as follows:

Town of Paradise
5555 Skyway
Paradise, California 95969
Attn: Public Works Director, Marc Mattox
Email: mmattox@townofparadise.com
Telephone: ([__]) [__]-[____]

with a copy to:

Town of Paradise
5555 Skyway
Paradise, California 95969
Attn: Public Works, Engineering Department, Colin Nelson
Email: cnelson@townofparadise.com
Telephone: ([__]) [__]-[____]

with a copy to:

Scott E. Huber, Esq.
Town Attorney
Town of Paradise
Cole Huber LLP
2281 Lava Ridge Court #300
Roseville, CA 95661
Email: shuber@colehuber.com
Telephone: (916) 780-9009

(C) Design-Builder Notice Address. Notices required to be given to the Design-Builder shall be addressed as follows:

Mountain Cascade, Inc.
555 Exchange Court
Livermore, California 94550
Attn: Peter Foote
Email: pfoote@mountaincascade.com
Telephone: (925) 337-1685

With a copy to:

Mountain Cascade, Inc.
555 Exchange Court
Livermore, California 94550
Attn: Randy Buckman
Email: randyb@mountaincascade.com
Telephone: (925) 570-8413

and

Mountain Cascade, Inc.
555 Exchange Court
Livermore, California 94550
Attn: Roger Williamson
Email: rogerw@mountaincascade.com
Telephone: (925) 525-2794

SECTION 17.18. OTHER NOTICES.

(A) Notice of Litigation. In the event the Design-Builder or the Town receives notice of or undertakes the defense or the prosecution of any Legal Proceedings in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

(B) Notice of Third Party Claim. In the event the Town receives any notice, demand, letter or other document concerning any claim made by one or more third parties (including claims for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including the Town, relating to this Design-Build Contract, the Town shall give the Design-Builder timely notice of such in satisfaction of the requirement of Section 9201(b) of the California Public Contract Code. The reasonable costs incurred by the Town in providing such notification to the Design-Builder shall be reimbursed by the Design-Builder to the Town.

SECTION 17.19. FURTHER ASSURANCES.

The Town and Design-Builder each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Design-Build Contract. The Town and the Design-Builder, in order to carry out this Design-Build Contract, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Design-Build Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

SECTION 17.20. RIGHTS OF GRANTING AGENCIES AND FEDERAL AGENCIES.

The parties acknowledge and agree that the Town intends to utilize Grants for the entirety of its financing structure. The Design-Builder hereby acknowledges that the

utilization of the Grants is predicated on complying with all applicable requirements of the Grants, including, as applicable, complying with all applicable provisions identified in Appendix 12 (Certain Grant Requirements and Guidelines). In furtherance of such compliance, the Granting Agencies and the Federal Agencies are each made express third-party beneficiaries of this Design-Build Contract with the power to enforce any remedy, claim, liability, reimbursement or cause of action of the Town against the Design-Builder under this Design-Build Contract not involving or subject to the discretion of the Town until the date all amounts payable under the applicable Grant have been satisfied or paid in full. In furtherance of such compliance, the Granting Agencies and the Federal Agencies have been granted access to the Books and Records pursuant to Section 9.10(B) (Town Rights to Audit and Examine Payments).

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Design-Build Contract to be executed by their duly authorized representatives as of the day and year first above written.

TOWN OF PARADISE, a California municipal corporation

MOUNTAIN CASCADE, INC.

Jim Goodwin
Town Manager

By: _____
[Name]
[Title]

Approved and certified as being in conformance with the requirements of the Public Contract Code Section 20170 et seq.:

Scott E. Huber
Town Attorney

Approved Effective: _____

TRANSACTION FORMS
TO THE
DESIGN-BUILD CONTRACT
FOR THE
TOWN OF PARADISE SEWER PROJECT

between

THE TOWN OF PARADISE

and

MOUNTAIN CASCADE, INC.

Dated

[_____, 2024]

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TRANSACTION FORM A
FORM OF PERFORMANCE BOND
(EARLY WORK PACKAGE AMENDMENT)

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FORM OF PERFORMANCE BOND (EARLY WORK PACKAGE AMENDMENT)

KNOW ALL PERSONS BY THESE PRESENTS:

That we, [_____], hereinafter referred to as "Design-Builder", as principal, and _____ as surety, are held and firmly bound unto the Town of Paradise, a municipal corporation organized and existing and by virtue of the laws of the State of California (the "Owner"), in the sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and entered into the annexed Design-Build Contract with the Owner for the Town of Paradise Sewer Project, dated as of _____, 20[___], as amended from time to time (the "Design-Build Contract"),

WHEREAS, the Design-Builder and the Owner have entered into an Early Work Package Amendment dated _____ ("Early Work Package Amendment [1]"), with an Early Work Package Price of _____ (\$_____);

WHEREAS, one of the conditions of the Design-Build Contract is that the Design-Builder provide this bond for Early Work Package Amendment [1]; and

WHEREAS, for purposes of this bond, the term "Work" refers to all of the Design-Builder's obligations under the Design-Build Contract to perform Early Work Package Amendment [1];

NOW, THEREFORE, if the Design-Builder, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Design-Build Contract and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect inclusive of any period of any guarantees or warranties required under the Design-Build Contract.

Any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of the Design-Build Contract, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Contract release either the Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Contract is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

In the event suit is brought upon this bond by the Owner and judgment is recovered, the surety shall pay all costs incurred by the Owner in such suit, including, but not limited to, reasonable attorneys' fees and administrative and consultant costs to be fixed by the court. Any proceeding, legal or equitable, under this bond shall be instituted in State courts located in Santa Clara County, California or in federal courts located in the Northern District of California.

The address or addresses at which the principal and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following: _____.

WITNESS our hands this _____ day of _____, 20__.

(Seal)

Design-Builder

By _____

Title

(Surety's Corporate Seal)

Surety

By _____

Title

Address of Surety

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, § 1189]

State of California)
County of)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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TRANSACTION FORM B
FORM OF PAYMENT BOND

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FORM OF PAYMENT BOND FOR MATERIALS AND LABOR

KNOW ALL PERSONS BY THESE PRESENTS:

That we, [_____], hereinafter referred to as "Design-Builder", as principal, and _____ as surety, are held and firmly bound unto the Town of Paradise, a municipal corporation organized and existing and by virtue of the laws of the State of California (the "Owner"), in the sum of _____ dollars (\$_____) lawful money of United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and entered into the annexed Design-Build Contract with the Owner for the Town of Paradise Sewer Project, dated as of _____, 20[___], as amended from time to time (the "Design-Build Contract"), whereby the Design-Builder is required by the Owner to give this bond on the GMP Amendment Date (as defined in the Design-Build Contract) pursuant to said Design-Build Contract;

NOW, THEREFORE, if Design-Builder, or its subcontractors, fails to pay any of the persons referred to in Section 9100 of the Civil Code of the State of California for any materials, provisions, provender, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Design-Builder and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, reasonable attorneys' fees, to be fixed by the court. This bond shall inure to the benefit of any and all persons entitled to file claims under Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

Any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of the Design-Build Contract, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Contract release either Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Contract is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

The address or addresses at which the Design-Builder and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following:
_____.

WITNESS our hands this _____ day of _____, 20__.

(Seal)

Design-Builder

By _____

Title

(Surety's Corporate Seal)

Surety

By _____

Title

Address of Surety

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, § 1189]

State of California)
County of)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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TRANSACTION FORM C
FORM OF PERFORMANCE BOND
(GMP AMENDMENT)

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FORM OF PERFORMANCE BOND (GMP AMENDMENT)

KNOW ALL PERSONS BY THESE PRESENTS:

That we, [_____], hereinafter referred to as "Design-Builder", as principal, and _____ as surety, are held and firmly bound unto the Town of Paradise, a municipal corporation organized and existing and by virtue of the laws of the State of California (the "Owner"), in the sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and entered into the annexed Design-Build Contract with the Owner for the Town of Paradise Sewer Project, dated as of _____, 20[___], as amended from time to time (the "Design-Build Contract"),

WHEREAS, the Design-Builder and the Owner have entered into a GMP Amendment dated _____ ("GMP Amendment"), with a Base Guaranteed Maximum Price of _____ (\$_____);

WHEREAS, one of the conditions of the Design-Build Contract is that the Design-Builder provide this bond for the Design-Build Work; and

WHEREAS, for purposes of this bond, the term "Work" refers to all of the Design-Builder's obligations under the Design-Build Contract to perform Design-Build Work;

NOW, THEREFORE, if the Design-Builder, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Design-Build Contract and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect inclusive of any period of any guarantees or warranties required under the Design-Build Contract.

Any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of the Design-Build Contract, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Contract release either the Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Contract is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety's rights as to other security held by the creditor).

In the event suit is brought upon this bond by the Owner and judgment is recovered, the surety shall pay all costs incurred by the Owner in such suit, including, but not limited to, reasonable attorneys' fees and administrative and consultant costs to be fixed by the court. Any proceeding, legal or equitable, under this bond shall be instituted in State courts located in Santa Clara County, California or in federal courts located in the Northern District of California.

The address or addresses at which the principal and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following: _____.

WITNESS our hands this _____ day of _____, 20__.

(Seal)

Design-Builder

By _____

Title

(Surety's Corporate Seal)

Surety

By _____

Title

Address of Surety

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, § 1189]

State of California)
County of)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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APPENDICES
TO THE
DESIGN-BUILD CONTRACT
FOR THE
TOWN OF PARADISE SEWER PROJECT

between

THE TOWN OF PARADISE

and

MOUNTAIN CASCADE, INC.

Dated as of

[_____, 2024]

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APPENDIX 1
PROJECT AND SITE INFORMATION

APPENDIX 1**PROJECT AND SITE INFORMATION****1.1. PURPOSE**

The purpose of this Appendix is to describe the Project and Project site, and to list Reference Documents for the Project.

1.2. PROJECT SITE DESCRIPTION

The Project will establish a municipal sewer system for the Town, as well as connection to the City of Chico's Water Pollution Control Plant (WPCP) for regional treatment of the Town's wastewater. The Project includes three distinct components to serve approximately 1,400 parcels within the Sewer Service Area (SSA): a core sewer collection system in the Town of Paradise (Core Collection System), an approximately 18-mile sewer export pipeline to convey wastewater to the City of Chico's WPCP (Export Pipeline), and a sewer pipeline connection to the City of Chico's WPCP (WPCP Connection).

An overview of the Project location is shown on Attachment 1A as copied from the Final PEIR – Executive Summary, Figure ES-1. Proposed Project Location.

The following key components are associated with the Core Collection System, Export Pipeline and WPCP Connection.

- Core Collection System – approximately 157,000 feet of 6- to 8-inch-diameter gravity sewers, approximately 29,000 feet of 2- to 4-inch-diameter force mains, and up to 28 pump stations.
- Export Pipeline – approximately 18-miles of 8- to 12-inch sewer pipeline dropping approximately 1,300 feet in elevation from the Town to the Chico WPCP.
- WPCP Connection – a flow control and metering structure and necessary modifications to the City of Chico's WPCP to allow wastewater flow into the WPCP.

1.3. REFERENCE DOCUMENTS

The following Reference Documents are being made available to the Design-Builder at the start of Preliminary Services. The Design-Builder is responsible for reviewing and updating the list during The Preliminary Services Period with additional documents obtained or developed by the Design-Builder. The Town may also update the Reference Document list from time to time with new information via amendments to the Design-Build Contract.

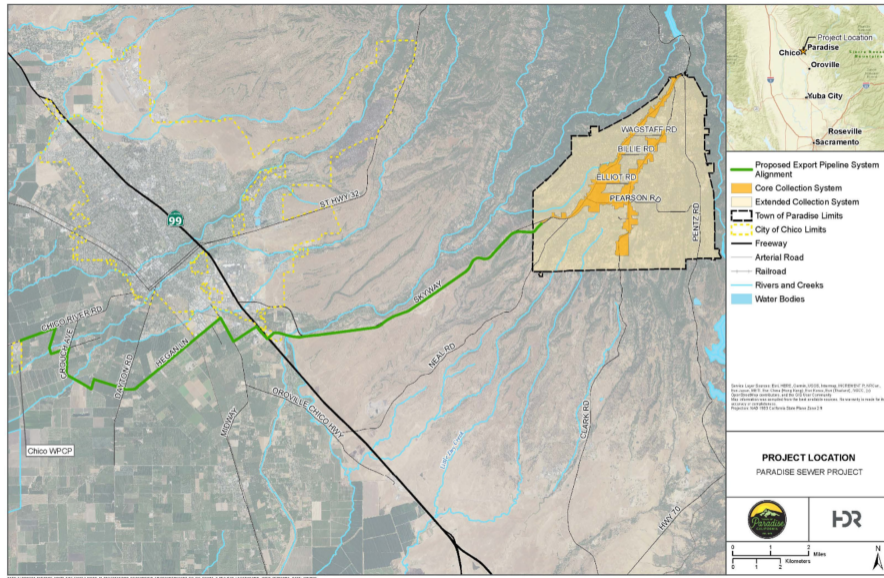
Table A1-1. Reference Documents		
Studies, Plans, Reports, and Legal Documents		
No.	Document name	Document type
1.	2020 HDR Phase 1a Executive Summary	Technical Report
2.	2022 HDR Technical Memo 8 Export Pipeline Analysis	Technical Report

Table A1-1. Reference Documents		
3.	2022 HDR Technical Memo 8 Export Pipeline Analysis	Technical Report
4.	2022 HDR Technical Memo 9 EIR Construction Analysis	Technical Report
5.	2022 HDR Technical Memo 10 Analysis of Extended Collection System	Technical Report
6.	2022 HDR Technical Memo 11 Environmental Permitting Strategy	Technical Report
7.	Final PEIR Documents: <ul style="list-style-type: none"> • Final PEIR Main Document • Final PEIR Addendum • Appendix A: NOP Scoping Report • Appendix B: Town of Paradise 1994 General Plan Resolution and Amendments • Appendix C: Regulatory Framework • Appendix D: Emissions Modeling • Appendix E: Vegetation Community Descriptions and Special-Status Species Accounts • Appendix F: Swainson’s Hawk Survey and Elderberry Shrub Mapping Report • Appendix G: Tribal Consultation • Appendix H: Pump Station Energy Consumption Calculation • Appendix I: Public Comments and Responses on Draft PEIR • Final PEIR Notice of Determination 	Environmental Report
8.	2023 Inter-Municipal Agreement, City of Chico Wastewater Treatment Services to the Town of Paradise	Legal Document
9.	2023 Board Approval/LAFCO Resolution	Authorizing Proceedings

Record drawings and work orders may be included in the Reference Documents as updated by the Town or Design-Builder in advance of or during Preliminary Services Period services.

ATTACHMENT 1A
POTENTIAL PROJECT ALIGNMENTS

ATTACHMENT 1A
POTENTIAL PROJECT ALIGNMENTS



APPENDIX 2
PRELIMINARY SERVICES

APPENDIX 2**PRELIMINARY SERVICES****2.1. GENERAL**

The Preliminary Services will be delivered in multiple phases. Initially, the Preliminary Services shall be delivered in two phases: the Phase 1a Preliminary Services and the Phase 1b Preliminary Services. The parties acknowledge that the Town may desire to expand the scope of the Preliminary Services performed by the Design-Builder under this Design-Build Contract at any time, in its discretion, beyond those services included in the Phase 1a Preliminary Services and the Phase 1b Preliminary Services based on the recommendations of the Design-Builder, to be delivered in additional phases of the Preliminary Services, to be defined sequentially as Phase 1c, Phase 1d, etc.

This appendix sets forth the Scope of each phase of the Preliminary Services, the not-to-exceed price for conducting such Scope, as agreed to by the parties in executing this Design-Build Contract, the Phase 1b Base Preliminary Services Amendment and any other Contract Amendment to provide for an additional phase of Preliminary Services, as well as all inclusive billing rates for the Preliminary Services Period services, and information on invoicing the Preliminary Services.

This appendix initially sets forth the Scope of the Phase 1a Base Preliminary Services, the not-to-exceed price for conducting such Scope, as well as all inclusive billing rates for the Phase 1a Preliminary Services.

2.2. SCOPE OF PHASE 1A BASE PRELIMINARY SERVICES TASKS

The scope of the Phase 1a Base Preliminary Services shall include the following tasks:

- Task 1 - Project Management
- Task 2 - Reference Document Review and Validation
- Task 3 - Field Investigations
- Task 4 - Hydraulic Model Development and Analysis
- Task 5 - Basis of Design Report
- Task 6 - Funding Support
- Task 7 - Permitting Support
- Task 8 - Stakeholder and Public Outreach Support
- Task 9 - Design and Construction Phasing Plan
- Task 10 - Cost Model
- Task 11 - Phase 1a Additional Preliminary Services

Required Deliverable Material (the “**Deliverables**”) for each Phase 1a Base Preliminary Services Task is identified in this Appendix. All Deliverables shall be reviewed with the Town. The Design-Builder shall promptly correct deficiencies and shall make modifications to conform to Project requirements and achieve acceptability to the Town. Draft deliverables shall be provided to the Town in the format agreed to by the Town and documented in the “Deliverables” sections below. [Note: Formats for deliverables shall be discussed and agreed to during Phase 1a Preliminary Services.]

Specific tasks and Tasks for the scope of Phase 1a Base Preliminary Services are described below.

2.2.1 TASK 1 - PROJECT MANAGEMENT

Design-Builder shall provide all necessary project management and coordination throughout Phase 1a. Project Management shall include the following Tasks.

2.2.1.1 TASK 1.1 - PROJECT MANAGEMENT AND ADMINISTRATION

Project Management Documents. As part of Task 1.1 and within twenty-one (21) calendar days of Notice to Proceed (the “**NTP**”), the Design-Builder shall prepare and submit drafts of the following documents for review and concurrence by the Town. Final documents shall be submitted within twenty-one (21) calendar days of receipt of comments from the Town. Throughout Phase 1a, the Design-Builder shall also implement the activities described by the documents, cause the Project team to be familiar with their contents, and keep the documents up to date.

- **Project Management Plan (PMP).** The PMP shall communicate basic Project requirements and approach to the Project team, including subconsultants.
- **Health and Safety Plan (HSP).** The HSP shall describe the Design-Builder’s approach and Project team requirements and procedures to manage safety practices throughout Phase 1a and comply with all applicable Town procedures and local, state and federal regulations. Phase 1a activities include, but are not limited to site visits, field investigations, in-person meeting attendance, and applicable Town procedures and local, state and federal regulations.
- **Quality Management Plan (QMP).** The QMP shall identify a plan to deliver quality Phase 1a deliverables that are complete and accurate in accordance with the Draft PDB Contract and this Phase 1a Scope. The plan shall include descriptions of each team member’s role in quality control and/or quality assurance, procedures for adequate collection of data prior to design, checking of work, verification that checks were complete, corrective action, and document control.
- **Document Management Plan (DMP).** The DMP shall describe the Design-Builder’s approach and Project team requirements and procedures to manage all documents generated and used in the execution of the Project. This plan shall describe the tools to be used for collaboration, communication and submittal of documents from the Design-Builder to the Town and feedback from the Town to the Design-Builder. The plan shall include protocols and naming conventions required by the Town to provide for proper and adequate documentation of technical data during Phase 1a and provide placeholders for use during the design and construction phases as well as for the life of the constructed facilities. The plan should address accommodating grant requirements.
- **Phase 1a Preliminary Services Schedule.** The Phase 1a Preliminary Services Schedule shall contain at a minimum the following components:
 - Activities for all Tasks and Tasks necessary to complete the Phase 1a Scope including, as applicable, durations for preparation of deliverables and Town review periods.
 - Start and finish dates for each activity
 - Major milestones including all deliverable and key meeting dates
 - Critical Path analysis

Project Coordination and Communication. As part of Task 1.1, include general coordination and communication with the Design-Builder’s Project team and with the Town and its Owner

Representative regarding issues as they arise, including but not limited to scheduling and progress of Project activities.

Risk Management. As part of Task 1.1, include overall Project risk management, incorporating all Project risks that become evident as the Project development progresses. An initial Program and Project Risk Register has been created by the Town and its Owner Representative and shall be reviewed with the Design-Builder as part of the initial “Risk Register Workshop” described in Task 1.2. Components of the initial Project Risk Register are listed below. The Risk Register shall be updated as noted in “Progress Tracking and Reporting” below. Following the initial “Risk Register Workshop”, the Town’s Owner Representative shall maintain ownership of the Project Risk Register and the Design-Builder shall provide updates to the Project Risk Register items where the Design-Builder is deemed the “Risk Owner.”

- Risk identification and description
- Risk Owner
- Estimated percent likelihood that risk may occur
- Potential schedule impact should risk occur
- Potential cost impact should risk occur
- Probability weighted cost associated with each risk item
- Risk management/mitigation strategy

Progress Tracking and Reporting. The Design-Builder shall submit monthly reports summarizing Project progress. The monthly progress reports shall include a narrative summarizing the progress of the Project and shall identify any recommended actions by the Town, its Owner Representative or the Design-Builder to mitigate risks or modify the Project approach and scope. Monthly progress reports shall be due by the fifth (5th) of each month. Attachments to the monthly progress report shall include:

- **Summary of Work.** Identify activities worked on and/or completed during the last month including meetings and workshops, progress on deliverables, as well as significant items related to external agencies such as grants, permits, etc.
- **Planned Activities.** Summarize planned activities and scheduled meetings/workshops for the next month.
- **Issues and Concerns.** Identify issues and concerns that may affect Phase 1a Project schedule or budget and require discussion between the Town, its Owner Representative and Design-Builder.
- **Progress Schedule.** An updated P6 schedule file and a table of major milestones with originally scheduled completion dates and updated scheduled completion dates, including explanation of any changes to schedule since the last progress report.
- **Updated Action Item Log (if changed).**
- **Updated Decision Log (if changed).**
- **Updated Risk Register (if changed).**

In addition, the Design-Builder shall submit a simplified weekly progress email to the Town’s Project Manager detailing the major accomplishments of the week and planned key tasks for the week ahead. This weekly email shall be due by 5 pm PT every Friday.

2.2.1.2 TASK 1.1 – DELIVERABLES

- Project Management Plan (PMP) – Draft & Final
- Health and Safety Plan (HSP) – Draft & Final
- Quality Management Plan (QMP) – Draft & Final
- Document Management Plan (DMP) – Draft & Final
- Phase 1a Preliminary Services Schedule – Draft & Final

- Project Risk Register – Monthly updates (if changed)
- Action Item Log – On-going
- Decision Log – On-going
- Monthly Progress Reports – On-going

2.2.1.3 TASK 1.1 - ASSUMPTIONS

Phase 1a will be [____] months in length.

2.2.1.4 TASK 1.2 - MEETINGS

As part of Task 1.2, the Design-Builder shall plan to participate in and/or schedule, prepare for and facilitate the following meetings, including the Design-Builder's Project team, the Town and its Owner Representative, and any additional attendees necessary for a productive meeting. The meetings listed below are exclusive of additional meetings identified later in their respective Tasks or Tasks.

- **Project Kickoff Meeting.** The Design-Builder shall schedule, prepare for and facilitate a Project Kickoff Meeting. Project Kickoff meeting shall be in-person, held at Town Hall in the Town and attended by up to eight (8) Design-Builder key management staff.
- **Team Building and Project Chartering Workshop.** The Design-Builder shall participate in one (1) in-person 6-hour Team Building and Project Chartering Workshop at Town Hall in Paradise. The Town's Owner Representative shall schedule, prepare for and facilitate the workshop. Up to eight (8) Design-Builder key management staff shall attend.
- **File Storage/Team Collaboration Site Workshop.** The Design-Builder shall schedule, prepare for and facilitate (1) in-person 2-hour Workshop at Town Hall in the Town. Up to eight (8) Design-Builder key management staff shall attend.
- **Risk Register Workshop.** The Design-Builder shall prepare for and participate in one (1) in-person three-hour Risk Register Workshop at Town Hall in Paradise. The Town's Owner Representative shall schedule and facilitate the workshop. Up to six (6) Design-Builder key management staff shall attend.
- **Progress Meetings.** The Design-Builder shall schedule, prepare for and facilitate one-hour Progress Meetings at least every two (2) weeks. Meetings shall be hosted with hybrid participation options (MS Teams or other) and shall be attended by six (6) Design-Builder key management staff (on average).
- **Weekly Collaboration Meetings.** The Design-Builder shall participate in weekly collaboration meetings with the Town and its Owner Representative (two (2) – one-hour remote/hybrid meetings each week). The Town's Owner Representative shall schedule and facilitate the meetings. Meetings shall be hosted with hybrid participation options (MS Teams or other) and shall be attended by four (4) Design-Builder key management staff (on average).
- **Stakeholder Meetings.** The Design-Builder shall participate in various stakeholder meetings scheduled and facilitated by the Town's Owner Representative (i.e. septic standards committee, zoning and land use studies, Caltrans, Butte County, etc.). The fee associated with this task assumes ten (10) targeted/one-hour stakeholder meetings, attended in-person by up to four (4) Design-Builder key staff.
- **Project Coordination Team (PCT) Meetings.** The Design-Builder shall attend monthly PCT meetings, in-person for the first meeting and via remote/hybrid option for the following months. The Town's Owner Representative shall schedule and facilitate the meetings. The fee associated with this task assumes one-hour long meetings, attended by up to two (2) Design-Builder key staff.
- **Phase 1b Review Meetings.** Upon completion of all Phase 1a Tasks, the Design-Builder shall schedule, prepare for and facilitate up to three (3) in-person 2-hour review meetings

to present and ultimately finalize the scope, schedule and budget for Phase 1b. Up to eight (8) Design-Builder key management staff shall attend.

2.2.1.5 TASK 1.2 – DELIVERABLES

- Meeting Agendas – Draft & Final (when facilitating) or pre-meeting comments (when participating)
- Meeting Notes – Draft & Final (when facilitating) or post-meeting comments (when participating)

2.2.1.6 TASK 1.2 – ASSUMPTIONS

- Electronic deliverables.

2.2.2 TASK 2 - REFERENCE DOCUMENT REVIEW AND VALIDATION

The Design-Builder shall consult with the Town and its Owner Representative to develop a better understanding of the Project, Project site, constraints, Project requirements, and other information relevant to the Project. The Design-Builder shall schedule, prepare for and facilitate all necessary review meetings to help familiarize the Design-Builder's Project Team with the past and on-going Project related work, as well, to allow the Design-Builder to inquire as to additional reference documentation that may be needed to progress the Project. At a minimum, the reference documents listed in Section 1.3 of Appendix 1 should be reviewed by the Design-Builder ahead of initial review meetings.

2.2.2.1 TASK 2.1 – REVIEW EXISTING INFORMATION/DOCUMENTS

Under this task the Design-Build team shall review the existing information as available by the Town and its Owner Representative. At a minimum, the following reference documents should be reviewed by the Design-Builder ahead of initial review meetings (all documents are located at <https://paradiseseWER.com/project-materials/>):

- 2020 HDR Phase 1 Executive Summary
- 2022 HDR Technical Memo 8 Export Pipeline Analysis
- 2022 HDR Technical Memo 8 Export Pipeline Analysis
- 2022 HDR Technical Memo 9 EIR Construction Analysis
- 2022 HDR Technical Memo 10 Analysis of Extended Collection System
- 2022 HDR Technical Memo 11 Environmental Permitting Strategy
- Final PEIR Documents:
 - Executive Summary
 - Final PEIR Main Document
 - Final PEIR Addendum
 - Appendix A: NOP Scoping Report
 - Appendix B: Town of Paradise 1994 General Plan Resolution and Amendments
 - Appendix C: Regulatory Framework
 - Appendix D: Emissions Modeling
 - Appendix E: Vegetation Community Descriptions and Special-Status Species Accounts
 - Appendix F: Swainson's Hawk Survey and Elderberry Shrub Mapping Report
 - Appendix G: Tribal Consultation
 - Appendix H: Pump Station Energy Consumption Calculation
 - Appendix I: Public Comments and Responses on Draft PEIR
 - Final PEIR Notice of Determination

- 2023 Inter-Municipal Agreement, City of Chico Wastewater Treatment Services to the Town of Paradise
- 2023 Board Approval/LAFCO Resolution
- Permit Matrix and necessary permit accommodations (to be provided to Design-Builder upon Notice to Proceed)
- Town land-use/parcel mapping information and GIS files.
- Lidar file(s) from Town's recent Stormwater Master Planning effort.

2.2.2.2 TASK 2.2 – INFORMATION/DATA NEEDS

The Design-Builder shall prepare an information/data needs summary upon initial review of all reference documents, noting any missing data/information that the Town may have.

2.2.2.3 TASK 2.3 – INFORMATION/DATA NEEDS REVIEW WORKSHOP

The Design-Builder shall schedule, prepare for and facilitate (1) in-person 8-hour Workshop at Town Hall in Paradise to discuss outstanding information/data needs following review of all information shared (and transmittal of Information/Data needs summary). It is understood that the Town/OA shall come to the workshop prepared to provide updates on various project efforts that may not yet be well documented.

2.2.2.4 TASK 2 – DELIVERABLES

- Meeting Agendas and Meeting Notes – Draft and Final
- Data/information needs summary
- Reference Document Log documenting:
 - Documents, reports, drawings, and information Design-Builder has reviewed
 - Follow-up questions for the Town and its Owner Representative

2.2.2.5 TASK 2 – ASSUMPTIONS

- Electronic deliverables

2.2.3 TASK 3 – FIELD INVESTIGATIONS

Robust field investigations shall be required to confirm Project and site conditions. The work associated with this Task is intended to meet the following objectives:

- Inform the Design-Builder's analysis of alternatives, including hydraulic modeling criteria, pipe alignments, and approach(es) to construction planning and methods, including accommodations for pertinent climatic information (ie groundwater in Town vs. down Skyway).
- Allow the Design-Builder to develop its recommended geotechnical design criteria.
- Provide information on expected ground behavior for selection and design of trenchless methods.
- Define areas with contaminated soils, the types of contamination, and the appropriate methods for transport and disposal, including disposal locations.

This work shall be delivered as separate packages for the (1) survey effort and (2) the geotechnical and environmental hazards investigation efforts, as described in the following Tasks.

2.2.3.1 TASK 3.1 – DESKTOP GEOTECHNICAL AND ENVIRONMENTAL HAZARDS STUDY

The Design-Builder shall prepare a Desktop Geotechnical and Environmental Hazards Study before the preparation of the Geotechnical and Environmental Hazards Field Investigation Plan (Task 3.3) to expedite Phase 1a completion and to best inform the Field Investigation Plan. This desktop study shall identify known geologic conditions and environmental hazards along the Project alignment that shall be used to inform early project decisions and the plan for performing geotechnical and environmental hazards field investigations. The Desktop Study shall include review of available geologic, regulatory agency, mineral resource maps and literature, and previous geotechnical reports which are relevant to the geology, soil, bedrock, environmental, and groundwater conditions within the Project alignment. The Design-Builder understands that the northbound lane at Butte Creek bridge of Highway 99 was replaced by Caltrans in 2014 due to scour issues at the underpinning of the bridge. The Design-Builder shall gather and review any available geotechnical reports from Caltrans or other sources related to the construction of the new bridge in 2014. Information shall include the geologic setting, geologic hazards, historical land uses, and general hazardous materials conditions that shall potentially be encountered within the alignment during construction. The data shall then be interpreted to delineate areas of concern for significant geologic and environmental hazards or other adverse conditions. The geotechnical engineer shall perform a two-day site reconnaissance to walk and drive the Project alignment. The information shall be consolidated in a preliminary geologic map. A Preliminary Geotechnical Report shall be prepared with preliminary geotechnical recommendations including earthwork, trenchless crossings, lateral earth pressures, seismic design parameter using the USGS on-line mapping tool, and foundation recommendations, corrosivity and groundwater conditions.

2.2.3.2 TASK 3.2 – EXISTING UTILITY RESEARCH

The Design-Builder shall complete existing utility research necessary for the development of an existing utility base map. This effort will also be useful before performing Survey Field Investigations to identify existing utility surface features to look for during the survey and help identify unmarked existing utility surface features. This will help expedite development of background CAD files that will be used for design development.

Existing utility research shall be conducted consistent with American Society of Civil Engineers Standard Guideline for Investigating and Documenting Existing Utilities (ASCE/UESI/CI 38-22) Quality Level D. This work generally includes:

- Conducting utility records research to assist in identifying utility owners that may have facilities on or be affected by the Project.
- Collecting applicable utility owner records.
- Reviewing utility owner records for:
 - Indications of additional available records
 - Duplicate information and credibility of such duplicate information
 - The need for clarifications by utility owners

This effort shall also include coordination with PG&E and other local stakeholders (as deemed useful by the Town) to obtain information about existing utility installation.

Mapping existing utilities based on the drawings would occur as part of the Survey Field Investigations.

2.2.3.3 TASK 3.3 – FIELD INVESTIGATION PLANS

Prior to conducting any field investigations and mobilizing any subconsultants specializing in the work below, the Design-Builder shall submit Field Investigation Plans for the Town and its Owner Representative review and acceptance. The Field Investigation Plans shall include, but not limited be to, the following information:

- Outline and schedule of proposed field investigation
- Planned field inspection methods, testing methods, and procedures, including identification of proposed boring locations and depths, testing, analyses, and recommendations that will be developed
- Governmental Approvals required and approvals required from other third parties
- Public outreach plan recommendations for any work planned in the Town or within effected stakeholder communities
- Town and its Owner Representative staff support needed during field investigations
- Scope and budget for any subconsultants not currently part of the Design-Builder’s “PDB Basis of Design Services Fee” described in Attachment B (Pricing Information Forms)

The fee associated with this task assumes the development of the following Field Investigation Plans:

- Survey Field Investigation Plan.
- Geotechnical and Environmental Hazards Field Investigation Plan
- Potholing Plan

The Design-Builder shall submit each Draft Field Investigation Plan for Town and its Owner Representative review, prior to facilitating the review of each during a regularly scheduled progress meeting. The Design-Builder shall prepare Final Field Investigation Plans that incorporate changes based on the Town and its Owner Representative feedback.

2.2.3.4 [TASK 3.4 – EARLY-PHASE FIELD INVESTIGATIONS ALLOWANCE]

[An allowance of \$[_____] is included herein for use by the Design-Builder for early-phase field investigation efforts needed to expedite the development of the BODR and related predesign efforts (including, but not limited to, geotechnical borings at the various trenchless crossings and in Town). This task includes the preparation of a Geotechnical Data Report, summarizing methodology and key findings from the early phase borings. The Design-Builder shall request the use of Task 3.4 allowance funds before initiation of related efforts (receipt of email approval from the Town or its Owner Representative shall suffice as NTP for associated effort).]

2.2.3.5 TASK 3.5 – SCOPING FOR PHASE 1 FIELD INVESTIGATIONS

The Design-Builder shall meet with the Town and its Owner Representative upon completion of each Task 3.3 field investigation plan to discuss scope, schedule, and fee for additional field efforts recommended for incorporation into the BODR. The Design-Builder shall prepare amendments for additional services associated with (1) survey field investigations, (2) geotechnical and environmental hazards field investigation, and (3) identified potholing efforts that might contribute to efficiencies in the BODR development based on Town feedback received during the scoping sessions and any stakeholder interests identified during earlier Task 3 efforts.

An amendment for these additional field investigations shall be negotiated with the Town and its Owner Representative before initiation of associated effort.

2.2.3.6 TASK 3 – DELIVERABLES

- Desktop Geotechnical and Environmental Hazards Study - Draft and Final
- Survey Field Investigation Plan - Draft and Final
- Geotechnical and Environmental Hazards Field Investigation Plan - Draft and Final
- Potholing Plan - Draft and Final
- Geotechnical Data Report (per Task 3.4 allowance) - Draft and Final

2.2.3.7 TASK 3 – ASSUMPTIONS

- Access to Town GIS databases will be provided.
- PG&E's LiDAR data will be provided by the Town.
- Fee negotiations for Task 3.4 will be completed during regularly scheduled progress meetings and the Town will expedite release of amendments for the work (one for survey field investigation efforts, and one for geotechnical and environmental hazards field work).
- Electronic deliverables.
- The Town or its Owner Representative will provide a consolidated set of comments on all draft deliverables via Bluebeam Studio review session (or similar, as mutually agreed by all participants).
- Existing utility owners will provide existing utility records without a fee. Some utility owners require the existing utility request be signed by a representative of a public agency. In this case, we assume the Design-Builder will draft the letter for the Town to sign and send to the existing utility owner.
- Geotechnical Baseline Report (the "GBR") will be completed in a future phase.

2.2.4 TASK 4 – HYDRAULIC MODEL DEVELOPMENT AND ANALYSIS

Sewer flowrates for the system will vary over time. The hydraulics associated with the Core Collection System and Export Pipeline will be reliant on alignments which are reliant on existing geologic conditions and locations of existing utilities. The work associated with this Task is intended to meet the following objectives:

- Document sewer flowrates over time
- Analyze pipeline and pumping hydraulics based on the realities of geologic conditions and locations of existing utilities
- Confirm the optimum pipe, pump, WPCP Connection, and other associated design criteria for use in the Basis of Design Report

2.2.4.1 TASK 4.1 - HYDRAULIC MODEL

The Design-Builder shall develop a sewer system hydraulic model of the Core Collection System and Export Pipeline. This includes the development of phased sewer system flow estimates, which shall be developed based on the Town's General Plan, Housing Element, and input from Town or its Owner Representative staff. Average dry weather flow (ADWF) and peak wet weather flow (PWWF) estimates shall be developed for up to three flow conditions, which could include the following:

- Initial (Near-Term) ADWF and PWWF Conditions
- Core Collection System ADWF and PWWF Conditions
- Extended Collection System ADWF and PWWF Conditions

Following completion of the flow estimates, a hydraulic model shall be developed for the Core Collection System and Export Pipeline in a software package agreed upon by the Town and Carollo. The hydraulics associated with the Core Collection System and Export Pipeline shall be

analyzed based alignments which are reliant on existing geologic conditions and locations of existing utilities. As part of the hydraulic modeling, up to four alternative alignments shall be considered for the Core Collection System and Export Pipeline to confirm the optimum pipe alignment and sizing, pump station location and sizing, WPCP Connection, and other associated design criteria for use in the Basis of Design Report. The hydraulic modeling results including phased sewer flow estimates and hydraulic modeling results shall be generated for use in the Basis of Design Report.

2.2.4.2 TASK 4.2 - HYDRAULIC MODEL DOCUMENTATION

The Design-Builder shall summarize the methodology and findings of the hydraulic modeling efforts in a short technical memorandum (TM). The Hydraulic Model TM shall be submitted to the Town and its Owner Representative in draft form for review at the Hydraulic Model Review Meeting. Comments from the Town and its Owner Representative shall be incorporated into a final version of the TM, which shall be included as an attachment to the BODR.

2.2.4.3 TASK 4.3 - HYDRAULIC MODEL REVIEW MEETING

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to present and summarize the draft findings of the hydraulic modeling effort and collect feedback from the Town and its Owner Representative. Up to six (6) Design-Builder staff shall participate.

2.2.4.4 TASK 4 - DELIVERABLES

- Hydraulic Model – format as recommended by Design Builder
- Hydraulic Model TM
- Workshop agenda and minutes

2.2.4.5 TASK 4 - ASSUMPTIONS

- Electronic deliverables.
- Model calibration based on industry standard of care.
- Town will provide land use plan for core collection system and extended collection system.

2.2.5 TASK 5 – BASIS OF DESIGN REPORT (THE “BODR”)

2.2.5.1 TASK 5.1 - IDENTIFICATION OF PROPERTY ACQUISITION AND RIGHT-OF-WAY NEEDS WORKSHOP

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to discuss property acquisition and right-of-way needs and to collaborate action items and schedule for accomplishing related work.

2.2.5.2 TASK 5.2 - LATERAL CONNECTION STRATEGY SESSION

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to discuss alternatives for the collection system lateral connections and collect feedback from the Town and its Owner Representative for the draft BODR.

2.2.5.3 TASK 5.3 - COLLECTION SYSTEM OPERATIONS WORKSHOP

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to discuss opportunities/limitations related to various collection system operational/design strategies and collect feedback from the Town and its Owner Representative for the draft BODR.

2.2.5.4 TASK 5.4 - EXPORT PIPELINE/CHICO WPCP CONNECTION OPERATIONS WORKSHOP

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town, and its Owner Representative, the City of Chico, and Butte County to discuss opportunities/limitations related to differing export pipeline and Chico WPCP connection operational/design strategies and collect feedback from the Town and its Owner Representative for the draft BODR. The Design-Builder shall schedule and facilitate a separate, subsequent follow-up meeting with the City of Chico and Butte County (in-person, up to two (2) hours), as needed to clarify the strategies discussed in the original review workshop.

2.2.5.5 TASK 5.5 - SCADA STRATEGY WORKSHOP

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to discuss supervisory control and data acquisition (the “**SCADA**”) options for the overall project.

2.2.5.6 TASK 5.6 - PERMITTING, FUNDING, AND STAKEHOLDER/PUBLIC OUTREACH STRATEGY WORKSHOP

The Design-Builder shall schedule and facilitate a review workshop (in-person, up to four (4) hours) with the Town and its Owner Representative to discuss permitting, funding, and stakeholder/public outreach coordination needs and to collaborate action items and schedule for accomplishing related work.

2.2.5.7 TASK 5.7 - DRAFT BASIS OF DESIGN REPORT

The Design-Builder shall prepare and deliver a draft and final Basis of Design Report (the “**BODR**”) that summarizes the information from Task 2 (Reference Document Review and Validation), Task 3 (Field Investigations) and Task 4 (Hydraulic Model Development and Analysis), as well as feedback/findings from workshops included in Task 5, and provides the basis to finalize design and construction of the Core Collection System, Export Pipeline and WPCP Connection. At a minimum, the BODR shall include the following:

- Project Summary, Goals/Objectives, and Requirements
- Design Criteria
- Design Standards
- Pipeline Alignment
- WPCP Connection Details
- Core Collection System Final Lateral Connection Alternatives Analysis and Recommendations
- Sewer System Operations and Maintenance Alternatives Analysis and Recommendations

Design-Builder shall facilitate review of the draft BODR in the most efficient manner for the Town. Account for a period of fourteen (14) calendar days for Town and its Owner Representative review of the draft BODR submittal.

2.2.5.8 TASK 5.8 - DRAFT BASIS OF DESIGN REVIEW MEETINGS

The Design-Builder shall schedule and facilitate up to two (2), 4-hour review meetings with the Town and its Owner Representative to present and summarize the BODR and address comments received from the Town and its Owner Representative.

2.2.5.9 TASK 5.9 - FINAL BASIS OF DESIGN REPORT

The Design-Builder shall revise the BODR in response to the Town and its Owner Representative comments, as appropriate, and furnish the final BODR in a format acceptable to the Town within fourteen (14) calendar days of receipt of the Town and its Owner Representative comments.

The Town shall notify the Design-Builder of its acceptance of the final BODR. The final BODR, in conjunction with the deliverables associated with the deliverables from Tasks 6-10 will serve as the basis for the next phase of the Project.

2.2.5.10 TASK 5 - DELIVERABLES

- Workshop agendas and minutes
- Basis of Design Report - Draft and Final
- Basis of Design Review Meeting Agendas and Notes - Draft and Final

2.2.5.11 TASK 5 - ASSUMPTIONS

- Electronic deliverables.
- The Town or its Owner Representative will provide a consolidated set of comments on the Draft Basis of Design Report via BlueBeam Studio review session (or similar, as mutually agreed by all participants).
- Review meeting(s) participation from up to eight (8) Design-Builder key management staff.

2.2.6 TASK 6 - FUNDING SUPPORT

The Project's funding comes through various grants. The Design-Builder shall be required to support the Town and its Owner Representative in responding to funding questions from funding entities. The Design-Builder should assume up to twenty (20) hours per month over the duration of the Design-Builder's proposed Phase 1a Preliminary Services Schedule in response to questions related to overall Project cost and schedule. The Design-Builder shall receive questions from the Town and/or its Owner Representative and shall provide responses back to the Town and/or its Owner Representative.

2.2.6.1 TASK 6 - DELIVERABLES

- Response to questions (as required)

2.2.6.2 TASK 6 - ASSUMPTIONS

- Electronic deliverables.

2.2.7 TASK 7 - PERMITTING SUPPORT

The Town's Owner Representative is responsible for obtaining environmental permits associated with the Project on behalf of the Town. The Design-Builder shall be required to support creation of a detailed Project Permit Matrix that identifies anticipated permits, approvals, and consultations required for the Project, as well as the respective responsibilities of the Town, its

Owner Representative and the Design-Builder in obtaining the required permits and approvals shall be provided. The Town's Owner Representative shall be responsible for maintaining the Project Permit Matrix at least until construction Notice to Proceed – maintenance of the Project Permit Matrix may transition to the Design-Builder during construction.

2.2.7.1 TASK 7 – DELIVERABLES

- Project Permit Matrix updates (as required)

2.2.7.2 TASK 7 – ASSUMPTIONS

- Electronic deliverables.

2.2.8 TASK 8 – STAKEHOLDER AND PUBLIC OUTREACH SUPPORT

2.2.8.1 TASK 8.1 – DESIGN-BUILDER'S SUPPORT OF PUBLIC OUTREACH ACTIVITIES

The Town's Owner Representative in conjunction with the Town is responsible for public outreach activities throughout the life of the Project. As a part of the Task 1 "Team Building and Project Chartering Workshop", the Design-Builder shall be provided the Project's Public Outreach Plan and with the Town and its Owner Representative, shall confirm the Design-Builder's support of public outreach activities for use in the Task 1 "Phase 1b Review Meetings".

2.2.8.2 [TASK 8.2 – ALLOWANCE FOR PARTICIPATION/SUPPORT AT TOWN COUNCIL MEETINGS]

[The Design-Builder shall support the Town and its Owner Representative with Town Council updates and other public communications, as requested by the Town or its Owner Representative. An allowance of \$[_____] is included for this support, to be billed by the Design-Builder with receipt of email confirmation from the Town or its Owner Representative that associated services are approved.]

2.2.8.3 TASK 8 – DELIVERABLES

- Design-Builder Public Outreach support responsibilities – Draft and Final

2.2.8.4 TASK 8 – ASSUMPTIONS

- Electronic deliverables.

2.2.9 TASK 9 – DESIGN AND CONSTRUCTION PHASING PLAN AND SCHEDULE

2.2.9.1 TASK 9.1 - DRAFT DESIGN AND CONSTRUCTION PHASING PLAN AND SCHEDULE

The Design-Builder shall schedule a four (4) hour in -person meeting with the Town and its Owner Representative to strategize breaking down the project into design and build segments. This shall incorporate the limitations/capabilities of designing the systems, permitting, obtaining rights of way, constructability, and perhaps funding mechanisms. The goal is to have a plan that promotes efficiency in the design process and facilitates construction productivity while maximizing opportunities for early and/or late work packages if necessary.

The Design-Builder shall schedule a meeting with the Town and its Owner Representative scheduler to develop a draft schedule WBS activities. Upon agreement of the schedule WBS

activities, and after the initial cost model (draft estimate) has been submitted with a cost-loaded schedule shall be developed through testing and commissioning of the Project. This schedule shall be based on the information provided in the technical reference documents and information provided by the SOQ.

No later than thirty (30) calendar days after completion of the BODR, the Design-Builder shall submit an updated draft Design and Construction Phasing Plan and Schedule that includes all activities through the completion of testing, commissioning and start-up of the Project.

The Design-Builder shall facilitate review of the draft Design and Construction Phasing Plan and Schedule in the most efficient manner for the Town. Account for a period of fourteen (14) calendar days for Town and its Owner's Representative review of the draft Design and Construction Phasing Plan and Schedule.

2.2.9.2 TASK 9.2 - DRAFT DESIGN AND CONSTRUCTION PHASING PLAN AND SCHEDULE REVIEW MEETINGS

The Design-Builder shall schedule with the Town and its Owner Representative the following meetings.

- One (1) two-hour meeting to develop the schedule WBS
- Up to three (3) two-hour meetings to review draft schedules and updates
- Up to two (2) four-hour meetings to review cost loaded schedules

2.2.9.3 TASK 9.3 - REVISED DESIGN AND CONSTRUCTION PHASING PLAN AND SCHEDULE

The Design-Builder shall revise the draft Design and Construction Phasing Plan and Schedule in response to the Town and its Owner Representative comments, as appropriate, for use in the Task 1 "Phase 1b Review Meetings".

2.2.9.4 TASK 9 - DELIVERABLES

- Draft WBS Schedule Structure
- Draft Cost-Loaded Schedule Based on SOQ Reference Documents - Due May 17, 2024
- Design and Construction Phasing Plan and Schedule – Draft and Final

2.2.9.5 TASK 9 - ASSUMPTIONS

- WBS activity meeting will be virtual.
- Electronic deliverables.
- Initial Schedule will be based off of SOQ Reference Documents.
- The Schedule will be updated to reflect the BODR once complete.

2.2.10 TASK 10 - COST MODEL

2.2.10.1 TASK 10.1 - DRAFT BASELINE COST MODEL TEMPLATE

The Design-Builder shall meet with the Town's Owner Representative and develop an agreed upon cost model (estimate) template for the work through design, construction, and startup.

Once an agreed upon template is developed, the Design-Builder shall produce an estimate based on the SOQ Reference Documents and using current market rates for labor, equipment, and materials. Upon completion of the estimate, the Design-Builder shall review it with the Town

and its Owner Representative and compare it with the Town's current schedule of costs for the Design and Construction portions of the project. The estimate will then be used to provide a cost-loaded schedule as described in Task 9.

After completion of the BODR, the estimate shall be updated and reviewed with the Town. The final Phase 1a estimate shall be incorporated into an updated Schedule and Phasing Plan for Design and Construction.

2.2.10.2 TASK 10.2 - DRAFT BASELINE COST MODEL REVIEW MEETINGS

The Design-Builder shall schedule and facilitate one (1) two-hour meeting to review the estimate template and up to two (2), four-hour review meetings with the Town to compare the Town's Owner Representative's initial Design and Construction Estimate with the Design-Builder's estimate.

The Design-Builder shall facilitate review of the Baseline Cost Model in the most efficient manner for the Town. Account for a period of fourteen (14) calendar days for Town and its Owner Representative review of the Baseline Cost Model.

The Design-Builder shall schedule and facilitate up to two (2), 4-hour review meetings with the Town and its Owner Representative to present and summarize the draft Baseline Cost Model and address comments received from the Town and its Owner Representative. Review meetings may be in conjunction with the review meetings for the Task 9 "draft Design and Construction Phasing Plan and Schedule".

2.2.10.3 TASK 10.3 - FINAL BASELINE COST MODEL

The Design-Builder shall revise the draft Baseline Cost Model in response to the Town and its Owner Representative comments, as appropriate, for use in the Task 1 "Phase 1b Review Meetings".

2.2.10.4 TASK 10 - DELIVERABLES

- Initial Cost Model using SOQ Reference Documents and current market prices.
- Baseline Cost Model – Draft and Final

2.2.10.5 TASK 10 - ASSUMPTIONS

- Initial two (2) hour meeting will be virtual or scheduled on the same day as other in-person meetings.
- Electronic PDF copies will be made available to the Town and its Owner Representative on a secure site provided by the Design Builder for review.

2.2.11 TASK 11 - ADDITIONAL PHASE 1A BASE PRELIMINARY SERVICES

The Town and the Design-Builder anticipate that additional Phase 1a Base Preliminary Services may be needed to progress the Project. The Town may request the Design-Builder perform additional Phase 1a Base Preliminary Services for which the Design-Builder shall be compensated on a negotiated basis from the allowance described below. Additional Phase 1a Base Preliminary Services may include but are not limited to the following:

- Additional field investigations and environmental evaluations.
- Additional alignment alternatives.
- Other unanticipated work identified by the Town.

- Outreach to local business, labor sources, and community education.

An allowance of \$[_____] is included herein for use by the Design-Builder for Task 11 work effort and deliverables. The Design-Builder shall request the use of Task 11 allowance funds before initiation of related efforts (receipt of email approval from the Town or its Owner Representative shall suffice as NTP for associated effort).

2.2.12 TASK 11 – DELIVERABLES

- To be subsequently determined.

2.2.13 TASK 11 – ASSUMPTIONS

- The Town shall approve all additional services prior to notice to proceed for this task.

2.3. PHASE 1A ADDITIONAL PRELIMINARY SERVICES

As provided in Section 5.2.B (Additional Preliminary Services) of this Design-Build Contract, the Town may request that the Design-Builder perform potential Phase 1a Additional Preliminary Services, for which the Design-Builder shall be compensated on a negotiated basis. The Design-Builder shall provide Phase 1a Additional Preliminary Services as requested by the Town. These may include but are not limited to the following:

- Additional field investigations and environmental evaluations.
- Additional alignment alternatives.
- Other unanticipated work identified by the Town.
- Outreach to local business, labor sources, and community education.

Deliverables for any Phase 1a Additional Preliminary Services shall be negotiated by the Town and the Design-Builder.

2.4. PHASE 1A PRELIMINARY SERVICES SCHEDULE

The Phase 1a Preliminary Services Schedule is included as Attachment 2B-1.

2.5. PHASE 1A PRELIMINARY SERVICES COMPENSATION

2.5.1 COMPENSATION FOR PHASE 1A BASE PRELIMINARY SERVICES

The Town shall pay the Design-Builder for Phase 1a Base Preliminary Services direct costs for labor and expenses based on all inclusive hourly labor rates documented in Attachment 2D-1, up to a not-to-exceed limit of \$3,500,000, as documented in Attachment 2D-1, plus a not-to-exceed amount of \$4,100,000 of allowance for Task 11. Allowance funds shall not be used by Design-Builder except with specific written approval by the Town. Attachment 2C-1 is a breakdown by task of the not-to-exceed amount. Use of any funds for Task 11 requires Town approval. Work on Task 11 shall be billed at the rates shown in Attachment 2D-1.

2.5.2 PAYMENT REQUESTS

The Design-Builder shall request monthly progress payments for direct labor and expense costs incurred. All billings and requests for progress payments shall require a written invoice from the Design-Builder in a form acceptable to the Town, including itemization of labor and expenses by task. The Design-Builder shall submit all billings with appropriate summaries of work progress,

after which the Town shall make payment at the earliest practicable time, but not later than 45 days following receipt of a proper payment request. To the extent that prevailing wages apply to any Preliminary Services so invoiced, the Design-Builder shall provide certified payrolls with respect to any such Preliminary Services so invoiced.

2.5.3 COMPENSATION FOR PHASE 1A ADDITIONAL PRELIMINARY SERVICES

In the event the Town elects to request any Phase 1a Additional Preliminary Services, compensation for such Phase 1a Additional Preliminary Services shall be negotiated by the Town and the Design-Builder in accordance with Section 9.1(B) (Compensation for Phase 1a Additional Preliminary Services) of the Design-Build Contract, and shall be billed using the rates set forth in Attachment 2D-1.

ATTACHMENT 2A
PLANNED SURVEY EXTENTS

[Note: To be developed.]

ATTACHMENT 2B
PRELIMINARY SERVICES SCHEDULE

ATTACHMENT 2B-1

PHASE 1A PRELIMINARY SERVICES SCHEDULE

[See attached pages]

ATTACHMENT 2B-2

PHASE 1B PRELIMINARY SERVICES SCHEDULE

[From the Phase 1b Base Preliminary Services Proposal.]

ATTACHMENT 2C

PRELIMINARY SERVICES NOT-TO-EXCEED PRICING

ATTACHMENT 2C-1

PHASE 1A PRELIMINARY SERVICES NOT-TO-EXCEED PRICING

[See attached pages]

ATTACHMENT 2C-2

PHASE 1B PRELIMINARY SERVICES NOT-TO-EXCEED PRICING

[From the Phase 1b Base Preliminary Services Proposal.]

ATTACHMENT 2D
PRELIMINARY SERVICES BILLING RATES

ATTACHMENT 2D-1

PHASE 1A PRELIMINARY SERVICES BILLING RATES

[See attached pages]

ATTACHMENT 2D-2

PHASE 1B PRELIMINARY SERVICES BILLING RATES

[From the Phase 1b Base Preliminary Services Proposal.]

APPENDIX 3

GOVERNMENTAL AND NON-GOVERNMENTAL APPROVALS

APPENDIX 3**GOVERNMENTAL AND NON-GOVERNMENTAL APPROVALS**

[Note: To be developed.]

3.1. PURPOSE

The purpose of this Appendix is to identify the Governmental and Non-Governmental Approvals that are expected to be required to proceed to the Design-Build Period of the Project. (Tables A-3.1 and A-3.2).

The Design-Builder shall be responsible for obtaining and maintaining any Governmental and Non-Governmental Approvals that are not explicitly identified as a Town responsibility, irrespective of whether any such Governmental or Non-Governmental Approval is identified in this Appendix.

3.2. GOVERNMENT AND NON-GOVERNMENTAL APPROVALS

Tables A3-1 and A3-2 indicate the responsibilities of the Design-Builder and the Town with respect to Governmental and Non-Governmental Approvals, respectively.

Table A3-1. Governmental Approvals Responsibility					
Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Responsibility for Obtaining / Supporting Permit Application Process	Fee Payment Responsibility

(1) Payment for review time by permitting entity above and beyond that covered by permit fees will be paid by the Town.

Table A3-2. Non-Governmental Approvals Responsibility					
Name of Governmental Approval	Issuing Agency	Permittee /Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility

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APPENDIX 4

TECHNICAL STANDARDS AND BASELINE DESIGN DOCUMENTS

APPENDIX 5
GENERAL DESIGN-BUILD WORK REQUIREMENTS

APPENDIX 5**GENERAL DESIGN-BUILD WORK REQUIREMENTS****5.1. PURPOSE**

The purpose of this Appendix is to set forth certain requirements for the performance of the Design-Build Work. The Design-Builder shall perform the Design-Build Work in accordance with the Contract Standards, including the requirements set forth in this Appendix.

5.2. MANAGEMENT AND COORDINATION

As needed, the Design-Builder shall hold meetings that are separate from and in addition to weekly Construction progress meetings described in Section 5.4.2 of this Appendix, and shall prepare correspondence and make any other arrangements as necessary to coordinate the Design-Build Work. The Design-Builder shall coordinate its activities with other contractors performing work at or near the Project Sites. The Design-Builder shall identify other construction contracts that may be in progress in close proximity to or bordering on the Project. The Design-Builder shall coordinate all Construction activities that could impact existing Utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances) with the Utilities, and shall coordinate, arrange for and/or implement any required utility relocations with the applicable utility, consistent with its Utility Relocation Plan. Coordination meetings may include review of the Design-Build Period Work Schedule and installation procedures of other contractors to identify potential conflicts, allocation of space on the Project Sites, drawing/design interchange among contractors, establishment and modification of schedules and sequences of Construction operations, and planning of future meetings.

5.3. DESIGN-BUILD PERIOD WORK SCHEDULE**5.3.1 Design-Build Period Work Schedule.**

All activities comprising the Design-Build Work shall be scheduled and monitored by use of Microsoft Project or Primavera software which sets forth all tasks and key Tasks in a logical and efficient work sequence that the Design-Builder intends to utilize to plan, organize and execute design and Construction work in taking the Project from the Baseline Design Documents to Final Completion and Town operation, to record and report actual performance and progress, to show plans to complete all remaining activities as of the end of each progress report period, and to enable Town and the Owner Representative to monitor and evaluate work progress. If Primavera is used, the Design-Builder shall provide schedule information to the Town in both native and PDF format as directed by the Town.

The Design-Build Period Work Schedule shall be in the form of an activity oriented network diagram (Critical Path Method) and the principles and definitions of the terms used herein shall be as set forth in the Associated General Contractors of America (AGC) publication The Use of CPM in Construction, 1976. In the event of discrepancies, this Appendix shall govern the development and utilization of the Design-Build Period Work Schedule.

The Design-Build Period Work Schedule shall be comprised of the cost and resource loaded Detailed Network Diagram and reports described herein. The Design-Build Period Work Schedule shall show the sequence and interdependence of activities required for complete performance of all the work including design development, procurement, Construction, Substantial Completion and Final Completion. The Design-Build Period Work Schedule shall begin with the Contract Date, include milestones representing release of design packages for

Construction, include the Interim Construction Milestones, include milestones representing completion of Substantial Completion and conclude with a milestone representing Final Completion, in addition to any control milestones provided by the Town. [Note: Other milestones may be added based on Construction Phasing Plan and as part of GMP Amendment.]

The Design-Build Period Work Schedule shall be initially prepared and updated in accordance with Appendix 2 and further updated as required in accordance with this Appendix. The Design-Builder shall undertake and complete the Design-Build Work in accordance with the Design-Build Period Work Schedule. The Design-Builder shall develop, revise and provide all information and input necessary for the Design-Build Period Work Schedule required pursuant to this Appendix in accordance with the Contract Standards. The planning, scheduling, coordination and execution of the Design-Build Work are the sole responsibility of the Design-Builder. The Scheduled Substantial Completion Date and the date for Final Completion shall not be changed in any updates without written permission from the Town in accordance with the Contract Documents.

5.3.2 Detailed Network Diagram

The Design-Build Period Work Schedule shall include a time-scaled “**Detailed Network Diagram**” based on calendar days. The Detailed Network Diagram shall be in Critical Path Method (the “**CPM**”) precedence format and shall show the sequence and interdependence of activities required for complete performance of all items of work. A calendar shall be shown on all sheets along the entire sheet length. Each activity shall be plotted so that the beginning (and completion dates) of the activity can be determined graphically (by comparison) with the calendar scale.

The Detailed Network Diagram shall provide sufficient detail and clarity of form and technique so that the Design-Builder can plan, schedule, and control the Design-Build Work properly and the Town and the Owner Representative can readily monitor and follow progress for all portions of the Design-Build Work. The Detailed Network Diagram shall include all activities of the Design-Build Work. Critical path activities shall be identified, including critical paths for milestone dates.

The Detailed Network Diagram shall include the following information related to the activities:

- Activity number.
- Activity Description.
- Estimated duration in working days.
- Major materials and equipment acquisition and arrivals/departures at/from the Project.

The degree of detail of the Detailed Network Diagram shall consider the following factors:

- Normal weather delays per season that would delay or affect the work plan using identified schedule buffer activities in the logic chain to the next control milestone in the logic chain
- The type of work to be performed and the labor trades involved.
- All delivery activities for all major materials and equipment.
- A schedule for all submittals requiring outside or design Subcontractor approval, including allowed review response time, and logic linked to start of appropriate work items so that any resubmittal requirements shall adjust the start or ordering of the consequential work item(s)
- Submittal and approval of shop and working drawings and material samples.

- Efforts and activities for all Subcontract work by discrete Subcontractor.
- Access and availability to work areas.
- Test, submissions, and acceptance of test results.

Seasonal weather conditions shall be considered and included in the planning and scheduling of all work influenced by high or low ambient temperatures and/or precipitation to complete all Design-Build Work by the Final Completion date. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions based upon the preceding ten year records published for the locality by the National Ocean and Atmospheric Administration based on the Chico Army Flying School reporting station.

The Design-Builder may use labor or equipment restraints separately noted to optimize and level labor and equipment requirements. The individual activities involved may be sequenced within the limits of total float to the next control milestone in the logic chain. When this technique is used in establishing the working schedule, it shall be reflected in the logic. Critical or near-critical paths developed from the use of labor restraints shall be kept to a minimum. Near-critical paths shall be defined as those paths having 14 calendar days or less of total float at time of initial submission.

The Design-Build Period Work Schedule (and any updates thereto) shall be submitted to the Town in hardcopy, pdf and native format.

5.3.3 Design-Build Period Work Schedule Updates.

The Design-Builder shall, as required from time to time during the Design-Build Period, but no less than once per calendar month, in consultation with the Town update the Design-Build Period Work Schedule so that it is at all times an accurate, reasonable and realistic representation of the Design-Builder's plans for the completion of the Design-Build Work in accordance with the requirements of the Contract Documents. The Design-Builder shall submit schedule updates (in hard copy, pdf and native format) to the Town 3 business days in advance of the first progress meeting of each month. Each schedule update shall include the following elements:

- (a) A complete updated CPM schedule showing progress against each activity;
- (b) a four week look ahead schedule and a present to complete summary schedule and a Construction activity status report to include current and forecasted status of each Construction activity and submittal event in WBS start sort order; and
- (c) status for any weather schedule buffers shall be made on the number of observed and recorded weather delays that occurred to date for the schedule buffer timespan, which must be verifiable against the daily field reports for each work segment.

The updates shall include adjustments resulting from Uncontrollable Circumstances and Baseline Design Requirements Changes, if any, as permitted by this Design-Build Contract and as provided in Section 5.3.5 of this Appendix.

Should any negative float items appear, the Design-Builder shall provide specific explanation of the causes of each and proposed remedies.

5.3.4 Town Review.

The Town shall review the updated Design-Build Period Work Schedule and advise the Design-Builder as to any of its concerns, along with proposed changes. Every three months, or more frequently if requested by the Town, in addition to the weekly Construction progress meetings, the Design-Builder shall meet with the Town to discuss Project progress and the updated Design-Build Period Work Schedule. The Design-Builder shall respond to the Town concerns and indicate how the proposed changes or revisions thereto can be made to satisfactorily address Town concerns. Upon Town approval, the changes shall be incorporated in the updated Design-Build Period Work Schedule and replace the previous baseline Design-Build Period Work Schedule. Design-Build Period Work Schedule updates are for the purpose of providing the Design-Builder with flexibility in its work activity durations and sequences, but in no event shall such updates result in a change in the Scheduled Substantial Completion Date or the date for Final Completion. The Scheduled Substantial Completion Date shall be adjusted solely as provided in Sections 8.4 and 8.10, respectively, of this Design-Build Contract.

5.3.5 Events Affecting the Design-Build Period Work Schedule.

No later than 15 days following the occurrence of an Uncontrollable Circumstance or a Town-directed Change Order, or delays are experienced that may impact the critical path, the Design-Builder shall submit a report containing a **“Time Impact Analysis”** illustrating the effects of such events on the current Design-Build Period Work Schedule, including any new dates for work task and major Tasks, Interim Construction Milestones, Substantial Completion, the Scheduled Substantial Completion Date or the date for Final Completion. Additionally, the analysis shall demonstrate the time impact based on the date that the Design-Builder was notified of the authorization of the change or the date that the delay began, the status of Construction at that point in time, and the event time computation of all affected activities. The Design-Builder shall present mitigation measures that were considered to offset potential work delays; those proposed for Town review and acceptance; and a revised Design-Build Period Work Schedule incorporating the Design-Builder’s proposed changes.

The event items used in the analysis shall be those included in the latest updated copy of the detailed progress schedule. In cases in which the Design-Builder does not submit a Time Impact Analysis for a specific change within the time requirements established under this Section 5.3.5, then it is mutually agreed that that particular potential revision or delay has no time impact on any of the scheduled completion dates and the Project’s critical path and no time extension will be granted.

5.4. CONSTRUCTION MEETINGS AND REPORTS

5.4.1 Pre-Construction and Partnering Conferences.

Consistent with its Town Approved Design and Construction Phasing Plan, the Design-Builder shall hold a pre-Construction conference prior to commencement of each Construction work package. Additionally, the Design-Builder shall hold Partnering conferences at intervals agreed to by the Town. The Design-Builder shall prepare an agenda which shall be reviewed with the Town prior to each conference, and shall preside at each conference, contributing appropriate items for discussion, providing any data requested, recording minutes to summarize significant proceedings and decisions, and distributing the minutes to all parties in attendance.

Each conference shall be scheduled by the Design-Builder at a time reasonably acceptable to the Town and shall be attended by the Project Manager (Project Manager), the Design-Builder’s Construction Manager, the Design-Builder’s Construction Superintendent, and the Design-Builder’s principal Subcontractors’ project managers or superintendents and representatives of

major suppliers as the Design-Builder deems appropriate. Other attendees may be added at the discretion of the Design-Builder and the Town.

5.4.2 Construction Progress Meetings - Scheduling and Attendance.

The Design-Builder shall schedule, hold, and facilitate regular weekly Construction progress meetings from the time mobilization for Construction commences through Final Completion, and at other times if requested by the Town or as the Design-Builder deems necessary. The Construction progress meetings shall be attended by the Design-Builder Construction Manager, the Design-Builder Superintendent, the QA/QC Manager, as applicable, and the Design-Builder's principal Subcontractors' project managers or superintendents and representatives of major Suppliers, as the Design-Builder deems appropriate. The Project Manager shall attend weekly Construction progress meetings, and the representatives from the Design-Builder's executive team shall attend weekly Construction progress meetings periodically as requested by the Town. Other attendees may include any other contractors whose work affects or is affected by Construction of the Project, and others deemed appropriate by these parties. The Town and the Owner Representative shall attend the weekly Construction progress meetings and monthly management meetings. Construction progress meetings shall be held at a location designated by the Town.

5.4.3 Construction Progress Meetings Agenda.

At such weekly meetings, discussions shall be held concerning all aspects of the Design-Build Work. The Design-Builder shall prepare an agenda, preside at meetings, record minutes to include significant proceedings and decisions, and distribute the minutes to all parties in attendance within three Business Days of the meeting. The agenda shall generally include the status of the following matters, as applicable:

- (a) Summary of previous meeting issues, actions and assignments.
- (b) Progress since last meeting (Design-Builder and Subcontractors).
- (c) Schedules, including updates on planned progress for next four weeks, off-site fabrication and delivery schedules; corrective action measures, if required and when to be implemented.
- (d) Problems, issues and considerations.
- (e) Change Orders, Contract Administration Memoranda and Contract Amendments.
- (f) Status of submittals, including to be submitted, submitted, responses requiring corrective actions and resubmittal and approved.
- (g) Requests for Information, including those to be submitted, submitted, responses and whether adequate or more information is required.
- (h) QA/QC reviews, findings, issues and actions.
- (i) Coordination among parties.
- (j) Safety program update, concerns, accidents, and injuries, if any.
- (k) Public affairs and issues or concerns of nearby businesses and other stakeholders.

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- (l) Project Sites visits by the Town, the Town's representatives, representatives of Governmental Bodies, issuers of Non-Governmental Approvals and Design-Builder's representatives.
 - (m) Compliance with Governmental Approval mitigations and any environmental issues.
 - (n) Status of record drawings and specifications.

5.4.4 Monthly Progress Reports.

Monthly Progress Report required to be submitted by the Design-Builder shall include:

- (a) a summary of Design-Build Work activities during the reporting month.
- (b) a schedule of upcoming Design-Build Work activities.
- (c) a listing of submittals delivered during the reporting month and their status;
- (d) a listing of submittals scheduled for delivery the following month.
- (e) the Design-Builder's verification that the record documents have been updated as appropriate.
- (f) a summary of activities involved with obtaining Governmental Approvals and Non-Governmental Approvals.
- (g) a listing of any violations of Governmental Approvals, Non-Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations.
- (h) a listing of issues needing resolution.
- (i) a listing of all telephone calls received during the reporting month involving material inquiries or complaints.
- (j) Design-Build Period Work Schedule updates and Cost/Schedule Status Report (CSSR).
- (k) the Design-Builder's recovery plan for meeting the Scheduled Substantial Completion Date should the Design-Builder's progress-to-date indicate that the Design-Builder's Design-Build Work is behind schedule and at risk of not being completed by the Scheduled Substantial Completion Date (as adjusted for extensions of time permitted under this Design-Build Contract).
- (l) Expenditures for the most recently completed month and for the Project to date, and a comparison to the Anticipated Design-Build Period Work Cost Schedule; explanations for significant deviations from the Anticipated Design-Build Period Work Cost Schedule for both over-expenditures and under-expenditures.
- (m) Progress payment requests as described in Article 9 of this Design-Build Contract. The format of the payment request shall be matched with the description of work activities completed for the reporting month and the Anticipated Design-Build Period Work Cost Schedule so that the Town can easily relate the breakdown of

the payment request to work progress on specific tasks and Tasks. Supporting documentation shall be provided so that the Town can readily determine the basis for the requested payment amounts for Design-Build Work performed during the month by task or Tasks in terms of labor hours, construction equipment costs, Capital Improvements equipment and materials expenditures, including similar breakdowns for Subcontracts and other Project costs incurred during the month unless waived by the Town. Current retainage and total retainage to date shall be included in the monthly report. Payment request information shall include similar information for changes made pursuant to Sections 6.7 and 6.8 of this Design-Build Contract.

The Monthly Progress Reports shall also provide a description of (1) any concerns or issues raised by the Town or other parties regarding the Design-Build Work, and the Design-Builder's approach to promptly addressing and resolving such concerns or issues, and (2) a section containing health and safety statistics and a description of any accidents or injuries that occurred and the follow up investigations as to cause and subsequent corrective actions to be taken or already implemented by the Design-Builder. The format of the Monthly Progress Reports shall be developed by the Design-Builder and approved by the Town prior to the commencement of any Construction on the Project Sites.

5.4.5 Project Records.

The Design-Builder, in connection with the Design-Build Work generally, shall maintain and provide the following records:

- (a) Record Drawings and Specifications: The Design-Builder shall:
 - (1) throughout the Construction, update the Design Documents (with respect to the drawings, such update shall be in hard copy and "CAD" or other electronic format reasonably acceptable to the Town), including approved shop drawings that are available from Subcontractors in CAD format, so as to produce accurate and complete record documents for the Project.
 - (2) as requested from time to time during the Construction, make available such record drawings and specifications to the Town for review to permit the Town to monitor the Design-Builder's compliance with the requirements of this Section 5.4.5.
 - (3) provide eight half-size and two full-sized hard copies of the completed record drawings as a condition to Final Completion. The record drawings shall not be deemed to have satisfied the condition to Final Completion unless reviewed and deemed final by the Town.
- (b) Equipment and Systems Manuals: The Design-Builder shall:
 - (1) (1) as a condition to Final Completion, and in accordance with Sections 5.8.2 (Content of the Operations and Maintenance Manual) and 5.9 (Service Manuals) of this Appendix, make available all operation and maintenance manuals, specifications, warranties and related information, in both written and electronic form, for all the equipment and systems that have been included in the Design-Build Work for review by the Town; and

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- (2) organize and store such information in accordance with Section 6.6(D) of this Design-Build Contract;
- (c) Design Records: The Design-Builder shall retain records of the design development.
- (d) Minutes of Meetings: The Design-Builder shall retain minutes of meetings between the Town and the Design-Builder relating to the Design-Build Work, and shall circulate such minutes to the Town and the Owner Representative for review and comment.
- (e) Inspection Reports and Tests Results: The Design-Builder shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction.
- (f) Utility Plans: The Design-Builder shall retain utility plans for the Project and the Project Sites.
- (g) Landscape and Irrigation Plans: The Design-Builder shall retain landscape and irrigation plans for the Project and the Project Sites.
- (h) Copies of all Governmental Approvals and Non-Governmental Approvals: The Design-Builder shall retain copies of all Governmental Approvals and Non-Governmental Approvals for the Construction and occupation of the Project.
- (i) Signed Quality Management Plan as updated for the Design-Build Period Work: The Design-Builder shall retain a signed copy of the Quality Management Plan as updated for the Design-Build Period Work for the design and Construction and all records of the quality assurance program implemented as required by the Contract Documents.
- (j) Daily field logs recording the weather at each work site throughout the day, what contractors are on site and equipment/material deliveries as well as any events such as outages, work stoppage, accidents, material/equipment loss, and property damage.

The records referred to in this Section 5.4.5 shall be retained for at least five (5) years after the latest of: (1) final payment under this Design-Build Contract; (2) final settlement of a termination for convenience under Section 12.6; (3) the final resolution of any dispute; and (4) the last of the notices from the Granting Agencies to the Town that the applicable Grant contract has been closed according to the record retention requirements at 2 CFR 200.334.

5.5. CONSTRUCTION WORK GENERALLY

5.5.1 Geotechnical Work and Subsurface Exploration

As part of the Preliminary Services, it is expected that the Design-Builder will conduct geotechnical and subsurface investigations of portions of the Project Sites and the results of these investigations will be presented in the applicable reports required pursuant to Appendix 2, including the Contamination Assessment Report and the Contaminated Media Management Plan. The Design-Builder shall conduct any additional subsurface investigations of the Project Sites as necessary in accordance with Good Engineering and Construction Practice to determine design requirements for Construction, including dewatering and foundation requirements. The Design-Builder shall employ a qualified firm to perform the subsurface investigations. The

Design-Builder shall employ a professional engineer, licensed in the State, to plan, oversee, and evaluate the results of all additional subsurface investigations and to determine requirements for the design of the Project, including foundations, superstructures, and dewatering systems, with regard to seismic conditions and existing soil conditions. The engineer shall provide recommendations for Construction requirements as to protecting the Design-Build Work and any existing structures and Utilities. The Design-Builder shall perform all geotechnical work and subsurface explorations in accordance with the Contract Standards.

The Design-Builder shall have the full responsibility for verifying the presence and location of all subsurface utilities structures at the Project Site.

5.5.2 Deliverable Material.

The Design-Builder shall deliver to the Town all Deliverable Material required to be delivered under this Appendix, Appendix 6, Appendix 7 and Appendix 9.

5.5.3 Signs.

The Design-Builder shall provide and maintain temporary identification and information signs during the Design-Build Period in conformance with Town requirements and specifications. No signs shall be erected until their appearance, content, and location have been fully reviewed and approved by the Town, which approval shall not unreasonably be withheld, conditioned or delayed. The Design-Builder shall remove temporary signs from the Project Sites when they are no longer necessary.

5.5.4 Laydown Areas and Town Construction Office Space.

Laydown and staging areas for construction materials shall be located at the Project Sites or at other locations arranged and paid for by the Design-Builder that are approved by the Town. The Design-Builder shall not store materials in a Town Right of Way unless authorized by the Town.

5.5.5 Maintenance of the Project Sites.

During performance of the Design-Build Work, the Design-Builder shall be responsible for the overall maintenance of the Project Sites. The Design-Builder shall keep the Project Sites neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Sites as they accumulate in accordance with the Contract Standards.

5.5.6 Temporary Utilities.

The Design-Builder shall supply all necessary temporary Utilities, including electricity, telecommunications services, potable water, fire protection, lighting, and sanitary facilities, during Construction, testing and start-up of the Project. Prior to the Substantial Completion Date, the Design-Builder shall disconnect and arrange for the disconnection and removal of all temporary Utility connections and services. The Design-Builder shall coordinate with the Town on all temporary Utilities.

5.5.7 Relocation of Existing Utilities.

The Design-Builder shall be responsible for all Construction activities required with regard to existing utility services and installations (e.g., conduits, pipelines, transmission mains and other utility equipment and appurtenances), including after Town review and approval of any relocation of Utilities consistent with the Design-Builder's Utility Relocation Plan.

5.5.8 Noise Control and Construction Work Hours.

The Design-Builder shall comply with all noise regulations required pursuant to Applicable Law. The Design-Builder shall not perform Construction work between 6 PM and 7 AM, or on Sundays, holidays or Saturdays without specific permission from the Town.

5.6. COORDINATION OF CONSTRUCTION WORK AND OPERATIONS**5.6.1 Maintenance of Operations.**

The Design-Builder shall take no actions during Construction that adversely affect operation of Town, public or private Utilities. The Town shall arrange and provide all necessary bypasses and other measures needed to maintain utility service.

5.6.2 Coordination with Related Projects

The Design-Builder shall take no actions during Construction that adversely affect the construction of the Related Projects.

5.7. CONSTRUCTION SAFETY AND SECURITY**5.7.1 Safety and Security.**

The Design-Builder shall maintain safety and security at the Project Sites at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Design-Builder shall:

- (a) Take appropriate precautions for the safety and security of the Design-Build Work and provide appropriate protection to prevent damage, injury or loss related to the performance of the Design-Build Work over the Design-Build Period for:
 - (1) Workers at the Project Sites and all other persons who may be involved with deliveries or inspections;
 - (2) Visitors to the Project Sites;
 - (3) Passersby, neighbors and adjacent properties with respect to the Design-Build Work activities;
 - (4) Materials and equipment under the care, custody or control of the Design-Builder or Subcontractors on the Project Sites;
 - (5) Other property constituting part of the premises or the Project under construction; and
 - (6) Town Property;
- (b) Establish and enforce appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards;
- (c) Provide temporary fencing of all open or partially open trenches and excavations, all open or partially completed structures, and all work and storage areas at all times while unattended by workmen;
- (d) Implement a comprehensive safety program in accordance with Applicable Law;

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- (e) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
 - (f) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
 - (g) Provide for safe and orderly vehicular movements and maintain compliance with the Traffic and Pedestrian Control Plan prepared as a Preliminary Service;
 - (h) Develop and implement a Project Sites-specific update to the Health and Safety Plan for the Design-Build Period Work that includes management commitment, maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections;
 - (i) Designate an appropriately certified and experienced safety professional to develop and sign the Project Sites-specific update to the Health and Safety Plan for the Design-Build Period Work, including all safety rules at the Project Sites;
 - (j) Designate a qualified safety professional at the Project Sites during on-site Construction activities who shall be responsible for the implementation of safety rules at the Project Sites, the prevention of fires and accidents, monitoring compliance with the Design-Builder's Project Sites-specific update to the Health and Safety Plan for the Design-Build Period Work, and the coordination of such activities as shall be necessary with the Town and all Governmental Bodies related to health and safety; and
 - (k) Require all Subcontractors to work in accordance with and implement the updated Health and Safety Plan for the Design-Build Period Work, comply with the Design-Builder's on-site safety requirements, and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Sites and monitoring compliance of Subcontractor employees with the Project Sites-specific update to the Health and Safety Plan for the Design-Build Period Work.

5.7.2 Construction Site Security.

The Design-Builder shall develop, maintain and comply with a Project Sites security plan that complies with Appendix 5 is approved by the Town and constitutes part of the Health and Safety Plan. The security plan shall provide for the security of the Project Sites when perimeter fencing cannot be continuously maintained.

5.8. OPERATIONS AND MAINTENANCE MANUAL

5.8.1 Development by the Design-Builder

The Operations and Maintenance Manual shall be a secured online, electronic manual with hard copy reproduction capability. During the Design-Build Period, the Design-Builder shall develop the Operations and Maintenance Manual in accordance with the Contract Standards. The Design-Builder shall provide the Town with preliminary, interim, pre-final and final versions of the Operations and Maintenance Manual for the Town's review, comment and approval.

A pre-final Operations and Maintenance Manual shall be submitted to and approved by the Town as a condition precedent to the achievement of Substantial Completion. A final Operations and

Maintenance Manual shall be submitted to and approved by the Town as a condition precedent to the achievement of Final Completion.

5.8.2 Content of the Operations and Maintenance Manual

The Operations and Maintenance Manual shall (i) include the practices and procedures necessary for Project operation and control, auxiliary facility equipment and systems, system maintenance, repair and replacement, and grounds and buildings maintenance; and (ii) integrate all equipment and systems manuals and Service Manuals. The Operations and Maintenance Manual will be comprehensive, suitable as a resource for training operational staff, and will include the following information:

- (a) process design criteria;
- (b) Project layout drawings and process flow diagrams;
- (c) detailed operation and control procedures;
- (d) standard operating procedures;
- (e) emergency response procedures;
- (f) maintenance instructions, including:
 - (1) information necessary to properly assemble and install the equipment, including alignment, clearances, tolerances and interfacing equipment requirements; the trade and skill level required to install the equipment; any special rigging required to place the equipment; and any special test equipment required to place the equipment in service;
 - (2) manufacturer's schedule for routine preventive maintenance, calibration, lubrication, inspections, tests, and adjustments required to provide for proper and economical operation and to minimize corrective maintenance and repair;
 - (3) manufacturer's projection of preventive maintenance labor-hours on a daily, weekly, monthly, and annual basis, including required trades and skill levels required for performance of maintenance and the total time required to perform the work;
 - (4) manufacturer's troubleshooting guide and recommendations on procedures and instructions for correcting problems and making repairs;
 - (5) step-by-step procedures to isolate the cause of typical malfunctions, describing clearly why the checkout is performed and what conditions are to be sought;
 - (6) a description of maintenance and operating tools, replacement parts and materials, including specified quantity of spare parts;
 - (7) information available from the manufacturers to use in training personnel to maintain the equipment and systems properly;

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- (8) information on test equipment required to perform specified tests and/or special tools needed for the maintenance and repair of components;
 - (9) instructions related to when equipment is in operation, including lubrication requirements;
 - (10) all warranty information, including effective warranty dates;
 - (11) Governmental Approvals indicating approval of all installations requiring permits; and
 - (12) the development of asset records and the means to assess equipment condition;
- (g) a long-term schedule of major repairs and replacements, including a long-term budgeting plan to maintain the operability, durability and reliability of the Project through its projected operational life;
 - (h) the practices and procedures necessary to maintain the appearance of the buildings, grounds and landscaping of the Project; and
 - (i) procurement procedures for all additional tools, equipment, maintenance supplies and component parts necessary for the operations and maintenance of the Project, including specifications and quantity of the items to be procured and procedures for planning and scheduling delivery of such items.

[Note: To be developed.]

5.9. SERVICE MANUALS

The Service Manuals shall include the practices and procedures necessary for the operation and control, maintenance, and repair and replacement of each equipment system, package, or unit incorporated into the Project. The Service Manuals shall be suitable as a resource for operating and maintaining the components of the Project, and shall include the following information:

- (a) safety information for each equipment system, package or unit incorporated into the Project, including mechanical and electrical lockout procedures for all Project components; and
- (b) descriptions of units or systems and component parts, their functions, operating characteristics and limiting conditions, including:
 - (i) equipment summary, which will include nameplate data, supplier, manufacturer and local representative;
 - (ii) start-up sequences, including inspections required before initiation of sequence;
 - (iii) performance monitoring requirements to confirm proper operation and guide component control adjustments;
 - (iv) adjustment of variable functions and settings;
 - (v) interface among the components and systems of the Project;

- (vi) troubleshooting guidelines to identify non-performing components and identify probable cause;
 - (vii) shut-down sequences and lock-out requirements to safely remove components from service without adverse impact on system performance;
 - (viii) preparation to isolate off-line equipment piping, power, and controls for safe execution of maintenance activities; and
- (c) description of instrumentation and control system, including alarm summary.

Pre-final Service Manuals shall be submitted to and approved by the Town as a condition precedent to the achievement of Substantial Completion. Final Service Manuals shall be submitted to and approved by the Town as a condition precedent to the achievement of Final Completion.

5.9.2 Electronic Requirements

The Operations and Maintenance Manual will cover all process, electrical, instrumentation, and control equipment in the Project as secure digital electronic files that are designed for both web-based and local network access [with capability to be linked and coordinated the Chico WPCP]. The Design-Builder shall:

- (a) provide links within the final Operations and Maintenance Manual to digital files of all Final Design Documents and individual equipment service manuals;
- (b) provide special secure applications and links required to permit access to the final Operations and Maintenance Manual files from hand-held electronic devices and other portable or fixed electronic devices designated by the Town; and
- (c) coordinate digital Operations and Maintenance Manual development with the Town's information technology group to determine compatibility with currently available hardware and software in the Town network.

[Note: To be developed.]

5.10. ENVIRONMENTAL REVIEW AND PROTECTION

5.10.1 Wildlife and Protected Species Protection.

In accordance with the Environmental Mitigation Measures, if any exist, the Design-Builder shall develop and implement a plan that is consistent with required mitigation measures for wildlife and protected species that may be affected by Construction activities of the Design-Builder. Prior to implementing the plan, the Design-Builder shall obtain Town approval.

5.10.2 Design-Builder Construction Environmental Monitor.

If required by the Environmental Mitigation Measures, if any exist, the Design-Builder shall assign a Design-Builder Construction Environmental Monitor (the "**CEM**") to confirm that its mitigations plan is properly and fully implemented. The CEM shall be the single, identified entity or person responsible for, at a minimum, the following duties:

- (a) Planning of environmentally compliant construction methods.

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- (b) Oversight of Construction activities to determine compliance with mitigation measures.
 - (c) Ensuring that all training has been conducted, and signage, marking and barriers to protected areas have been installed.
 - (d) Ensuring compliance with the Stormwater Pollution Prevention Program (SWPPP).
 - (e) Coordination with the Town on implementation of environmental mitigation measures.
 - (f) Coordination with Governmental Bodies that have administrative oversight of the environmental sites to be protected, if required.
 - (g) Compliance with environmental Governmental Approvals.
 - (h) Meeting or interacting with representatives of Governmental Bodies with environmental oversight authority, if required.

All environmental monitoring duties conducted by the CEM shall be recorded in the form of a standard report and photographic log (as required). The photographic log shall be kept in both electronic and hardcopy form. All reports shall be submitted to the Town in summary form on a monthly basis or more frequently if required by the Town. Copies of all daily monitoring records shall be maintained at the Terminus Site by the CEM.

5.10.3 Contaminated Media Management Plan.

The Design-Builder shall develop, maintain and implement a Contaminated Media Management Plan that includes at a minimum the requirements specified in this Section 5.10.3 and Appendix 2. A copy of the Contaminated Media Management Plan shall be submitted to the Town and all appropriate Governmental Bodies for review and approval. The intent of the plan is to prevent accidental spills, site contamination, and injury or illness of all personnel on the site due to contact or exposure to Regulated Substances. The Town shall notify the Design-Builder of any observed conditions that may be in violation of the plan. If the Design-Builder fails to address Town-reported concerns about observed conditions that may be in violation of the plan in a timely and appropriate manner, the Town may notify all appropriate Governmental Bodies, and report the observed conditions to them, and request that they inspect the sites involved that are under the Design-Builder's control. All documents required by the Contaminated Media Management Plan shall be made available to the Town immediately upon request.

5.10.4 Design-Builder Regulated Substances.

Any Regulated Substances generated by the Design-Builder shall be the responsibility of the Design-Builder. The Design-Builder shall obtain an EPA identification number for all Design-Builder Regulated Substances, listing the Design-Builder's name and construction site address as the generator of the Design-Builder Regulated Substances. The Design-Builder shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of Design-Builder Regulated Substances. Any fines that are levied against the Town for violations of Applicable Law as determined by any Governmental Body relating to Design-Builder Regulated Substances shall be reimbursed immediately by the Design-Builder after payment by the Town.

5.10.5 Emergency/Spill Response Plan.

As part of the Design-Build Period Work, the Design-Builder shall develop an Emergency/Spill Response Plan (the “**Emergency Response Plan**”), for each Regulated Substance or class/group of Regulated Substances either known to be on the Project Sites or intended to be brought to the Project Sites by the Design-Builder. At a minimum, the Emergency Response Plan must include the following:

- (a) A description of on-site equipment available to contain and respond to an emergency/spill of the Regulated Substance.
- (b) Notification procedures, including notification to potentially impacted residents adjacent to the Project Sites.
- (c) Response coordination procedures between the Design-Builder and the Town.
- (d) A Regulated Substance site map showing the location of stored Regulated Substances and location spill containment/response equipment.
- (e) A description of the Regulated Substances handling and spill response training provided to the Design-Builder’s employees and Subcontractors.

5.10.6 Dust Control.

The Design-Builder shall be responsible for dust control during the performance of the Design-Build Work and shall comply with all applicable air pollution control regulations and the Environmental Mitigation Measures, if any exist. The Design-Builder shall furnish all necessary labor, materials and equipment for dust control.

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APPENDIX 6

DESIGN-BUILD QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS

APPENDIX 6**QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS****6.1. PURPOSE**

The purpose of this Appendix is to describe the minimum requirements for the Quality Management Plan (the “**QMP**”) for each of the Phase 1a Preliminary Services, the Phase 1b Preliminary Services and the Design-Build Period Work, including quality assurance (“**QA**”) and quality control (“**QC**”) procedures.

- (a) Quality assurance refers to the overall efforts to assuring project quality. Quality assurance shall include the planning and activities necessary to verify that the required QC activities have been satisfactorily conducted and that the quality requirements were met.
- (b) Quality control shall include the monitoring, inspection, sampling and testing as applicable, and evaluation of the Design-Build Work through the project to verify that quality requirements as specified in the Contract Documents are met. Quality control also includes the identification of any defective work and documentation of completed corrective measures.

6.2. TOWN’S QUALITY OBJECTIVES

The QMP is a critical component of the design and Construction of the Project. The QMP, including quality assurance and quality control (“**QA/QC**”), shall be consistent with and support the following quality objectives for the Project:

- (a) Confirm that permitting, design, construction and testing are consistent with the Contract Standards;
- (b) Confirm that Governmental and Non-Governmental Approval requirements are effectively incorporated into Design-Build Work;
- (c) Develop and implement procedures to provide that problems are discovered early, resolved in a timely manner, and do not recur;
- (d) Confirm that adequate QA/QC procedures and resources are provided by the Design-Builder to effectively assess and provide for high quality in all work products and services and compliance with warranty requirements, safety, security and environmental compliance requirements;
- (e) Provide timely reporting and documentation of QA/QC inspections, technical reviews, testing, analysis and determinations of compliance with the Contract Standards;
- (f) Provide follow up inspections, analysis and testing if conditions are found to be non-compliant with the Contract Standards and verify through special reports and direct communications with the Town that all corrective actions have been effectively implemented and that the resultant product or service is of acceptable quality.

6.3. ROLES AND RESPONSIBILITIES

6.3.1 Design-Builder's Role and Responsibilities for QA/QC.

The Project QA/QC functions as defined in this Appendix are the responsibility of the Design-Builder.

6.3.2 Town's Role and Responsibilities for QA/QC.

The Town ultimately retains its rights with respect to the Substantial Completion of the Project. The Town may perform design reviews, verification sampling and testing, independent assurance sampling and testing, review of the Design-Builder's construction management scheduling, and other actions to verify payment of progress payments under the terms of this Design-Build Contract. However, by doing these actions, the Town does not assume responsibility for any design or construction issue except as otherwise indicated in this Design-Build Contract.

6.4. QUALITY MANAGEMENT PLAN UPDATE AND IMPLEMENTATION

6.4.1 General Requirements.

The Project requires one QMP initially applicable to the Phase 1a Preliminary Services, as updated to be applicable to the Phase 1b Preliminary Services and as further updated to become applicable to the Design-Build Period Work. The development and implementation of the QMP shall be the responsibility of the Design-Builder. The QMP shall integrate, as applicable, the permitting, design and construction as parts of the Project and shall include detailed QA and QC programs as attachments. Other QMP requirements are defined in Sections 6.5 and 6.6 of this Appendix.

6.4.2 Quality Management Plan Requirements.

As part of Task 1.1 of the Phase 1a Preliminary Services and within twenty-one (21) calendar days of Notice to Proceed, the Design-Builder shall prepare and submit its draft of the QMP for review and concurrence by the Town. The final QMP shall be submitted within twenty-one (21) calendar days of receipt of comments from the Town. Throughout the Phase 1a Preliminary Services, the Design-Builder shall also implement the activities described by the QMP, cause the Project team to be familiar with their contents, and keep the QMP up to date.

As part of the Phase 1b Preliminary Services and within twenty-one (21) calendar days of Notice to Proceed, the Design-Builder shall prepare and submit its draft of an update to the QMP for the Phase 1b Preliminary Services for review and concurrence by the Town. The final updated QMP for the Phase 1b Preliminary Services shall be submitted within twenty-one (21) calendar days of receipt of comments from the Town. Throughout the Phase 1b Preliminary Services, the Design-Builder shall also implement the activities described by the updated QMP for the Phase 1b Preliminary Services, cause the Project team to be familiar with their contents, and keep the QMP up to date.

As part of the Design-Build Period Work and within twenty-one (21) calendar days of Notice to Proceed, the Design-Builder shall prepare and submit its draft of an update to the QMP for the Design-Build Period Work for review and concurrence by the Town. The final updated QMP for the Design-Build Period Work shall be submitted within twenty-one (21) calendar days of receipt of comments from the Town. Throughout the Design-Build Period Work, the Design-Builder shall also implement the activities described by the updated QMP for the Design-Build Period Work, cause the Project team to be familiar with their contents, and keep the QMP up to date.

The QMP shall include a description of how the Design-Builder will provide the following (as applicable to each of the Phase 1a Preliminary Services, the Phase 1b Preliminary Services and the Design-Build Period Work, as applicable):

- (a) Adequate resources for effective plan implementation throughout the applicable stage of the Project.
- (b) Information on QA/QC staff to be assigned to the Project and their qualifications for performing required QA/QC functions;
- (c) Programs, procedures, methods, tests, analyses and communications procedures, reports, photographs and comments on drawings and specifications and other documents used by the Design-Builder to assess quality and compliance with the Contract Standards;
- (d) How the QA/QC program shall be empowered to enforce plan objectives, define quality requirements, independently verify quality of Phase 1a Preliminary Services, Phase 1b Preliminary Services and Design-Build Period Work products and services, identify potential causes of unacceptable quality of work and provide safeguards to prevent unacceptable work quality, and require prompt corrective action for identified deficiencies;
- (e) Communication of quality requirements to their commencement of providing products or services on the Project. This shall include information on the roles, responsibilities and authorities of identified QA/QC staff;
- (f) The Design-Builder shall submit its draft of the Quality Management Plan, its draft of the update to the Quality Management Plan for the Phase 1b Preliminary Services and its draft of the update to Quality Management Plan for the Design-Build Period Work, the Town will provide comments thereon and the Design-Builder shall submit the final forms thereof as outlined above; and
- (g) If any Early Work Packages are initiated prior to the GMP Submittal, the update to the Quality Management Plan for the Design-Build Period Work submittal shall be issued prior to Construction. The Town will provide comments on the Quality Management Plans, and the Design-Builder shall make required changes within twenty-one (21) calendar days of receipt of such comments.

6.4.3 Changes to the Quality Management Plan.

Revisions and updates to the QMP may be proposed by the Design-Builder as Preliminary Services and the Design-Build Work progresses. Changes to the approved QMP require written approval of the Town. Proposed revisions or updates shall be provided to the Town at least 30 days prior to the start of the Design-Build Work to which the revision applies. The Town will review and respond in a timely manner to QMP proposed changes. The Design-Builder shall not initiate any of the Design-Build Work that is impacted by such proposed revision or change until the Town has reviewed and accepted the change.

6.5. DESIGN QUALITY CONTROL AND QUALITY ASSURANCE REQUIREMENTS

6.5.1 Design QA/QC Program.

The Design-Builder has primary responsibility for design quality to cause the design documents to be professionally reviewed and checked to provide for a quality project. The QMP shall include

the details of the Design-Builder's Design QA/QC program and include a description of how the Design-Builder will provide the following:

- (a) Design management functions and design review processes, which are the responsibility of the Design-Builder, will be described;
- (b) Typical design QC tasks to be accomplished by the Design-Builder will be described and may include technical review of design deliverables, checking of calculations, checking of quantities, and the review of specifications;
- (c) Describe the process to approve and release design packages for Construction in alignment with the Design QA/QC program;
- (d) Demonstrate that the Town retains oversight in the form of review and verification of the design's ability to meet the stated contract requirements. The Town and its designated consultants will participate in the design review process while not relieving the Design-Builder from its obligation to comply with the Contract Documents;
- (e) Describe the application of the Design QA/QC program through design review techniques to be used by the Design-Builder, such as over-the shoulder design reviews to supplement formal reviews, formal milestone reviews, and submittal reviews during the Design-Build Period.

6.5.2 Design Quality Assurance Manager.

The Design-Builder shall designate a Design Quality Assurance Manager to determine whether the Baseline Design Documents and other Contract Standards are being met and that design QA/QC activities are following the approved QMP. The Design Quality Assurance Manager shall compile and maintain documentation of the review.

6.6. CONSTRUCTION QUALITY CONTROL REQUIREMENTS

6.6.1 Construction QA/QC Program.

The QMP shall include the details of the Design-Builder's Construction QA/QC program, including the following:

- (a) The Construction QA/QC program shall require inspection during Construction by inspectors who are not responsible, in whole or in part, for the scheduling or Construction of the Design-Build Work being inspected.
- (b) Instructions for performing inspections must be clearly defined, including the work attributes to be inspected, acceptability criteria, frequency of inspections, and the requirements for documenting the inspection results.
- (c) Inspection records must be kept current, have sufficient detail to enable the Engineer-of-Record to identify inspections which have been performed, and the results of these inspections. Inspections must be made throughout the period of construction, including the initial construction, in-process inspections, final inspections, and testing during Construction.

- (d) Documentation requirements shall include contractor production reports, contractor quality control reports, field test reports, testing plan and log, inspection reports, rework items list and quality control meeting minutes.
- (e) Procedures and controls shall be provided to cause inspections to be performed using the latest Design Documents and approved shop drawings. Procedures shall require that an adequate number of inspection personnel are available as needed, and that all inspectors are qualified, trained, and proficient in performing inspections for the Design-Build Work to which they are assigned.
- (f) A full-time quality control inspector and necessary specialty inspectors are to be provided by the Design-Builder.

6.6.2 Non-Conforming Work.

The Construction QA/QC program shall establish and maintain a non-conformance system and procedures for uniform reporting, controlling, and disposition of nonconformance, including the following:

- (a) The non-conformance system shall describe methods to be implemented, including a daily non-conformance report (NCR), to identify and track all unsatisfactory, deviating, and nonconforming work until the required repair, rework, or replacement is performed, and the work has been re-inspected and accepted. In addition, the non-conformance system shall detail the methods and measures to be used to develop corrective action procedures and prevent the recurrence of non-conforming work.
- (b) The Construction QA/QC program shall detail the means and methods for identifying and correcting all Construction deficiencies such that Construction quality meets the Contract Standards and the Design-Builder's Design Documents.
- (c) The Construction Quality Assurance Manager shall be informed of all unsatisfactory conditions within 24 hours of identification, and a copy of the condition report sent to the design-engineer. The Design-Builder will correct any nonconforming conditions in accordance with Section 6.16 of this Design-Build Contract.
- (d) The Design-Builder is encouraged to make corrections for non-conforming work as soon as practical rather than waiting until Substantial Completion. The Town may use the NCR as a basis for conducting its own final acceptance activities.

6.6.3 Construction Quality Assurance Manager.

The Design-Builder shall designate a Construction Quality Assurance Manager to determine whether the Baseline Design Documents and other Contract Standards are being met and that Construction QA/QC activities are following the approved QMP.

6.6.4 Materials and Equipment.

The Construction QA/QC program shall set the minimum requirements for the quality of all material and equipment. Procedures shall be used to verify that the procurement documents meet all Contract Standards and the Design-Builder's Design Documents, and shall include the following

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- (a) Define how quality will be controlled during the manufacture and testing of all equipment which is being fabricated for the Project.
 - (b) Written documentation of inspection of all material and equipment to confirm that it meets all Contract Standards and the Design-Builder's Design Documents. Documentation such as material test reports, certifications, and equipment tests results must be delivered to the Town and the Town-designated representatives to demonstrate compliance with all Contract Standards and the Design-Builder's Design Documents.
 - (c) Monitoring procedures to confirm that material and equipment is delivered to the Project Sites are undamaged, in the proper quantities and in accordance with the specification requirements, and that all materials and equipment are stored and maintained on the Project Sites according to the Contract Standards, including the requirements of the designer and the manufacturer.

6.6.5 Construction Management and Testing.

The Design-Builder shall provide all necessary construction management and comprehensive construction administration for the Design-Build Period Work. Construction inspectors, who shall be provided with the latest Design Documents released to Construction, shall perform initial verification of procurement and Construction activities at the Project Sites, so that any conflicts will be identified at an early stage. The Construction QA/QC program shall clearly identify the circumstances under which the Design-Builder's registered soils or geotechnical engineer and the Engineer-of-Record will be involved in Construction quality oversight. The Design-Builder shall perform all testing and inspections as required by the Contract Standards, approved design documents, applicable codes, regulations, and standards (such as ACI and ASTM) which may be referenced in Appendix 4. Section 1.2(R) of this Design-Build Contract shall govern any conflicts or inconsistency in the stringency of test requirements.

6.6.6 Laboratories.

All Construction testing shall be performed by individuals who are qualified and experienced in providing these testing services. Equipment used to perform tests shall be calibrated according to requirements in the testing procedure. The Design-Builder shall hire a certified independent testing laboratory to perform all laboratory testing. The laboratory selected shall be authorized to operate in the State, certified under the State's Environmental Laboratory Accreditation Program, as applicable, and shall be subject to the approval of the Town. Design-Builder requests for laboratory approval shall be made by the Design-Builder in a timely manner, in writing, to the Town. Laboratory tests shall include the proposed concrete mix design, concrete aggregate tests, strength of concrete field test cylinders, gradation, and moisture density relationship of soils. The certified testing laboratories must also perform on-site tests that the Design-Builder is not experienced, qualified, or certified to perform or that require independent testing under the Contract Standards. On-site tests shall include tests for: concrete slump, concrete air entrainment, concrete temperature, casting of concrete test cylinder specimens, in-place testing of concrete strength, compaction density testing of soils, and bedding materials coating thickness measurements and structural bolting torque.

6.7. INSPECTION OF DESIGN-BUILD WORK

6.7.1 Inspection and Correction.

All Design-Build Work performed by the Design-Builder or its Subcontractors shall be inspected by the Design-Builder. All nonconforming Design-Build Work and any safety hazards in the

work area shall be noted and promptly corrected. The Design-Builder is responsible for the performance of the Design-Build Work safely and in conformance with Section 5.7 of Appendix 5.

6.7.2 Town Access.

The Town, its employees, agents, representatives and contractors shall be permitted access to all parts of the Design-Build Work, including plants where materials or equipment are manufactured or fabricated. The presence of the Town, its employees, agents, representatives and contractors shall not relieve the Design-Builder of the responsibility for the proper execution of the Design-Build Work in accordance with all requirements of the Contract Documents. No act or omission on the part of the Town, its employees, agents, representative and contractors (other than Town Fault) shall be construed as relieving the Design-Builder of this responsibility.

6.7.3 Materials Inspection.

All materials and articles furnished by the Design-Builder shall be subject to documented inspection, by qualified personnel, and no materials or articles shall be used in the Design-Build Work until they have been inspected and accepted by the Construction QA/QC Manager or other designated representative. Any Design-Build Work covered in the absence of inspection shall be subject to uncovering as set forth in Section 6.15 of this Design-Build Contract.

6.8. TIME OF INSPECTION AND TESTS

Whenever the Design-Builder is ready to backfill, bury, cast in concrete or otherwise cover any Design-Build Work, the Town shall be notified before such covering and completion, and the Town shall notify the Design-Builder of a requested inspection of any such Design-Build Work as set forth in Section 6.15(G) of this Design-Build Contract. Failure of the Design-Builder to properly notify the Town, as required by Section 6.15(G) of this Design-Build Contract, in advance of any such covering or completion shall be reasonable cause for the Town to request the Design-Builder take apart or uncover for inspection or testing any previously covered or completed Design-Build Work in accordance with Section 6.15(G) of this Design-Build Contract. The costs of any uncovering, taking apart, remedial or corrective work required and all costs of such delays, including the impact on other portions of the Design-Build Work, shall be borne as set forth in Section 6.15(G) of this Design-Build Contract.

6.9. MATERIALS SAMPLING AND TESTING

6.9.1 Materials Testing and Removal.

All sampling and testing of materials shall be conducted in accordance with the methods prescribed in the current standards of the ASTM or otherwise required by the Contract Standards, as applicable to the class and nature of the article or materials considered. The Town reserves the right to require the Design-Builder to use any generally accepted system of inspection that, in the opinion of the Town, will provide sufficient evidence to the Town that the quality of the materials workmanship is in full accord with the Contract Documents. Results of such tests and analyses shall be considered along with the tests or analyses made by the Design-Builder to determine compliance with the applicable specifications for the materials so tested or analyzed. Wherever any material, as a result of such independent testing or investigation by the Town, fails to meet the requirements of the Contract Documents, all costs of such independent inspection and investigation and all costs of removal, correction, reconstruction, or repair of any such material shall be borne by the Design-Builder in accordance with Sections 6.15(G) and 6.16 of this Design-Build Contract.

6.9.2 Materials Rejection.

The Town shall have the right at all times and places to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of the Contract Documents, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the Design-Build Work at the Project Sites. If the Town, through an oversight or otherwise, has accepted materials or work which are defective or in any way contrary to the Contract Documents, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected. The Design-Builder, at its cost and expense and without any adjustment to the Scheduled Substantial Completion Date and the Scheduled Acceptance Date, shall promptly remove and replace rejected articles or materials from the Project Sites after notification of rejection.

6.10. MATERIALS TESTING SERVICES**6.10.1 Design-Builder's Laboratories.**

The Design-Builder shall perform all tests requiring the services of a laboratory, to determine compliance with the Contract Documents, using independent commercial materials testing firms acceptable to the Town. The materials testing firm's laboratory shall be staffed with experienced technicians, properly equipped, and fully qualified to perform the tests in accordance with the specified standards. The Design-Builder shall obtain the Town's acceptance of the testing firm before having testing services performed, and pay all costs for these testing services.

6.10.2 Interruptions For Testing and Sampling.

The Design-Builder shall furnish all sample materials and cooperate in the testing activities, including sampling, and shall interrupt the Design-Build Work when necessary to allow testing, including sampling, to be performed. The Design-Builder shall have no claim for an increase in the Design-Build Price or extension of the Scheduled Substantial Completion Date due to such interruption. When testing activities, including sampling, are performed in the field by the testing firm's laboratory personnel, the Design-Builder shall furnish personnel and facilities to assist in the activities.

6.10.3 Test Reports.

Written reports of tests and engineering data regarding materials and equipment proposed to be used in the Design-Build Work shall be submitted by the Design-Builder for the Town's review. The testing firm's laboratory shall perform all laboratory tests within a reasonable time, consistent with the specified standards, and shall furnish a written report of each test. The Town shall furnish one copy of each field and laboratory QA/QC test conducted by the Town to the Design-Builder. The testing firm retained by the Design-Builder for material testing shall furnish a written report for each test. A copy of each test report shall be transmitted directly to the Town and Design-Builder electronically, within five days after each test is completed. The Design-Builder shall consecutively number each report for each type of test.

6.10.4 Town's Laboratories.

The Town shall have the right to inspect work performed by the Town-approved independent testing laboratory utilized by the Design-Builder, both at the Project Sites and at the laboratory. This may include inspection of the independent testing laboratory's internal quality assurance records (quality assurance manual, equipment calibrations, proficiency sample performance, etc.). Testing services provided by the Town, if any, are for the sole benefit of the Town; however,

test results shall be available to the Design-Builder. Testing necessary to satisfy the Design-Builder's internal QA/QC procedures shall be the sole responsibility of the Design-Builder.

6.10.5 Materials to be Tested.

The Design-Builder shall provide all testing services in connection with the following materials as required under Good Design-Build Practice, and deliver the test reports for review by the Town:

- (1) Concrete materials and mix designs.
- (2) Asphalt concrete materials and design mixtures.
- (3) Embankment, fill, and backfill materials.
- (4) QC testing of all precast concrete.
- (5) Holiday testing of pipeline coatings.
- (6) Air testing of field-welded joints for steel pipe and fabricated specials.
- (7) Hydrostatic testing of pipeline and structures.
- (8) Concrete strength tests.
- (9) Magnetic particle or dye penetrant testing of field welds for steel pipe and fabricated specials.
- (10) Moisture-density and relative-density tests on embankment, fill, and backfill materials, pipe bedding, and road bedding.
- (11) In-place field density test on embankments, fills, backfill, pipe bedding and road bedding.
- (12) Other materials and equipment as specified herein.
- (13) All other tests and engineering data required for the Town's review of materials and equipment proposed to be used in the Design-Build Work.

6.11. INSTALLATION

6.11.1 Inspection and Measurement.

The Design-Builder shall inspect materials or equipment upon the arrival at the jobsite and immediately prior to installation, and remove damaged and defective items from the jobsite. The Town shall be provided the opportunity to observe any such Design-Builder inspections in accordance with Section 6.15 of this Design-Build Contract. The Design-Builder shall verify measurements and dimensions of the work as an integral step of starting each installation.

6.11.2 Manufacturer's Instructions.

Where installations include manufactured products, the Design-Builder shall comply with manufacturer's applicable instructions and recommendations for installation, to whatever extent

these are more explicit or more stringent than the Contract Standards, so as not to violate manufacturers' warranty conditions.

6.12. PERSONNEL QUALIFICATIONS

The QMP shall include a QA/QC organization chart with named individuals performing QA/QC including their experience and qualifications. The QMP shall describe staffing levels required for QA/QC and qualifications and experiences requirements for persons performing QA/QC functions, including the following:

- (a) Description of minimum qualifications and experiences that demonstrate quality management personnel have related experience and certifications. Typically, this indicates professional engineers and professional certified quality personnel who have a certain level of similar project experience, which may include:
 - (i) QA/QC Management/Supervisors should possess experience managing professional personnel in similar circumstances or on similar projects; demonstrate excellent communication skills; possess a working knowledge of QA/QC and quality management; possess certification as quality professionals by appropriate certifying bodies or have completed training courses in the quality discipline.
 - (ii) The Design Quality Assurance Manager must be a registered professional engineer in the State; may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years' experience in projects similar in scale or scope to the Project.
 - (iii) The Construction Quality Assurance Manager may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years of recent experience (within the past ten years) overseeing the inspection and materials testing of projects similar in scale or scope to the Project.
 - (iv) QA and QC reviewers, inspectors, and testing technicians for design and Construction must be qualified for the duties they must perform; must possess the appropriate education or experience commensurate with the job responsibilities; and must possess the necessary certifications required for assignments.
- (b) Persons performing QC and/or QA functions shall be at an organizational level that reports directly to upper level management of the Design-Builder to assure independence from the influences of the Project production staff.
- (c) All key personnel performing QC and/or QA functions shall be identified.

APPENDIX 7

DESIGN-BUILD WORK REVIEW PROCEDURES

APPENDIX 7**DESIGN-BUILD WORK REVIEW PROCEDURES****7.1. OVERVIEW****7.1.1 Purpose.**

The purpose of this Appendix is to set forth the procedures for the Town's review of each aspect of the Design-Build Work to verify that the Project has been designed and constructed in accordance with the Contract Documents.

7.2. DOCUMENTS TO BE SUBMITTED

At a minimum, the documents to be submitted during the Design-Build Period shall include the following:

- (a) Monthly Design-Build Period Work Schedule updates
- (b) Intermediate submittals for review sessions and workshops on various materials, facilities, systems, equipment, and disciplines
- (c) Final Design Documents (issued for Construction)
- (d) Test reports
- (e) Operations and Maintenance Manual, if applicable
- (f) Applications and supporting documents required for any remaining Governmental Approvals
- (g) Record drawings and specifications

7.2.2 Design-Construction Work Package Information.

Consistent with its Town-approved Design and Construction Phasing Plan, the Design-Builder shall have flexibility with how it organizes and performs design-Construction work packages so that it can proceed with ordering any necessary materials and equipment or commence with any Early Works Package(s) prior to the Final Design; provided, however, such Construction or ordering of materials and equipment prior to the Final Design shall not negatively affect the remaining Design-Build Period Work, the Design-Build Price or the Design-Build Period Work Schedule. The Design-Builder shall provide the following information in the appropriate design-construction work package(s):

- (a) Specifications, Design Narratives and Lists:
 - (1) Project design criteria
 - (2) Specifications list
 - (3) Piping list
 - (4) Valve list, if applicable

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- (5) Cathodic protection narrative, if applicable
 - (6) Construction sequencing and Dewatering Narrative
 - (7) Contaminated Media Management Plan
 - (8) Specifications (general requirements, civil, structural, specialties and mechanical sections)
- (b) Drawings prepared and accepted for the GMP Submittal Design Level shall continue to be progressed to Final Design completion and shall be submitted, in both electronic and standard design formats:
- (1) Cover sheet
 - (2) Drawing index
 - (3) List of abbreviations
 - (4) Legends
 - (5) Layouts of the Project Sites and Piping
 - (6) Construction Staging and Phasing Plans
 - (7) Access and Traffic Control Plans
 - (8) Landscape plans, surface restoration and irrigation plans and details
 - (9) TESC plans and details
 - (10) Project Sites grading and utility plans, with sections as needed for Construction clarity or dimensioning
 - (11) Surface drainage plans and details
 - (12) Outfall structure and other structural foundation plans and sections
 - (13) Outfall structure and other structural plans
 - (14) Outfall structure and other structural exterior elevations and sections, if applicable
 - (15) Sections through all major crossings and structures
 - (16) Other systems plans, details and schedules, if applicable
 - (17) Pipeline plan and profile sheets
 - (18) Pipeline sections and details
 - (19) Tunnel and access pit plans, sections and details
 - (20) Dewatering plans and details

7.3. TOWN REVIEW DURING GOVERNMENTAL AND NON-GOVERNMENTAL APPROVAL PROCESS

The Design-Builder's responsibilities for obtaining and maintaining the Governmental and Non-Governmental Approvals required for Construction of the Project are described in Section 6.5 of this Design-Build Contract and Appendix 3. The Town shall have the right to review and comment on Design-Builder submittals as provided by Section 6.5 of this Design-Build Contract and this Appendix. Governmental Approval applications shall not include design specifications or drawings that the Town has not previously reviewed. For all Governmental Approval applications, the Design-Builder shall provide draft copies of the applications and supporting documents for Town review and comment. The Town's review will not diminish the Design-Builder's responsibility for timely submittals of complete applications for Governmental Approvals. The Town may attend Design-Builder meetings with permitting agencies and help arrange for agency reviews and meetings.

7.4. TOWN DOCUMENT REVIEW**7.4.1 Town Review Responsibilities.**

The Town shall review design-construction work package documents included in the Design-Builder's Final Design Documents for compliance and consistency with the design at the GMP Amendment and for overall compliance with the requirements of the Contract Documents. The Town's input during finalization of the design documents and preparation and finalization of design-construction work packages shall be solicited by the Design-Builder on a timely basis so as to provide adequate periods for review by the Town, revisions by the Design-Builder and final review by the Town without negatively impacting the Design-Build Period Work Schedule. The Town shall make reasonable efforts to bring staff or representatives with review and decision-making authority to the work sessions as requested and scheduled by the Design-Builder. The Design-Builder shall provide the Town with advance notice of the work sessions and agenda topics to facilitate the Town's scheduling of the appropriate participants for the work sessions. The Design-Builder shall provide the Town with Final Design Documents before commencing any Construction activity, except as provided in Section 7.2.2 of this Appendix. Construction activities shall not vary from the Final Design Documents submitted to the Town except where such variations are allowed, subject to the Town's and applicable Governmental Body's review and approval. Adherence to the Final Design Documents as well as to the Baseline Design Documents during work completion shall be a factor used by the Town in its review and approval of the Design-Builder's Payment Requests during Construction.

7.4.2 Changes to Baseline Design Documents.

Any change requested by the Design-Builder to the Baseline Design Documents (regardless of prior oral discussion) must be clearly identified by the Design-Builder in its cover letter that transmits the submittal and must be fully documented with compelling justification of the Design-Builder's request for a change to the Baseline Design Documents and the benefits to the Town for consenting to such a change. Any such change shall comply with the requirements set forth in Article 6 of this Design-Build Contract, as applicable. No change to the Baseline Design Documents shall be made except with the Town's approval pursuant to Section 6.7 of this Design-Build Contract. The Design-Builder shall assume all risks associated with obtaining Town approval of any change to the Baseline Design Documents.

7.4.3 Time for Town Review.

Town review time for Preliminary Services Period submittals is planned to be no longer than two weeks, unless otherwise agreed to by the Town and the Design-Builder. Town review time for Design-Build Period submittals will be established by the GMP amendment.

The Design-Builder and the Town shall periodically review key submittals and the target submittal dates, and develop a submittal review schedule for each submittal based on the content and criticality of each submittal. The Town shall complete its review of each submittal in a timely manner based on such target submittal dates in order to determine that the Design-Build Work conforms to the Baseline Design Documents and other Contract Standards. Nothing in this Section 7.4 shall prevent the Town from conducting a subsequent review raising a question as to whether the submittal was in compliance with the Contract Standards.

The review and comment rights of the Town under this Appendix are intended for the informational purposes of the Town and for the Town to determine whether the Design Documents comply with the Baseline Design Documents and other Contract Standards. The Town's approval of any Design-Document shall not be required in order for the Design-Builder to proceed with the performance of the Design-Build Work.

7.4.4 Time for Design-Builder Response.

For each submittal, the Town shall provide written comments in a tabular summation describing any concerns, problems, or assertions of non-compliance with the applicable Contract Standards. The tabular summation shall be on a form created mutually by the Design-Builder and the Town, with provisions on the form for the Design-Builder's responses. The Design-Builder shall provide a written response to the Town's comments within 15 days of receipt of the Town's comments, primarily through use of the tabular summary form, including documentation of responses and agreed-upon action items.

7.4.5 Design-Build Progress Meetings.

For the purpose of facilitating a timely review process, the Design-Builder shall schedule design-build progress meetings with the Town on a routine basis and at least bi-weekly (unless both parties agree that more frequent meetings are required) throughout the design finalization and design-construction work package development period. Any outstanding review comments not satisfactorily resolved shall be transferred to an issues tracking form by the Design-Builder for subsequent follow-up. The primary purpose of these meetings shall be to discuss overall Design-Builder work progress, the conformance of the design and design-construction work packages to the Baseline Design Documents, and to address outstanding issues arising from the review and response process. The status and issues of related permitting and early Construction activities may also be included as agenda items for each design-build progress meeting. These meetings shall be held in the Town's offices, or another location agreed to by the Town. Design-Builder representatives with responsibility for design and Construction shall participate in the meeting. Similarly, the Town shall be appropriately represented by individuals with knowledge and authority for decision making at the meeting.

7.4.6 Design Submittals During Construction.

It is anticipated that there could be some redesign or design clarifications needed during Construction. Additional design work by the Design-Builder shall be subject to the Town's review for compliance and consistency with applicable Baseline Design Documents and Contract Standards. Design changes to a particular Design Document performed following the issuance of the Design Document for Construction shall be issued under a Design Change Notice (DCN)

process that accurately tracks and documents changes to the design. No later than 30 days prior to initiation of Construction, the Design-Builder shall submit to the Town any DCNs. The Town shall be provided with copies of all DCNs in a timely manner to allow review, comment, and, where appropriate, approval in the same manner as set forth with respect to the initial design. Design clarifications shall be issued in a timely manner using a similar procedure. If a DCN requires a material change from what was reflected in the applications for Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

7.4.7 Design Change Authority.

The Design-Builder shall be responsible for providing design changes to the Design Documents necessary to complete the Project in accordance with the Contract Documents. All such changes shall be implemented in accordance with the DCN process described above, and in accordance with this Appendix. No DCN shall operate to change the Baseline Design Documents unless approved by the Town in writing. Any DCN which requests a change to the Baseline Design Documents shall be subject to the Town's rights under Section 7.4.2 of this Appendix.

7.5. TOWN CONSTRUCTION INSPECTION

7.5.1 Construction Review Intent.

The Town and its designated representatives, including the Owner Representative, shall have the right, as provided in this Appendix, to review and inspect Construction activities and participate in Construction progress meetings as needed to verify compliance with the Contract Standards. In addition, the Town shall have the right to monitor the progress of Construction work and verify all applications for payment covering all Construction work performed during the preceding calendar month in accordance with the procedures set forth in Article 9 and Appendix 8 of this Design-Build Contract. Notwithstanding the Town's review of Construction activities, the Design-Builder shall be fully responsible for means, methods, techniques, sequences, and procedures of Construction, as well as safety precautions and programs in the performance of the Design-Build Work. The Town's review and involvement in Construction activities is intended for the informational purposes of the Town and to monitor compliance with the Contract Documents. Such activities shall also be a part of the Town's independent quality assurance process and shall not be viewed as an additional layer or integral part of the Quality Management Plan.

7.5.2 "Or Equals".

Whenever an item of material or equipment is specified in the Baseline Design Documents by using the name of a proprietary item or the name of a particular supplier, and is followed by the words "or equal", material or equipment of other suppliers may be considered. The Town shall determine, acting reasonably, the acceptability of proposed "or equal" items associated with the Design-Build Work. The Design-Builder shall reserve adequate time for the Town to review and approve all "or equal" items for the Design-Build Work. Any delays resulting from submittal of "or equal" items shall be the responsibility of the Design-Builder. The Design-Builder's design personnel shall be permitted to review proposed "or equal" suppliers for the balance of the Design-Build Work.

7.5.3 Named Suppliers.

Whenever an item of material or equipment is specified in the Baseline Design Documents by using the name of a proprietary item or the name of a particular supplier, and is not followed by the words "or equal", the Design-Builder shall provide the named material or equipment.

7.5.4 Functionally Equal.

If, in the Town's reasonable discretion, an item of material or equipment proposed by the Design-Builder for the Design-Build Work is functionally equal to that named, it may be considered by the Town as an "or equal" item. A proposed item of material or equipment shall be considered functionally equal to an item so named if:

- (a) The Town determines that:
 - (1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
 - (2) it shall reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; and
- (b) the Design-Builder certifies that it shall conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

7.5.5 Corrections and Changes.

The procedures to be followed for correction of non-conforming Design-Build Work and for instituting changes and additions to such work are set forth in Article 6 of this Design-Build Contract.

7.6. FINAL SURVEY AND RECORD DRAWINGS

At the completion of Construction, the Design-Builder shall (i) conduct a final survey of the alignment including all structures and (ii) prepare and submit to the Town two complete sets of record drawings for the Project as built. The record drawings shall be prepared in accordance with the Contract Standards. The Design-Builder shall obtain the Town's approval of the record drawings as a condition of Final Completion. The Town's approval of the record drawings shall not be unreasonably withheld.

APPENDIX 8
DESIGN-BUILD PRICE

APPENDIX 8**DESIGN-BUILD PRICE****8.1. PURPOSE**

The purpose of this Appendix is to set forth the procedures and requirements for determining (1) the Design-Build Price, and (2) the Guaranteed Maximum Price.

8.2. DESIGN-BUILD PRICE**8.2.1 Payment.**

The Town shall pay the Design-Builder the Design-Build Price for its performance of the Design-Build Period Work, subject to the Guaranteed Maximum Price established in accordance with Section 8.7 of this Appendix.

8.2.2 Design-Build Price Defined.

The Design-Build Price shall be an amount equal to the sum of:

- (a) The Design-Build Period Costs;
- (b) The General Conditions Fee; and
- (c) The Design-Builder Fee,

all subject to the following:

- (a) The Design-Build Price shall not include Unallowable Costs, all of which shall be borne by the Design-Builder without payment or reimbursement by the Town;
- (d) The only compensation payable for General Conditions Costs is the General Conditions Fee; and
- (e) The Design-Build Price shall not exceed the Guaranteed Maximum Price.

8.2.3 Related Definitions.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

- (a) **“Design-Build Period Costs”** has the meaning specified in Section 8.3 of this Appendix.
- (b) **“Design-Build Price”** has the meaning specified in Section 8.2.2 of this Appendix.
- (c) **“Design-Builder Contingency”** has the meaning specified in Attachment 8D of this Appendix.
- (d) **“Design-Builder Fee”** has the meaning specified in Section 8.6 of this Appendix.
- (e) **“General Conditions Costs”** has the meaning specified in Attachment 8A of this Appendix.

- (f) **“General Conditions Fee”** has the meaning specified in Section 8.5 of this Appendix.
- (g) **“Guaranteed Maximum Price”** has the meaning specified in Section 8.7 of this Appendix.
- (h) **“Specified Project Risk Contingency”** has the meaning specified in Section 8.10.1 of this Appendix.
- (i) **“Specified Project Risks”** has the meaning specified in Section 8.10.1 of this Appendix.
- (j) **“Town Allowance”** has the meaning specified in Section 8.8.1 of this Appendix.
- (k) **“Unallowable Costs”** has the meaning specified in Section 8.4 of this Appendix.
- (l) **“Uncontrollable Circumstance Costs”** means, subject to Article 14, Section 17.8, and all other terms and conditions of this Design-Build Contract, any Design-Build Period Costs paid by the Design-Builder to the extent that such Design-Build Period Cost has been paid due to the occurrence of an Uncontrollable Circumstance.

8.2.4 Certification and Cost Substantiation.

Each Payment Request shall:

- (a) Comply with and be submitted in accordance with the procedures and requirements of Article 9 of this Design-Build Contract.
- (b) Provide Cost Substantiation for the Design-Build Period Cost for which reimbursement is sought, including copies of all documentation reasonably necessary to demonstrate that the reimbursable Design-Build Period Cost has been paid or incurred.
- (c) Be presented by element of the Design-Build Price.
- (d) If Uncontrollable Circumstance Costs are being invoiced, present such Uncontrollable Circumstance Costs separately from other Design-Build Period Costs.
- (e) If costs resulting from Subcontractor or Supplier delay or non-performance are being invoiced, present such costs separately from other Design-Build Period Costs.
- (f) For Design-Build Period Costs payable on a lump sum basis, provide copies of all documentation reasonably necessary to demonstrate the value of the Design-Build Period Work in place.

All such documentation shall be in a format and a level of detail reasonably acceptable to the Town.

8.2.5 Relation to General Conditions Costs

Section 8.5 of this Appendix obligates the Town to pay a General Conditions Fee to the Design-Builder. The General Conditions Fee is based upon a percentage of the Design-Build Period Costs incurred, is intended to compensate the Design-Builder for Design-Build Period Work General Conditions Costs, and is the only amount payable for General Conditions Cost whether the Design-Builder's actual Design-Build Period Work General Conditions Costs are higher or lower than the amount of the General Conditions Fee. Accordingly, Design-Build Period Costs shall not include any costs constituting Design-Build Period Work General Conditions Costs unless otherwise expressly agreed to in writing by the parties.

8.2.6 Discounts, Rebates and Refunds.

All cash discounts, trade discounts, rebates, refunds and returns from the sale of surplus materials and equipment shall be reported and accrue to the benefit of the Town and serve to offset the Design-Build Period Costs.

8.3. DESIGN-BUILD PERIOD COSTS

"Design-Build Period Costs" means the reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Period Work (including costs resulting from the occurrence of the risks assumed by the Design-Builder under this Design-Build Contract) that (1) are described in and meet the requirements of this Section 8.3 (including all subsections) of this Appendix, and (2) are not Unallowable Costs.

As used in this Section 8.3, "reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Period Work" includes (1) costs of Design-Build Period Work necessitated by ordinary mistakes or inadvertence; (2) costs incurred in repairing or correcting defective, damaged or non-conforming Design-Build Period Work; (3) additional costs incurred due to Subcontractor delay or non-performance; (4) costs incurred in performing needed corrective action; and (5) Uncontrollable Circumstances Costs, in all cases except to the extent any such costs constitute Unallowable Costs. Such reasonable and necessary costs are further described in subsections 8.3.1 – 8.3.6. [Note: Include unit costs for contaminated soil disposal and contaminated groundwater treatment for Uncontrollable Circumstances in new Attachment 8E in the GMP Amendment, if applicable.]

8.3.1 Third-Party Professional Services Fees.

- (a) Professional fees and expenses payable by the Design-Builder to design engineers for design engineering services under third party design Subcontracts. Such fees for third-party design engineering services during the Design-Build Period or in connection with an Early Work Package shall be calculated based upon the rates set forth in Attachment 8B to this Appendix.
- (b) Fees and expenses payable by the Design-Builder for professional services under third-party professional services Subcontracts for other professional services, including accounting, planning, surveying, consulting and other professional services.

8.3.2 Construction Subcontractor and Materials Supplier Costs.

An amount equal to the amounts properly payable by the Design-Builder to Subcontractors for Construction Work performed under Construction Subcontracts, and Subcontracts for equipment and materials entered into in accordance with the procedures and requirements set

forth in Section 7.4 of this Design-Build Contract. No Subcontract shall provide for payment of Unallowable Costs.

8.3.3 Design-Builder's Own Direct Labor Costs.

Except to the extent that any of the following costs are supervisory and administrative personnel costs (excluding those personnel costs specifically approved by the Town as Design-Build Period Costs), and, as such, constitute General Conditions Costs payable as part of the General Conditions Fee:

- Wages or salaries, employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions paid by the Design-Builder, excluding bonuses, of direct employees of the Design-Builder (a) directly performing Design-Build Period Work (including Construction Work and design services) at the Project Sites or, with the written consent of the Town, at locations off of the Project Sites, or (b) providing services for the prosecution of the Design-Build Period Work as mechanics or fabricators in connection with materials, equipment, systems, and supplies incorporated, to be incorporated or reasonably used in completing the Design-Build Period Work. The costs for such employees of the Design-Builder performing Design-Build Period Work during the Design-Build Period or in connection with an Early Work Package shall be calculated based on the "all in" rates set forth in Attachment 8C to this Appendix or, if such rates are not set forth in Attachment 8C, based on the prevailing market rates for labor performing similar services.

8.3.4 Costs of Materials, Equipment and Supplies.

Except to the extent any of the following constitute General Conditions Costs or costs paid or incurred under Subcontracts with Suppliers for equipment and materials:

- (a) Costs, including transportation, inspection, testing, storage and handling, of materials, equipment, systems, and supplies incorporated, to be incorporated or reasonably used in completing the Design-Build Period Work.
- (b) Costs of materials, equipment and supplies, described in item (c) of this Section 8.3.4, in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, equipment and supplies, if any, shall become the Town's property at the completion of the Design-Build Period Work or, at the Town's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Town as a deduction from the Design-Build Price.
- (c) Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, that are provided by the Design-Builder at the Project Sites and fully consumed in the performance of the Design-Build Period Work; and costs (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall be fair market value.

- (d) Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the Project Sites, whether rented from the Design-Builder or others, and incurred in the performance of the Design-Build Period Work. Rates and quantities of equipment rented shall be subject to the Town's prior written approval.
- (e) Costs of materials and equipment suitably stored off the Project Sites at a mutually acceptable location, if approved in advance in writing by the Town.
- (f) Any sales commissions related to the foregoing.

8.3.5 Other Costs.

Except to the extent any of the following constitute General Conditions Costs:

- (a) Costs of conducting tests.
- (b) Premiums for any Subcontractor Default Insurance.
- (c) Increases in insurance premiums resulting from the Town request to modify lines of insurance coverage pursuant to Appendix 10.
- (d) Costs of handling, removal and disposal of Hazardous Material and remediating Regulated Site Conditions (except as provided in Section 6.4(A) of this Design-Build Contract).
- (e) Fuel and utility costs paid or incurred in the performance of the Design-Build Period Work.
- (f) Sales, use or similar taxes, tariffs or duties imposed by a Governmental Body and incurred by the Design-Builder in the performance of the Design-Build Period Work for which the Design-Builder is not able to obtain an exemption under Applicable Law.
- (g) Costs for obtaining and maintaining Governmental Approvals and Non-Governmental Approvals as set forth in Appendix 3.
- (h) Fees of laboratories for tests required by this Design-Build Contract.
- (i) Royalties and license fees paid for the use of a particular design, process or product required by this Design-Build Contract.
- (j) Costs of travel, accommodations and meals for the Design-Builder's personnel.
- (k) Premiums for Builder's Risk and other Project specific insurance policies.

8.3.6 Compensation for On-Going Design Costs During the Negotiation of the GMP Amendment.

Section 5.10(B) of this Design-Build Contract anticipates that, following the GMP Submittal, the parties will negotiate the GMP Amendment. The Design-Build Period Work Schedule anticipates a negotiating period of approximately four weeks. The Design-Builder may, but is not obligated

to, continue the development of the Project design during the negotiating period in order to preserve the continuity of the design effort by the design engineers. Any costs and expenses by the Design-Builder during the negotiating period in furtherance of the Project, including the cost and expense of the design team, shall be incurred at the sole risk of the Design-Builder and shall not be subject to payment or reimbursement by the Town unless the Town specifically agrees to the payment of such costs and expenses in connection with the negotiation and execution of a GMP Amendment, in which case such costs and expenses shall constitute Design-Build Period Costs hereunder. Any such costs shall be payable in the same manner as Design-Build Period Costs are payable following the GMP Amendment Date or in any other manner agreed to by the parties in executing the GMP Amendment.

8.4. UNALLOWABLE COSTS

8.4.1 No Payment Obligation.

Notwithstanding any other provision of the Contract Documents, the Town shall have no obligation to pay the Design-Builder any Unallowable Costs.

8.4.2 Unallowable Costs Defined.

“Unallowable Costs” means:

- (a) Premiums for Required Insurance other than Builder’s Risk and other Project specific insurance policies.
- (b) In the event of damage to or destruction of any portion of the Project that is caused by Design-Builder Fault, cost of repair or reconstruction not covered by the Required Insurance policies on account of deductibles or exceedances under the policy’s stated coverage limitations.
- (c) Costs for wages, salaries and professional services fees, to the extent they exceed wage and salary rates or fees customarily paid for similar services by comparably qualified workers and professionals in the Town or in excess of the rates set forth in the Attachments to this Appendix, except for such excess costs for wages, salaries and professional services fees that are expressly approved by the Town following written request from the Design-Builder for approval of such specific wages, salaries and professional services fees, including a specific explanation of the reasons therefor.
- (d) Any costs incurred in handling disputes or litigation with Subcontractors or any other third party.
- (e) Salaries and other compensation for the Design-Builder’s personnel stationed at the Design-Builder’s principal office or branch offices other than the Project Sites, except as provided in Section 8.3.3 of this Appendix.
- (f) Expenses of the Design-Builder’s principal office or branch offices other than the Project Sites, except as provided in Section 8.3.3 of this Appendix.
- (g) Overhead, office and general expenses at any location, except as provided for in Section 8.3.3 of this Appendix.
- (h) [The cost of the capital (including interest on capital) used in the performance of the Design-Build Period Work or otherwise.] [Note: To be revisited once payment

terms for Design-Build Work is finalized based upon input from Grant funding agency.]

- (i) Rental costs of machinery and equipment, except as specifically provided in Section 8.3.4(d) of this Appendix.
- (j) Costs incurred as a result of the negligence or willful misconduct of the Design-Builder, any Affiliate, any Subcontractor or any other party performing any aspect of the Design-Build Period Work.
- (k) Fines, penalties, sanctions or impositions assessed or imposed by any Governmental Body as a result of Design-Builder Fault, including violations of or non-compliance with any Governmental Approval.
- (l) Any cost relating to the Design-Builder's indemnification obligations hereunder.
- (m) Travel and subsistence expenses, except as specifically allowed pursuant to provided in Section 8.3.3(j).
- (n) Legal costs incurred for any reason.
- (o) The fees of independent experts hired to assist in connection with dispute resolution.
- (p) Amounts required to be paid the Design-Builder or any Subcontractor for federal or State income, franchise or other business Taxes, other than state sales Taxes or tariffs on materials and equipment incorporated in the Project.
- (q) Any costs that would cause the Guaranteed Maximum Price to be exceeded.

8.5. GENERAL CONDITIONS FEE

The "**General Conditions Fee**" is an amount equal to [_____] % of the Design-Build Period Costs (other than sales taxes or tariffs). [Note: General Conditions Fee to be agreed to on the GMP Amendment Date.] The General Conditions Fee is an amount attributable to Design-Build Period Work General Conditions Costs, as described in Attachment 8A, all of which shall be paid by the Design-Builder without reimbursement hereunder and irrespective of the sufficiency of the General Conditions Fee. The General Conditions Fee includes consideration for all costs and expenses paid or incurred by the Design-Builder, as well as all profit, risk, mark-up and general and indirect overhead, in connection with the Design-Build Period Work General Conditions Costs. The General Conditions Fee shall be adjusted in the event the Scheduled Substantial Completion Date is extended as provided in Article 14 of this Design-Build Contract.

8.6. DESIGN-BUILDER FEE

The "**Design-Builder Fee**" is an amount equal to 12% of the Design-Build Period Costs (other than sales taxes or tariffs). The Design-Builder Fee is an amount attributable to profit, risk, mark-up and general and indirect overhead with respect to the Design-Build Work, and includes an amount attributable to the cost of Required Insurance other than Builder's Risk and other Project specific insurance policies.

8.7. GUARANTEED MAXIMUM PRICE

8.7.1 Guaranteed Maximum Price Generally.

The Town shall pay the Design-Builder the Design-Build Price for the Design-Build Period Work, subject to the Guaranteed Maximum Price calculated in accordance with this Section 8.7. The **“Guaranteed Maximum Price”** shall be the sum of (1) the Base Guaranteed Maximum Price, and (2) the Base Guaranteed Maximum Price Adjustments. The Guaranteed Maximum Price represents the absolute limit of the total of all amounts payable to the Design-Builder by the Town for the performance of the Design-Build Period Work. In the event additional amounts are required to be expended over and above the Guaranteed Maximum Price to perform the Design-Build Period Work and achieve Substantial Completion and Final Completion, liability for and payment of such additional amounts shall be the sole responsibility of the Design-Builder. The Town shall not be liable for any such amounts, and the Design-Builder shall not pursue any claim for any such additional amounts against the Town. Notwithstanding any reference in this Design-Build Contract to the terms “mark-up” or “profit”, the Design-Builder acknowledges that (1) the Town is not guaranteeing the Design-Builder any profit, a particular level of profit, or the avoidance of any loss in the overall performance of the Design-Build Period Work, and (2) the obligation of the Design-Builder to complete the Design-Build Period Work may result in a loss or in a mark-up and profit that is less than the mark-up and profit amounts anticipated by the Design-Builder in proposing its Design-Builder Fee, in making its GMP Submittal, and in entering into this Design-Build Contract.

8.7.2 Base Guaranteed Maximum Price.

The **“Base Guaranteed Maximum Price”** shall be specified in the GMP Amendment. Except as provided in Section 8.7.3 of this Appendix, the Base Guaranteed Maximum Price shall not be increased for any reason. [Note: The Base Guaranteed Maximum Price shall be the Guaranteed Maximum Price as of the GMP Amendment Date minus the Town Allowance.]

8.7.3 Base Guaranteed Maximum Price Adjustments.

The adjustments to the Base Guaranteed Maximum Price provided for in this Section 8.7.3 constitute the **“Base Guaranteed Maximum Price Adjustments”**, and each adjustment shall be reflected in a Contract Administration Memorandum. The Base Guaranteed Maximum Price shall be adjusted (increased or decreased) only to reflect adjustments required on account of:

- (a) Uncontrollable Circumstances generally, as provided in Article 14 of this Design-Build Contract);
- (b) Baseline Design Requirements Changes made under Section 6.8 of this Design-Build Contract; or
- (c) Work Change Directives made under Section 6.10 of this Design-Build Contract.

8.7.4 Value of Base Guaranteed Maximum Price Adjustments

The value of a Base Guaranteed Maximum Price Adjustment shall be determined as follows:

- (a) Where the Design-Build Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved; or
- (b) To the extent unit prices are not applicable, by a mutually agreed amount.

Base Guaranteed Maximum Price Adjustment may provide for markup by a Subcontractor on work performed by a direct lower tier Subcontractor where Design-Build Period Work is performed through Subcontracts. Any such Subcontractor markup shall not exceed 5%.

8.8. TOWN ALLOWANCE

The Town Allowance in the amount of \$[_____] may be used by the Town to address the occurrence of compensable Uncontrollable Circumstances. The Design-Builder has no right to the Town Allowance unless expressly approved by the Town. Any amount not expended against the Town Allowance shall be solely for the account of the Town and the Design-Builder shall not be entitled to share in any unexpended balance thereof. The Base Guaranteed Maximum Price does not include the Town Allowance. The [Town shall keep]/[Design-Builder shall keep and provide the Town with] an ongoing record of the original amount of the Town Allowance, all uses thereof under this Appendix, and the remaining balance of the Town Allowance.

[Note: To be negotiated as part of the GMP Amendment.]

8.9. DESIGN-BUILDER CONTINGENCY

The Design-Builder Contingency in the amount of \$[_____] may be used by the Design-Builder for payment of Design-Build Costs only as provided in Attachment 8D to this Appendix. The Base Guaranteed Maximum Price includes the Design-Build Contingency as set forth in the Anticipated Design-Build Period Work Cost Schedule.

[Note: To be negotiated as part of the GMP Amendment.]

8.10. SPECIFIED PROJECT RISK CONTINGENCY

8.10.1 Specified Project Risk Contingency Amount

The Specified Project Risk Contingency in the amount of \$[_____] may be used by the Design-Builder to address the occurrence of certain of the risks assumed by the Design-Builder under this Design-Build Contract as specified below (each, a "Specified Project Risk"): [_____].

Any amount not expended against the Specified Project Risk Contingency shall be solely for the account of the Town and the Design-Builder shall not be entitled to share in any unexpended balance thereof. The Base Guaranteed Maximum Price includes the Specified Project Risk Contingency as set forth in the Anticipated Design-Build Period Work Cost Schedule.

[Note: To be negotiated as part of the GMP Amendment.]

8.10.2 Use of the Specified Project Risk Contingency

In the event the cost for completing Design-Build Period work arising in connection with a Specified Project Risk described in any particular Anticipated Design-Build Period Work Cost Schedule line item relating to such cost, exceeds the Anticipated Design-Build Period Work Cost Schedule dollar amount listed for such line item, and such exceedance is due to an occurrence of such Specified Project Risk, the Design-Builder shall have the right to request compensation for such excess amount from any remaining balance in the Specified Project Risk Contingency. The Town shall respond to any such request within 15 days of receipt of such request. If the Town approves such request, which approval shall not be unreasonably withheld, then the Design-Builder shall receive such excess amounts from any remaining balance in the Specified Project Risk Contingency; provided, however, that the Design-Builder shall not need prior written approval for amounts under \$50,000. If and when the Specified Project Risk Contingency has

been fully used in compensating the Design-Builder for such excess amounts, the Design-Builder shall not be entitled to any compensation for costs of Design-Build Work arising in connection with a Specified Project Risk exceeding the Anticipated Design-Build Period Work Cost Schedule line item relating to such cost, notwithstanding the fact that the Design-Builder has paid or incurred Design-Build Period Costs arising in connection with such Specified Project Risk in excess of such line item in the Anticipated Design-Build Period Work Cost Schedule; provided, however, that upon Final Completion the Design-Builder shall be entitled to request and to receive compensation for such excess Design-Build Period Costs arising in connection with such Specified Project Risk to the extent that payment of such costs does not cause the Design-Build Period Costs to exceed the Guaranteed Maximum Price.

The Design-Builder shall keep and provide the Town with an ongoing record of the original amount of the Specified Project Risk Contingency, all uses thereof under this Appendix, and the remaining balance of the Specified Project Risk Contingency at any time. The Design-Builder shall provide the Town with notice of all anticipated charges against the Specified Project Risk Contingency, and shall provide the Town as part of the monthly status report all reasonably foreseeable potential uses of the Specified Project Risk Contingency in the upcoming three month period. Any use of the Specified Project Risk Contingency must be clearly identified in the associated Payment Request. Any dispute between the Town and the Design-Builder regarding the reallocation and use of the Design-Builder Contingency shall be resolved (with both parties using good faith efforts to accelerate the resolution of such dispute) in accordance with Article 11 of this Design-Build Contract.

8.11. SHARED SAVINGS AMOUNT

In the event that upon Final Completion, the Design-Build Price is less than an amount equal to: (1) the Guaranteed Maximum Price, minus (2) all amounts not expended against the Town Allowance or the Specified Project Risk Contingency, both of which shall be for the account of the Town, minus (3) the used Design-Builder Contingency, as each such amount is finally determined in accordance with this Appendix, the Town shall pay the Design-Builder an amount equal to [_____] % of the difference between the Guaranteed Maximum Price (minus (a) all amounts not expended against the Town Allowance or the Specified Project Risk Contingency and (b) the used Design-Builder Contingency) and the Design-Build Price (the “**Shared Savings Amount**”). The Design-Builder shall not be entitled to share in any unexpended balance of the Town Allowance or the Specified Project Risk Contingency. The Shared Savings Amount shall be paid as part of the final payment to the Design-Builder in accordance with Section 9.5 (Payment Upon Final Completion) of this Design-Build Contract. The Town’s determination of the Shared Savings Amount shall be final and binding upon the Design-Builder. [Note: Shared Savings TBD subject to approval by the Granting Agencies.]

ATTACHMENT 8A
DESCRIPTION OF GENERAL CONDITIONS COSTS

ATTACHMENT 8A**DESCRIPTION OF DESIGN-BUILD PERIOD WORK GENERAL CONDITIONS COSTS****GENERAL CONDITIONS COSTS**

In connection with the Design-Build Period Work, the Design-Builder is responsible for the Design-Build Period Work General Conditions Costs, as well as the performance of the related obligations, identified in this Attachment 8A. The Design-Builder's compensation for the Design-Build Period Work General Conditions Costs is limited to the General Conditions Fee. Design-Build Period Costs shall not include any Design-Build Period Work General Conditions Costs. Design-Build Period Work General Conditions Costs consist solely and exclusively of costs incurred for the following items with respect to the Design-Build Period Work:

(1) Design-Builder Employee Supervisory and Administrative Personnel Costs

- (a) Hourly costs of wages or salaries of all Design-Builder's supervisory and administrative personnel engaged in the performance of the Design-Build Period Work but only for that portion of their time required for the Design-Build Period Work, including but not limited to the Project Manager (Project Manager), Construction Manager, Superintendent(s), and those responsible for managing and implementing Design-Builder's scheduling, cost control, billing, surveying, QA/QC and Health and Safety expenses. Only the Design-Builder's craft labor shall be excluded from this category.
- (b) Hourly costs of wages or salaries of the Design-Builder's supervisory and administrative personnel engaged off of the Project Site at factories, workshops or on the road, to assist in the coordination, production or transportation of material or equipment necessary for the Design-Build Period Work, but only for that portion of their time required for the Design-Build Period Work.
- (c) Hourly costs of wages or salaries of the Design-Builder's personnel stationed at the Design-Builder's principal or branch offices and performing Design-Build Period Work.
- (d) Costs reasonably paid or incurred by the Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments for supervisory and administrative personnel required by law, collective bargaining agreements and, for supervisory and administrative personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions paid by the Design-Builder, excluding bonuses, to the extent such costs are based on wages and salaries paid to supervisory and administrative personnel of the Design-Builder included in the Design-Build Period Costs under item (1)(a-c) of this Attachment.
- (e) The reasonable cost of travel, accommodations and meals for the Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Design-Build Period Work.

(2) Field Office and Construction Supply Costs for Design-Builder Staff Only

- Design-Builder field office mobilization and demobilization
- Office trailer rental
- Office furniture and equipment

- Office janitorial
- Document reproduction services (off-site or custom)
- Copy machines, fax machines, printers, scanners and paper shredders
- Office computers, software and maintenance
- Office telephones, telephone and internet services, and all job site communication for the Project
- Accounting and data processing costs
- Jobsite radios/cellular phones
- Postage, courier, and express delivery
- Scheduling expenses
- Job travel, including fuel and vehicle
- Job meeting expenses
- Temporary parking and laydown areas
- Storage facilities, both on and off site
- Small tools, tool shed and consumables
- Surveying equipment and supplies
- Office supplies
- Partnering sessions (Design-Build Period Work only)
- Project redline drawings
- Record drawings and specifications
- Project specific signage
- Reference manuals
- Employee identification system

(3) Temporary Amenities (unless otherwise indicated, includes hookup costs, metering, and consumption costs)

- Incidental construction equipment, fuel, drayage, and parking (on and off-site)
- Temporary toilets
- Temporary fire protection
- Site security
- Traffic control equipment rental
- Fencing, barricades, partitions, protected walkways, and other measures used for traffic control on-site
- Temporary water distribution and meters
- Temporary power generation
- Temporary and emergency lighting
- Temporary weather protection
- Site erosion control
- Street cleaning
- Drinking water
- Temporary construction facilities and services
- Temporary heat and ventilation

(4) Confined Space Entry

- Personnel and monitoring protective equipment
- Standby personnel
- All other costs

(5) Site Cleanup

- Daily site cleanup, dumpsters and garbage/recyclables disposal
- Cleanup at Substantial Completion

(6) Design-Builder Construction Trade Training Program

(7) Health and Safety Program (Excluding Incentives)

- PPE for staff and visitors
- First aid
- Fall protection
- Safety program administration and training
- Safety incentives
- Drug testing
- Safety signage

(8) Project Information and Documentation

- Photographs to document pre-construction conditions
- Project progress photos

Any General Conditions Costs that is subcontracted shall be payable from the General Conditions Fee. The Design-Builder shall make such payments to the extent such Subcontractors are involved in Design-Builder's affirmative action efforts.

ATTACHMENT 8B

**BILLING RATES FOR DESIGN-BUILD PERIOD WORK PROFESSIONAL SERVICES
PERSONNEL**

ATTACHMENT 8C

BILLING RATES FOR SELF-PERFORMED CONSTRUCTION WORK

ATTACHMENT 8D

**ANTICIPATED DESIGN-BUILD PERIOD WORK COST SCHEDULE AND DESIGN-BUILDER
CONTINGENCY**

ATTACHMENT 8D**ANTICIPATED DESIGN-BUILD PERIOD WORK COST SCHEDULE AND DESIGN-BUILDER CONTINGENCY****GENERAL**

The purpose of this Attachment is (1) to define the requirements for the Design-Builder's preparation of the Anticipated Design-Build Period Work Cost Schedule and the Design-Builder Contingency, which will be used as the basis for payments of the Design-Build Price pursuant to Article 9 of this Design-Build Contract, and (2) to describe the manner in which payment of the Design-Build Price will be made based on the Anticipated Design-Build Period Work Cost Schedule and the Design-Builder Contingency.

EARLY DESIGN-BUILD WORK PACKAGES

As provided in Section 5.7(F) of this Design-Build Contract, the parties intend that each Early Design-Build Work Package Amendment will contain complete pricing for the Design-Build Work covered by the Early Design-Build Work Package, and that an estimated Design-Build Period Cost schedule and contingency will be established for such Early Design-Build Work Package separate and apart from the Anticipated Design-Build Period Work Cost Schedule and Design-Builder Contingency established on the GMP Amendment Date for the balance of the Design-Build Work.

TOTAL ANTICIPATED DESIGN-BUILD PERIOD WORK COST SCHEDULE AMOUNT

The sum of all amounts comprising the line items in the initial Anticipated Design-Build Period Work Cost Schedule shall be equal to the total amount of the reasonably estimated direct costs of achieving Substantial Completion and Final Completion, as such total amount of reasonably estimated costs is negotiated by the parties pursuant to Section 5.8(C) of this Design-Build Contract. The total Anticipated Design-Build Period Work Cost Schedule amount, and the line items in the Anticipated Design-Build Period Work Cost Schedule, shall be adjusted appropriately by agreement of the parties to account for Base Guaranteed Maximum Price Adjustments.

DESIGN-BUILDER CONTINGENCY AMOUNT

The Design-Builder Contingency amount shall be a single stated dollar amount equal to the amount negotiated by the parties pursuant to Section 5.8(C)(2) of this Design-Build Contract.

SUM OF THE ANTICIPATED DESIGN-BUILD PERIOD WORK COST SCHEDULE AMOUNT, THE DESIGN-BUILDER FEE AMOUNT, THE GENERAL CONDITIONS FEE AMOUNT AND THE DESIGN-BUILDER CONTINGENCY AMOUNT

The sum of the total Anticipated Design-Build Period Work Cost Schedule amount, the associated Design-Builder Fee amount, the associated General Conditions Fee amount, the Design-Builder Contingency amount and the Specified Project Risk Contingency amount shall be equal to the Base Guaranteed Maximum Price.

PREPARATION OF THE ANTICIPATED DESIGN-BUILD PERIOD WORK COST SCHEDULE

As part of the GMP Submittal, the Design-Builder shall prepare an Anticipated Design-Build Period Work Cost Schedule identifying, on a line item basis, costs of major items of Design-Build

Work and other costs in accordance with this Attachment, and which shall include a Town Allowance, a Design-Builder Contingency and a Specified Project Risk Contingency, each separately stated as a block amount.

The Anticipated Design-Build Period Work Cost Schedule shall be consistent with the work scope and cost breakdown structure presented in the GMP Submittal, as negotiated and agreed to by the Town. The Anticipated Design-Build Period Work Cost Schedule shall assign prices to major elements of the Design-Build Work based on costs associated with scheduled activities for each such element.

The Anticipated Design-Build Period Work Cost Schedule shall:

- (a) Be broken down by each major component of the Project, in accordance with the approved WBS, and show each specification division within each structure; and
- (a) Show the division of work between the Design-Builder and each of the Subcontractors.

The Design-Builder shall provide supporting data, including certified payrolls, as requested by the Town for any Anticipated Design-Build Period Work Cost Schedule item. The final Anticipated Design-Build Period Work Cost Schedule must be approved by the Town.

USE OF THE DESIGN-BUILDER CONTINGENCY

The Design-Builder Contingency shall be used for payment of Design-Build Period Costs only as provided in this Section. [Note: Use of line item savings and use of the Design-Builder Contingency will be subject to any conditions or limitations imposed by the Grants, and are TBD for the California State Water Resources Control Board grant.]

In the event the cost for completing Design-Build Period Work described in any particular Anticipated Design-Build Period Work Cost Schedule line item exceeds the Anticipated Design-Build Period Work Cost Schedule dollar amount listed for such line item, the Design-Builder shall have the right to request compensation for such excess amounts from any remaining balance in the Design-Builder Contingency. The Town shall respond to any such request within 15 days of receipt of such request. If the Town approves such request, which approval shall not be unreasonably withheld, then the Design-Builder shall receive such excess amounts from any line item savings and only after exhaustion of all line item savings amounts, from any remaining balance in the Design-Builder Contingency; provided, however, that the Design-Builder shall not need prior written approval for amounts under \$50,000. If and when the Design-Builder Contingency has been fully used in compensating the Design-Builder for such excess amounts, the Design-Builder shall not be entitled to any compensation for costs of Design-Build Work exceeding the Anticipated Design-Build Period Work Cost Schedule line item relating to such cost (except as provided below in "Use of Line Item Savings"), notwithstanding the fact that the Design-Builder has paid or incurred Design-Build Period Costs in excess of such line item in the Anticipated Design-Build Period Work Cost Schedule; provided, however, that upon Final Completion the Design-Builder shall be entitled to request and to receive compensation for such excess Design-Build Period Costs to the extent that payment of such costs does not cause the Design-Build Period Costs to exceed the Guaranteed Maximum Price.

The Design-Builder shall keep and provide the Town with an ongoing record of the original amount of the Design-Builder Contingency, all uses thereof under this Appendix, and the remaining balance of the Design-Builder Contingency at any time. The Design-Builder shall provide the Town with notice of all anticipated charges against the Design-Builder Contingency,

and shall provide the Town as part of the monthly status report all reasonably foreseeable potential uses of the Design-Builder Contingency in the upcoming three month period. Any use of the Design-Builder Contingency must be clearly identified in the associated Payment Request.

USE OF LINE ITEM SAVINGS

In administering payment of the Design-Build Price based on the Anticipated Design-Build Period Work Cost Schedule line items, the parties acknowledge that the Design-Build Period Costs associated with any particular line item may be less than the dollar amount provided for such line item in the Anticipated Design-Build Period Work Cost Schedule. If the Design-Build Period Costs associated with a particular Anticipated Design-Build Period Work Cost Schedule line item are less than the dollar amount provided for such line item in the Anticipated Design-Build Period Work Cost Schedule, subject to the following sentence, the dollar value associated with the line item cost underage shall be available to be paid to the Design-Builder in the event the Design-Build Period Costs associated with another particular line item exceed the Anticipated Design-Build Period Work Cost Schedule dollar amount listed for such line item. Such line item savings amounts shall be in addition to any Design-Builder Contingency amounts that may be available to pay such Anticipated Design-Build Period Work Cost Schedule line item excess costs; provided, however, that in any event line item savings shall be used prior to Design-Builder Contingency amounts.

DAMAGE TO THE PROJECT AND INSURANCE RECOVERIES

The costs of repairing any damage to the Project constitute Design-Build Period Costs, and (1) are payable to the Design-Builder as part of the Design-Build Period Costs, as provided in Section 8.3 of this Appendix, (2) shall result in an appropriate revision of the Anticipated Design-Build Period Work Cost Schedule, and (3) shall result in a Base Guaranteed Maximum Price Adjustment, as provided in Section 8.7.3 of this Appendix. All recoveries under policies of Required Insurance on account of any damage to the Project shall be applied to the payment of such repair costs, as provided in Section 6.17 and Article 13 of this Design-Build Contract.

SUBCONTRACTOR AND SURETY RECOVERIES

A substantial portion of the Construction of the Project is expected to be performed by Construction Subcontractors. The risks of delay and non-performance by Subcontractors are borne by the Design-Builder, and costs incurred by the Design-Builder that result from the occurrence of such risks constitute Design-Build Period Costs payable by the Town from the Design-Builder Contingency hereunder, subject to the Guaranteed Maximum Price. All payments from the Design-Builder Contingency for costs incurred as a result of the occurrence of the risk of Subcontractor delay or non-performance shall be separately identified and recorded. In the event the Design-Builder, in the exercise of its mitigation duties under this Design-Build Contract, receives any judgment or settlement awards or otherwise makes any financial recoveries from Subcontractors or their guarantors or sureties on account of any such delays or non-performance, the amounts so received (net of reasonable enforcement costs), whether before or after Final Completion, shall be paid by the Design-Builder first to the Town, up to the amount of any Design-Builder Contingency payments made due to the occurrence of such risks. Any remaining amounts then may be retained by the Design-Builder for its own account. The obligation of the Design-Builder to take such mitigation measures and to make such payments to the Town shall survive termination of this Design-Build Contract.

APPENDIX 9
SUBSTANTIAL COMPLETION

APPENDIX 9**SUBSTANTIAL COMPLETION****9.1. PURPOSE**

The purpose of Substantial Completion is to demonstrate that the Project complies with all Contract Standards. This Appendix sets forth certain supplementary requirements for Substantial Completion.

9.2. RELATIONSHIP TO BASELINE DESIGN DOCUMENTS

The Baseline Design Documents applicable to the requirements of this Appendix are set forth in Appendix 4.

9.3. SUBSTANTIAL COMPLETION PROCEDURES**9.3.1 Substantial Completion Procedures Generally**

The intent of the Substantial Completion Procedures (as defined below) are to demonstrate that the installed facilities, systems, and the Project as a whole are ready to perform in accordance with the requirements of the Contract Documents and the Contract Standards.

9.3.2 Construction Testing

To confirm compliance with the testing (including but not limited to air tests, Mandrel tests, and the testing of materials described in subsection 6.10.5 of Appendix 6) required by the Contract Documents, including but not limited to Appendix 4, the Design-Builder shall submit certified reports. The certified reports shall be from the appropriate certifying entity demonstrating that construction complies with the Contract Documents and has satisfactorily passed relevant testing. For general construction, the reports will be submitted by a professional engineer. For valves and any mechanical equipment, the certifications shall be factory certifications.

9.3.3 Observation of Substantial Completion Procedures

The Town reserves the right to observe and inspect the Project testing. The Design-Builder shall provide at least five days' notice to the Town prior to commencement of any tests. The Design-Builder shall also ensure that each material manufacturer representative that is required to witness such test is present.

APPENDIX 10
INSURANCE REQUIREMENTS

APPENDIX 10**INSURANCE REQUIREMENTS****10.1. GENERAL REQUIREMENTS**

- (a) The Town of Paradise (the “**Town**”) reserves the right to approve or reject the insurance provided based upon the insurer (including financial condition), terms and coverage, the Certificate of Insurance (COI), and/or endorsements. The insurance must be provided by an insurer with a rating of (A-) VII or higher in the A.M. Best’s Key Rating Guide (<http://www.ambest.com/home/default.aspx>), and licensed to do business in the State of California. By requiring the insurance herein, the Town does not represent that the insurance coverages and limits will necessarily be adequate to protect the Design-Builder and such coverages and limits shall not be deemed as a limitation on the Design-Builder’s liability under the indemnities granted to the Town in this Design-Build Contract.
- (b) The Design-Builder shall keep the Required Insurance in force during the entire Term and for thirty (30) calendar days after the expiration of the Term, unless otherwise provided herein.
- (c) The liability insurance policies required by this section shall:
- (1) For insurance policies other than for professional liability or workers’ compensation, contain a “severability of insureds,” “separation of interest,” or “cross liability” provision.
 - (2) Be primary and non-contributory insurance to any insurance coverage or self-insurance program the Town may maintain.
 - (3) For insurance policies other than for professional liability or workers’ compensation, contain a Waiver of Subrogation clause in favor of the Town.
 - (4) Other than professional liability, reflect coverage on an “occurrence”, not “claims-made” policy form.
- (d) The Design-Builder shall provide the Town notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- (e) The Design-Builder shall forward to the Town, full and original certificates of insurance with endorsements required by this Appendix.
- (f) The Design-Builder shall not begin work under the Design-Build Contract until the required insurance has been obtained and approved by the Town.
- (g) Failure on the part of the Design-Builder to obtain and maintain the insurance as required by this section shall constitute a material breach of the Design-Build Contract, upon which the Town may, after giving five business day notice to the Design-Builder to correct the breach, immediately terminate the Design-Build Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to the Town by the Design-Builder upon demand, or at the sole discretion of the Town, offset against funds due the Design-Builder from the Town.

- (h) All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Design-Build Contract and no additional payment will be made by the Town to the Design-Builder.
- (i) For all liability insurance policies required by this Section, the Town, including its officers, elected officials, employees, agents, and volunteers, and any other entities as required by the Design-Build Contract, shall be named as additional insured(s) by amendatory endorsement, EXCEPT Professional Liability (if applicable), Workers Compensation, Owner's and Design-Builder's Protective Liability, and Railroad Protective Liability.
- (j) Except for the builders' risk insurance required pursuant to V(I) of this Appendix 10, the Design-Builder may provide the insurance coverages required pursuant to this Appendix 10 through the general corporate policies of the Design-Builder or its affiliates. In such case, the general corporate policies shall meet the applicable requirements of this appendix.

10.2. EVIDENCE OF INSURANCE

The Design-Builder shall deliver a COI and endorsements for each policy of insurance meeting the requirements set forth herein when the Design-Builder delivers the signed Design-Build Contract for the work to the Town. The certificate and endorsements must conform to the following requirements:

- (a) An ACORD certificate or a form determined by the Town to be equivalent.
- (b) Copies of all endorsements showing the policy number and naming the Town as an additional insured.
- (c) Except for insurance policies other than for professional liability or workers' compensation, the endorsement is to state that the insurance is primary and non-contributory over any Town insurance or self-insurance.
- (d) For insurance policies for general liability, the endorsement is to extend "Products/Completed Operations" coverage to the Town as an additional insured.
- (e) A statement of additional insured status on an ACORD COI shall not satisfy this requirement.
- (f) Any other amendatory endorsements to show the coverage required herein.

10.3. CERTIFICATE REQUIREMENTS SPECIFIC REPRESENTATIONS

The following must be indicated on the COI:

- (a) The Town is named as an additional insured ("with respect to the Design-Build Contract" or "for any and all work performed with the Town" may be included in this statement) for insurance policies for General Liability and Automobile Liability.
- (b) "This insurance is primary and non-contributory over any insurance or self-insurance the Town may carry" ("with respect to the Design-Build Contract" or "for any and all work performed with the Town" may be included in this statement) for insurance policies for General Liability and Automobile Liability.

- (c) A Waiver of Subrogation in favor of the Town for General Liability and Automobile Liability.
- (d) Self-Insured Retention and applicable deductible limits must be disclosed on the COI and be consistent with good industry practice.
- (e) Contract or Permit number and the Town Department.
- (f) All coverage other than professional liability, Cyber/Privacy & Security, and Pollution Liability must be written on "occurrence" form and not "claims-made" form.
- (g) Reflect the existence and form numbers of all required endorsements.

10.4. SUBCONTRACTORS

It is the Design-Builder's responsibility to cause each Subcontractor to obtain and maintain adequate liability insurance coverage. The Design-Builder shall provide evidence of such insurance upon the Town's request.

10.5. CERTIFICATE REQUIREMENTS FOR COVERAGES AND LIMITS

The insurance shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve the Design-Builder from liability in excess of such limits. None of the policies or coverage required by this section shall be subject to a deductible or self-insured retained limit of more than \$10,000 unless first approved in writing by the Town Contracting Department, which self-insured retention may be satisfied by either the named insured or the Town.

A. General Liability Insurance

(1) Commercial General Liability (CGL) Insurance

The CGL insurance policy must provide limits not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. A deductible of \$25,000 for Commercial General Liability Insurance is approved by the Town.

The CGL policy shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:

- a) Must use (Insurance Services Office (ISO) form CG0001(04-13) or its equivalent).
- b) Products Hazard/Completed Operations.
- c) Personal/Advertising Injury.
- d) Contractual Liability.
- e) Explosion, Collapse, or Underground Property Damage.
- g) Blasting (only required when the Design-Builder's work under this Design-Build Contract includes exposures to which this specified coverage responds).
- h) If Design-Builder is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work

within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.

- i) Include the Town as additional insured and:
 1. Use ISO forms CG2010(04-13) and CG2037(04-13) or equivalent for Design-Builders performing work on behalf of the Town and name the Town as an additional insured for ongoing and completed operations.
 2. Use ISO form CG2012(04-13) or equivalent for Permits and name the Town as an additional insured.
 3. Use ISO form CG2026(04-13) or equivalent for Facility Use Agreements and name the Town as an additional insured.
 4. Blanket additional insured provisions within a policy form will be accepted in lieu of the specific additional insured endorsement forms specified herein. However, a blanket additional insured endorsement shall provide the equivalent coverage provided by specific additional insured endorsements specified herein.

- (2) Marine General Liability (MGL) Insurance (only applicable in the event Design-Builder will utilize rented or owned vessels on a waterway to perform Design-Build Work.)

The MGL policy must provide limits no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The MGL policy shall be provided before the commencement of Design-Build Period Work.

MGL insurance must have no exclusions for non-owned watercraft. A policy of MGL Insurance shall be written on an "occurrence", not "claims-made", basis and shall include the following coverage:

- a) A per project aggregate policy limit.
- b) Products Hazard/Completed Operations- for a period of one year following final acceptance of the work.
- c) Personal/Advertising Injury.
- d) Contractual Liability.

If Design-Builder is performing work within 50 feet of a railroad right of way, the General Liability policy shall be endorsed to eliminate the Contractual Liability exclusion pertaining to work within 50 feet of a railroad right of way using ISO form CG2417(10-01) or equivalent.

- e) Include the Town as an additional insured for the Design-Build Contract and contracts both ongoing and for completed operations.

- (3) Protection and Indemnity (P&I) Insurance

The Design-Builder shall procure and maintain P&I insurance. This insurance must cover all claims with respect to injuries or damages to persons or property, arising out of the use, operation or ownership of boats, ships, or vessels with limits of liability not less than One Million Dollars (\$1,000,000) each occurrence. If required, the Design-Builder shall procure and maintain commercial umbrella liability insurance covering claims for these risks. The P&I policy shall be provided before the commencement of the Design-Build Period Work.

B. Commercial Automobile Liability (CAL) Insurance

The Design-Builder shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury coverage and property damage coverage for owned (if any), non-owned, hired, and leased vehicles.

The Design-Builder must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than \$1,000,000 each accident for bodily injury and property damage.

Must use ISO form CA 0001 or equivalent.

C. Workers' Compensation

(1) State of California Workers' Compensation

The Design-Builder shall comply with Workers' Compensation coverage as required by California Labor Code Section 3700.

D. Employers' Liability (EL) (Stop-Gap) Insurance

The Design-Builder shall maintain EL coverage with limits not less than \$1,000,000 each employee, \$1,000,000 each accident, and \$1,000,000 policy limit.

E. Professional Liability Insurance (PLI)

The Design-Builder and/or its Subcontractors shall provide evidence of PLI covering professional errors and omissions. Such policy must provide minimum limits of \$2,000,000 per claim and \$4,000,000 aggregate. If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than five years following the end of the Contract.

F. Excess or Umbrella Liability (UL) Insurance

The Design-Builder shall provide Excess or UL coverage at limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate. This Excess or UL coverage shall apply, at a minimum, to the CGL, EL and Automobile Liability forms required herein.

G. Pollution Liability (PL) Insurance

The Design-Builder shall procure and maintain a PL or Environmental Liability policy providing coverage, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage shall provide both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage the Town damage claims for loss arising out of the Design-

Builder's work with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. This policy shall include Environmental Resource Damage coverage. A deductible of \$25,000 for Pollution Liability Insurance is approved by the Town.

Such insurance may be provided on an "occurrence" or "claims-made" basis. If such coverage is provided on a "claims-made" basis, the following additional conditions must be met:

- (1) The policy shall not exclude coverage for Hazardous Substance Removal.
- (2) The policy must contain no retroactive date, or the retroactive date must precede the commencement date of this contract.
- (3) If provided on a "claims-made" basis and the insurer providing coverage changes during the term of the contract, the prior acts date must remain on or before the commencement date of this contract.
- (4) The extended reporting period (tail) must be purchased to cover a minimum of six years beyond completion of work.

H. Commercial Property (CP) Insurance

The Design-Builder shall provide CP for loss or damage to any and all equipment owned by the Town while in the care, custody or control of the Design-Builder, its Subcontractors, or their agents. The coverage shall be provided on an ISO special form Causes of Loss form or equivalent and shall provide full replacement cost coverage. The Design-Builder shall be liable for the payment of the deductible.

I. Builder's Risk (BR) Insurance

Prior to the commencement of Design-Build Period Work, the Design-Builder shall purchase and maintain throughout the remainder of the term of the Contract, a policy of BR insurance providing coverage for all-risk of physical injury to all structures to be constructed according to the Contract. The Town shall be named as an additional insured to the extent of its insurable interests, and a loss payee under the policy. BR insurance shall:

- (1) Be on an ISO special form Causes of Loss form or equivalent and shall insure against the perils flood, earthquake, theft, vandalism, malicious mischief, and collapse.
- (2) Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site.
- (3) Be written in the amount of the completed value of the structures, with no coinsurance provisions exposure on the part of the Design-Builder or the Town.
- (4) Have a deductible consistent with good industry practice for each occurrence, the payment of which will be the responsibility of the Design-

Builder. Any increased deductibles accepted by the Town will remain the responsibility of the Design-Builder.

- (5) Be maintained until Final Completion of the work.

The Design-Builder and the Town waive all rights against each other, their respective subcontractors, agents and representatives for damages caused by fire or other perils to the extent covered by BR insurance or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

J. Owners and Design-Builders Protective Liability (OCPL) Insurance

The Design-Builder shall obtain and keep in force during the performance of any and all work required by this Design-Build Contract, an ISO form OCPL policy, on which the Town shall be a named insured. Said policy shall provide coverage for bodily injury and property damage arising from the work to be performed under the Contract, and shall have policy limits of no less than Three Million Dollars \$3,000,000 combined single limit of liability with a dedicated aggregate limit of no less than Six Million Dollars \$6,000,000.

K. Other Insurance

Other insurance as may be deemed appropriate to cover the specified risk and exposure arising from the scope of work or changes to the scope of work required by the Town. The costs of such necessary and appropriate insurance coverage shall be borne by the Design-Builder.

The Design-Builder will also be responsible to comply with all specific insurance requirements of the Union Pacific Railroad (UPRR) and California State Department of Transportation (Caltrans) associated with the highway and rail crossings.

APPENDIX 11

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

APPENDIX 11**KEY PERSONNEL AND APPROVED SUBCONTRACTORS****11.1. PURPOSE**

The purpose of this Appendix is to identify (1) the Key Personnel proposed to be used by the Design-Builder in performing the Contract Obligations and (2) those Subcontractors that the Town has approved for use by the Design-Builder in performing the Contract Obligations.

11.2. KEY PERSONNEL**11.2.1 Key Personnel Generally.**

As referenced in Section 7.1 of this Design-Build Contract, certain Key Personnel were proposed by the Design-Builder and shall be used by the Design-Builder in connection with the performance of the Contract Obligations (the “**Key Personnel**”). Any change in the Key Personnel shall be subject to review and approval of the Town in accordance with Section 7.1 of this Design-Build Contract.

11.2.2 Key Personnel.

At a minimum, the Key Personnel shall include the following:

	Design-Builder Party	Role	Name
1.	Mountain Cascade, Inc.	Project Management	Peter Foote
2.	Carollo Engineers, Inc.	Outreach	Beverly Hann
3.	Carollo Engineers, Inc.	BODR Development	Tim Taylor
4.	Carollo Engineers, Inc.	Collection System	Darren Baune
5.	Mountain Cascade, Inc.	Project Controls	Gary Silveira
6.	Mountain Cascade, Inc.	Testing, Commissioning, and Start-Up	Howard Reiss
7.	Carollo Engineers, Inc.	Export Pipeline/Chico Connection	Jon Marshall
8.	Mountain Cascade, Inc.	Cost Model	Don Crivello
9.	Mountain Cascade, Inc.	Construction Phasing	Randy Buckman
10.	Mountain Cascade, Inc.	Safety	Rickey Arslanian
11.	Carollo Engineers, Inc.	Quality	Andrew Frost

11.3. APPROVED SUBCONTRACTORS

As of the Contract Date, Approved Subcontractors are identified in the following table. Additional potential Subcontractors shall be proposed by the Design-Builder and approved by the Town for any Early Work Packages and for the balance of the Design-Build Work in accordance with Sections 5.7 and 7.4 of this Design-Build Contract and Attachment 11A to this Appendix. Approved Subcontractors proposed by the Design-Builder and approved by the Town after the GMP Amendment Date shall be reflected in a Contract Administration Memorandum.

[Note: The names and roles of all additional Approved Subcontractors as of the GMP Amendment Date shall be added to the table below as part of the GMP Amendment.]

	Subcontractor	Role
1.	Carollo Engineers, Inc.	Engineer-of-Record
2.	Rolls, Anderson & Rolls	Surveying
3.	Fugro	Hazardous Materials Survey
4.	Montrose Environmental	Environmental
5.		
6.		
7.		

11.4. SUBCONTRACTING PLAN

A preliminary Subcontracting Plan is included as Attachment 11A. The final Subcontracting Plan will be set forth in the GMP Amendment.

ATTACHMENT 11A
SUBCONTRACTING PLAN

APPENDIX 12
CERTAIN STATE AND FEDERAL GRANT REQUIREMENTS AND GUIDELINES

APPENDIX 12**CERTAIN STATE AND FEDERAL GRANT REQUIREMENTS AND GUIDELINES**

The Town intends to utilize Grants for the entirety of its financing structure. The utilization of the Grants is predicated on complying with all applicable requirements of the Grants, including, as applicable, complying with all applicable provisions identified in this Appendix. As of the Contract Date, the written requirements of any California State Water Resources Control Board grants have not yet been established and therefore are not yet reflected in this Appendix. The parties intend to update this Appendix by Contract Amendment once such written requirements have been established.

This Appendix is a summary only of such requirements, and is not intended to be an exhaustive list of all of the Grant Requirements. Reference is made to the Grant documentation for the full terms and provisions of the written requirements of the Grants.

In order to satisfy the requirements of the Community Development Block Grant – Disaster Recovery grant funding, as well as additional procurement requirements of the Town, this Design-Build Contract and all Subcontracts must incorporate the following basic requirements:

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Table A12-1
Federal Statutes, Regulations and Other Requirements

	Reference	Subject
1.	2 C.F.R. parts 200.339, 200.342, 200.343	Remedies for Noncompliance
2.	2 C.F.R. parts 200.340 and 200.341	Termination
3.	2 C.F.R. 200.334	Five-Year Retention Requirement
4.	2 C.F.R. 200 Subpart F	Audit Requirements
5.	2 C.F.R. 200.208	Authority to Impose Additional Special Conditions
6.	2 C.F.R. 200.318	General procurement standards
7.	2 C.F.R. 200.319	Competition
8.	2 C.F.R. 200.320	Methods of procurement to be followed
9.	2 C.F.R. 200.322	Domestic Preferences for Procurements
10.	2 C.F.R. 200.324	Contract cost and price
11.	2 C.F.R. 200.325	Federal awarding agency or pass-through entity review
12.	2 C.F.R. 200.326	Bonding Requirements
13.	40 U.S.C. 3702	Contract Work Hours and Safety Standards Act
14.	40 U.S.C. 3702, Sections 103 and 107	Contract Work Hours and Safety Standards Act
15.	24 C.F.R. 570.489(h)	Conflicts of Interest
16.	15 U.S.C. Sec. 15 (Section 4)	Clayton Act
17.	37 C.F.R. 401	Rights To Inventions Made By Nonprofit Organizations And Small Business Firms Under Government Grants, Contracts, And Cooperative Agreements
18.	41 U.S.C. 51-58	Anti-Kickback Act of 1986
19.	40 U.S.C. 3141-3148; 42 U.S.C. 3212 29 C.F.R. Subtitle A, Parts 1, 3, and 5	Davis Bacon and Related Acts (DBRA)
20.	2 C.F.R. Part 200.214	Suspension and Debarment
21.	2 C.F.R. 1400	Nonprocurement Debarment and Suspension

22.	Executive Order No. 12,549, 1986	Debarment and suspension prohibitions relating to violations of the Clean Water Act and Clean Air Act with respect to federal contracts, grants or loans
23.	31 U.S.C. 1352	Byrd Anti-Lobbying Amendment
24.	43 C.F.R. 18	New Restrictions on Lobbying
25.	Pub. L. No. 117-58, §§ 70901-52	Build America, Buy America Act (BABA)
26.	33 U.S.C. 3914	American Iron and Steel (AIS) Requirement
27.	31 U.S.C. 1352	Limitations on the Payment of Funds to Influence Federal Transactions
28.	42 U.S.C. 2000d et seq.	Title VI of the Civil Rights Act of 1964
29.	42 U.S.C. 3601	Title VII of the Civil Rights Act of 1968 (The Fair Housing Act)
30.	Public Law 100-259; 102 Stat. 28	Civil Rights Restoration Act of 1987
31.	42 U.S.C. 5309, Section 109 of Title 1	Housing and Community Development Act of 1974
32.	42 U.S.C. 3604	Fair Housing Amendment Act of 1988
33.	42 U.S.C. 6101 and DOI implementing regulations published at 43 C.F.R. 17.300-17.339	The Age Discrimination Act of 1975
34.	Section 504 of the Rehabilitation Act of 1973, as amended 29 U.S.C. 794, and DOI implementing regulations published at 43 C.F.R. 17 subpart B	Rehabilitation Act of 1973
35.	42 U.S.C. 12101	The Americans with Disabilities Act of 1990 (ADA)
36.	Executive Order 11063, 1962	Prohibiting discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds
37.	42 U.S.C. 2000e	Equal Employment Opportunity Act
38.	29 C.F.R. 1607	Uniform Guidelines on Employee Selection Procedures adopted by the EEOC in 1978
39.	38 U.S.C. 4212	Vietnam Era Veteran's Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)

40.	Executive Order 11246, 1965	Prohibiting federal contractors and federally assisted construction contractors and subcontractors, who do business with the federal government from discriminating in employment decisions
41.	2 C.F.R. 200.321	Small, Minority and Women's Business Enterprises and Labor Surplus Area Firms
42.	Executive Order No. 12,432, 1983	Minority Business Enterprise Development
43.	41 U.S.C. 8101 2 C.F.R. Parts 182 and 1401	Drug-Free Workplace Act of 1988
44.	Executive Order No. 11,246, 1965	Prohibiting discrimination on the basis of race, color, sex, religion and national origin to enhance hiring training, and promotion opportunities for minorities and women in construction programs financed, in part, by federal dollars
45.	12 U.S.C. 1701u 24 C.F.R. 75	Section 3 of the Housing and Urban Development Act of 1968
46.	24 C.F.R. 50 24 C.F.R. 58 40 C.F.R. 1500-1508	The National Environmental Policy Act (NEPA)
47.	40 C.F.R. Parts 15 and 50	Environmental Protection Agency (EPA) Regulations
48.	24 C.F.R. 58	Environmental Review Procedures
49.	42 U.S.C. 7401-7671q	Clean Air Act
50.	33 U.S.C. 1251-1387	Federal Water Pollution Control Act
51.	33 U.S.C. 1251	Clean Water Act
52.	45 C.F.R. 75.331 2 C.F.R. 200.323	Procurement of Recovered Materials
53.	Pub. L. 94-163, 89 Stat. 871	The Energy Policy and Conservation Act
54.	42 U.S.C. 4001	Flood Disaster Protection Act
55.	42 U.S.C. 4151-4157	Architectural Barriers Act
56.	https://www.epa.gov/greeningepa/federal-sustainability-requirements-and-guidelines	Sustainability Requirements, such as those provided by the EPA and Department of Energy
57.	83 F.R. 5850, 83 F.R. 5861	National Floodplain Elevation Standards

58.	Title X	Residential Lead-Based Paint Hazard Reduction Act
59.	42 U.S.C. 63, Section 401(b)	Lead-Based Paint Poisoning Prevention Act of 1971
60.	54 U.S.C. 300101 16 U.S.C. 470	The National Historic Preservation Act of 1966
61.	Pub. L. 93-291	Archaeological and Historical Preservation Act of 1974
62.	36 C.F.R. 800	Advisory Council on Historic Preservation Procedures for Protection of Historic Properties
63.	Executive Order 11593	Protection and Enhancement of the Cultural Environment
64.	42 U.S.C. Chapter 51	The Architectural Barriers Act of 1968
65.	2 C.F.R. Subtitle A, Chapter II, Part 200, et. seq., adopted by HUD at 2 C.F.R. 2400	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
66.	42 U.S.C. 4601, and implementing regulations issued at 24 C.F.R. 42 and 49 C.F.R. 24	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
67.	42 U.S.C. 69 (Housing and Community Development Act of 1974), Section 104(d)	Residential Antidisplacement and Relocation Assistance Plan; Certification of Adherence; Contents
68.	Title 29, C.F.R., Subtitle A Parts 1, 3, and 5	Federal Labor Standards
69.	24 C.F.R. 570	HUD regulations concerning Community Development Block Grants
70.	24 C.F.R. 570	HUD regulations concerning Community Development Block Grants
71.	24 C.F.R. 85.40	HUD Reporting Requirements
72.	Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518	Safety Standards for General Industry and Construction
73.	Federal Register, Volume 36, No. 75. Title 29	Safety and Health Regulations for Construction

Table A12-2
State Statutes, Regulations and Other Requirements

	Reference	Subject
1.	Government Code 12900, et. seq. Cal. Code Regs., Title 2 Section 11000, et. seq.	California Fair Employment and Housing Act
2.	Government Code 11135 – 11139.5	California Discrimination
3.	Public Contract Code Section 10115, et seq.	Minority and Women Business Participation Goals for State Contracts
4.	2 Cal. Code Regs. 1896.60, et seq.	Disabled Veteran Business Enterprise (DVBE) program
5.	Public Contract Code 10353	Priority Hiring Considerations
6.	Public Contract Code Sections 12205 and 12156(e)	Recycled Content Certification
7.	Pub. Res. Code 21000, et seq.	California Environmental Quality Act (CEQA)
8.	California Green Buildings Standards Code Title 24, Part 11	California Green Buildings Standards Code (CAL Green)
9.	Wildland-Urban Interface Building Code Title 24, Chapter 7a	Wildland-Urban Interface Building Code (WUI Code)
10.	Pub. L. 94-163, 89 Stat. 871	California Energy Conservation Plan, developed in accordance with the federal Energy Policy and Conservation Act
11.	Cal. Code Regs. Title 25 Section 7122	Audit Requirements
12.	Government Code 8546.7	Audits
13.	Public Contract Code 7110 Family Code Chapter 8 Part 5 of Division 9	Child Support Compliance Act
14.	Cal. Code of Regs. Title 25	Grant Administration

15.	Public Contract Code 10344(e)	Requirement for Loss Leader Provision
16.	Labor Code Section 1720- 1743 Labor Code 1770-1784	State Prevailing Wages
17.	State Contract Manual Requirements Section 3.11, for Federally Funded Contracts	State Contract Manual Requirements
18.	Business and Professions Code Chapter 2 of Part 2 of Division 7	Cartwright Act
19.	Government Code 4550 – 4554 Chapter 11	Antitrust Claims

ATTACHMENT 12A

DAVIS BACON ACT WAGE DETERMINATIONS

APPENDIX 13**CERTAIN PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE****California Public Contract Code Sections 20104 to 20104.6****Public Contract Code - PCC****DIVISION 2. GENERAL PROVISIONS [1100 - 22355] (Division 2 enacted by Stats. 1981, Ch. 306.)****PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178] (Part 3 added by Stats. 1982, Ch. 465, Sec. 11.)****CHAPTER 1. Local Agency Public Construction Act [20100 - 20929] (Chapter 1 added by Stats. 1982, Ch. 465, Sec. 11.)****ARTICLE 1.5. Resolution of Construction Claims [20104 - 20104.6] (Article 1.5 added by Stats. 1994, Ch. 726, Sec. 22.)**

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

(Amended by Stats. 2010, Ch. 697, Sec. 47. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.)

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

(Added by Stats. 1994, Ch. 726, Sec. 22. Effective September 22, 1994.)

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

(Amended by Stats. 2004, Ch. 182, Sec. 54. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

(Added by Stats. 1994, Ch. 726, Sec. 22. Effective September 22, 1994.)

California Public Contract Code Sections 9201 to 9204**Public Contract Code - PCC****DIVISION 2. GENERAL PROVISIONS [1100 - 22355] (Division 2 enacted by Stats. 1981, Ch. 306.)****PART 1. ADMINISTRATIVE PROVISIONS [1100 - 9204] (Heading of Part 1 added by Stats. 1982, Ch. 1120, Sec. 2.)****CHAPTER 9. Claims and Disputes [9201 - 9204] (Chapter 9 added by Stats. 1982, Ch. 1120, Sec. 5.)**

9201. (a) A public entity shall have full authority to compromise or otherwise settle any claim relating to a contract at any time.

(b) The public entity shall include provisions in a public works contract for timely notification of the contractor of the receipt of any third-party claim, relating to the contract.

(c) The public entity shall be entitled to recover its reasonable costs incurred in providing the notification required by subdivision (b).

(Amended by Stats. 2002, Ch. 315, Sec. 1. Effective January 1, 2003.)

9203. (a) Payment on any contract with a local agency for the creation, construction, alteration, repair, or improvement of any public structure, building, road, or other improvement, of any kind which will exceed in cost a total of five thousand dollars (\$5,000), shall be made as the legislative body prescribes upon estimates approved by the legislative body, but progress payments shall not be made in excess of 95 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to, or under the control of, the local agency, and unused. The local agency shall withhold not less than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 50 percent of the work has been completed, if the legislative body finds that satisfactory progress is being made, it may make any of the remaining progress payments in full for actual work completed.

(b) Notwithstanding the dollar limit specified in subdivision (a), a county water authority shall be subject to a twenty-five thousand dollar (\$25,000) limit for purposes of subdivision (a).

(Amended by Stats. 2000, Ch. 126, Sec. 1. Effective January 1, 2001.)

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2019, Ch. 489, Sec. 1. (AB 456) Effective January 1, 2020. Repealed as of January 1, 2027, by its own provisions.)



Town of Paradise

Council Agenda Summary

Agenda Item: 6(c)

Date: February 13, 2024

ORIGINATED BY: Marc Mattox, Public Works Director
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Roe Road Extension Phase 2 Project Update
LONG TERM RECOVERY PLAN: Yes - Various

COUNCIL ACTION REQUESTED:

1. Consider approving a Letter of Intent to the California Transportation Commission relating to the Town's \$33,000,000 Roe Rd Extension Phase 2 Local Transportation Climate Adaptation Program grant award and funding needs for project construction; and,
2. Approve a Letter of Support for the Town's \$25,000,000 federal Rebuilding American Infrastructure with Sustainability and Equity (RAISE) funding opportunity; and,
3. Allocate \$3,800,000 of the Town's Paradise Recovery & Operations Reserve to leverage the Roe Road Extension Phase 2 Project. (ROLL CALL VOTE)

Background:

On January 27, 2020, United States Department of Housing and Urban Development (HUD) published Federal Register Notice 85 FR 4681 allocating \$1,017,399,000 in CDBG-DR funding, related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4382 from July to September 2018 and DR-4407 in November 2018. The California Department of Housing and Community Development (HCD) is the grantee responsible for administering the CDBG-DR funds allocated to the State of California. CDBG-DR supports the State of California's unmet recovery needs related to the Federal Emergency Management Agency (FEMA) Major Disaster Declarations DR-4382 from July to September 2018 and DR-4407 in November 2018.

Recognizing unmet infrastructure recovery needs, related to DR-4382 from July to September 2018 and DR-4407 in November 2018, HCD allocated \$317,428,488 of the CDBG-DR funding to the Disaster Recovery Infrastructure Program (DR-Infrastructure). DR-Infrastructure projects are funded to assist with meeting the unmet infrastructure needs of local communities. This program provides funding for FEMA Public Assistance (PA) match projects, FEMA Hazard Mitigation Grant Program (HMGP) match projects, other non-FEMA match projects, and stand-alone projects identified by local communities impacted by DR-4382 or DR-4407.

On February 8, 2022, Paradise Town Council adopted Resolution No. 2022-12, a resolution of the Town Council of the Town of Paradise declaring certain projects critical to Camp Fire recovery with unfunded needs for consideration in the CDBG-DR Infrastructure Program (DR-4407).

On August 19, the Town of Paradise was formally notified by California Housing and Community Development that of the \$317M made available for allocations, the Town would be recipients of

\$199,592,735.75 for implementation of identified projects in the program. Separate from this allocation, Housing and Community Development announced a \$30M Action Plan Amendment to program the Paradise Sewer Project design phase – bringing the overall allocation to \$229,592,735.75. Subtracting a subrecipient allocation to Paradise Irrigation District, the Town's final allocation amount for implementation is \$226,074,635.

A crucial next step towards implementation was identification of which projects of the Town's overall eligible listing should be advanced for further study, environmental review, design, and construction, as appropriate.

On September 15, 2022, Paradise Town Council reviewed and approved the CDBG-DR Infrastructure Action Plan which aims to keep the Council and community apprised of the status of allocated projects through completion. The primary objectives of the Action Plan aim to:

1. Stabilize the Town's Paradise Recovery & Operations Fund through the allocation of eligible Disaster Recovery and Mitigation projects with unfunded match requirements.
2. Implement a diverse array of infrastructure projects identified through the extensive planning of the 2019 Community Long-Term Recovery Plan and 2020 Transportation Master Plan. Projects identified will increase evacuation capacity, connect dead-end roads, or complete missing road segments which would have been useful during the 2018 Camp Fire evacuation and will be useful in any future evacuation scenario the Town may face in the future.

On December 13, 2022, Paradise Town Council reviewed and approved the CDBG-DR Infrastructure Action Plan Amendment 1 which incorporated new funding announcements through the California Transportation Commission's Active Transportation Program. These funding announcements included an additional \$41M towards projects along Skyway, Neal and Pentz Road. Amendment 1 documented the new funds and a revised project list.

A critical piece of the Town's Action Plan implementation is funding the Roe Road Extension Phase 1 Project. This Project is part of the Town's overall strategy to provide an additional east-west connecting roadway between Skyway and Pentz Road. Phase 1 spans between Pentz Road and South Libby Road.

On November 3, 2023, Town of Paradise staff learned that Roe Road Extension Phase 2 (South Libby to Clark) was approved for a \$33M allocation as the State's top scoring application in the Local Transportation Climate Adaptation Program's (LTCAP) first funding cycle. The total project cost is estimated at \$66M. A project Fact Sheet is attached to this agenda summary for reference.

In December 2023, federal Multimodal Discretionary Grant (Rural) and Safe Streets for All Programs funding announcements were made and, unfortunately, did not include the Roe Road Extension Phase 2 Project applications submitted by the Town of Paradise. Staff had hoped these grant applications would help leverage the secured LTCAP funding to provide 100% project funding.

On January 9, 2024, Paradise Town Council approved CDBG-DR Action Plan Amendment 2 which allocated \$4.2M in CDBG-DR Infrastructure funds towards the Roe Rd Extension Phase 2 Project.

The U.S. Department of Transportation has published a Notice of Funding Opportunity (NOFO) for \$1.5 billion in grant funding through the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) discretionary grant program for 2024. The popular program helps communities around the country carry out projects with significant local or regional impact.

RAISE discretionary grants help project sponsors at the state and local levels, including municipalities, Tribal governments, counties, and others complete critical freight and passenger transportation infrastructure projects. The eligibility requirements of RAISE allow project sponsors to obtain funding for projects that may be harder to support through other U.S. DOT grant programs.

With the \$33M LTCAP award and \$4.2M CDBG-DR allocation, the Roe Rd Extension Phase 2 Project requires an additional \$28.8M in construction funding. The maximum RAISE funding grant amount is \$25M.

Analysis:

Staff is recommending Council approve two letters relating to the Roe Road Extension Phase Project, as follows:

1. California Transportation Commission relating to the Town’s gratitude for the \$33M award for the project as well as intent to secure full construction funding. A critical note will be made relating to the Town’s understanding that for LTCAP funds to be obligated towards construction the Town shall ensure that the entire phase is fully funded.
2. US Department of Transportation relating to the Town’s commitment and support for the \$25M RAISE application.

As previously noted, the Town of Paradise has secured the following funding for the \$66M Roe Road Extension Phase 2 Project:

\$33,000,000	Local Transportation Climate Adaption Program (CTC)
\$4,200,000	CDBG-DR Infrastructure Funds (HUD/HCD)
\$37,200,000	TOTAL

The Town of Paradise intends to submit a maximum \$25M request under the federal 2024 RAISE funding opportunity. If approved, this leaves an overall project funding shortfall of \$3.8M. Town staff is requesting Council to approve a \$3.8M commitment of local reserve funds towards the project’s construction phase. This local funding demonstrates the Town’s support for the project, increasing the likelihood of federal funding selection.

Financial Impact:

In the last two years, staff has secured over \$270M in new funding without encumbering any of the Town’s reserves. Staff is requesting a \$3.8 million budgetary commitment for the Roe Road Extension Phase 2 Project. As a part of the Town’s planned Fiscal Sustainability Model, Paradise Town Council reserved 10% of the Paradise Recovery & Operations (PRO) Fund (\$22,000,000) for anticipated capital projects, unfunded match requirements and other needs.

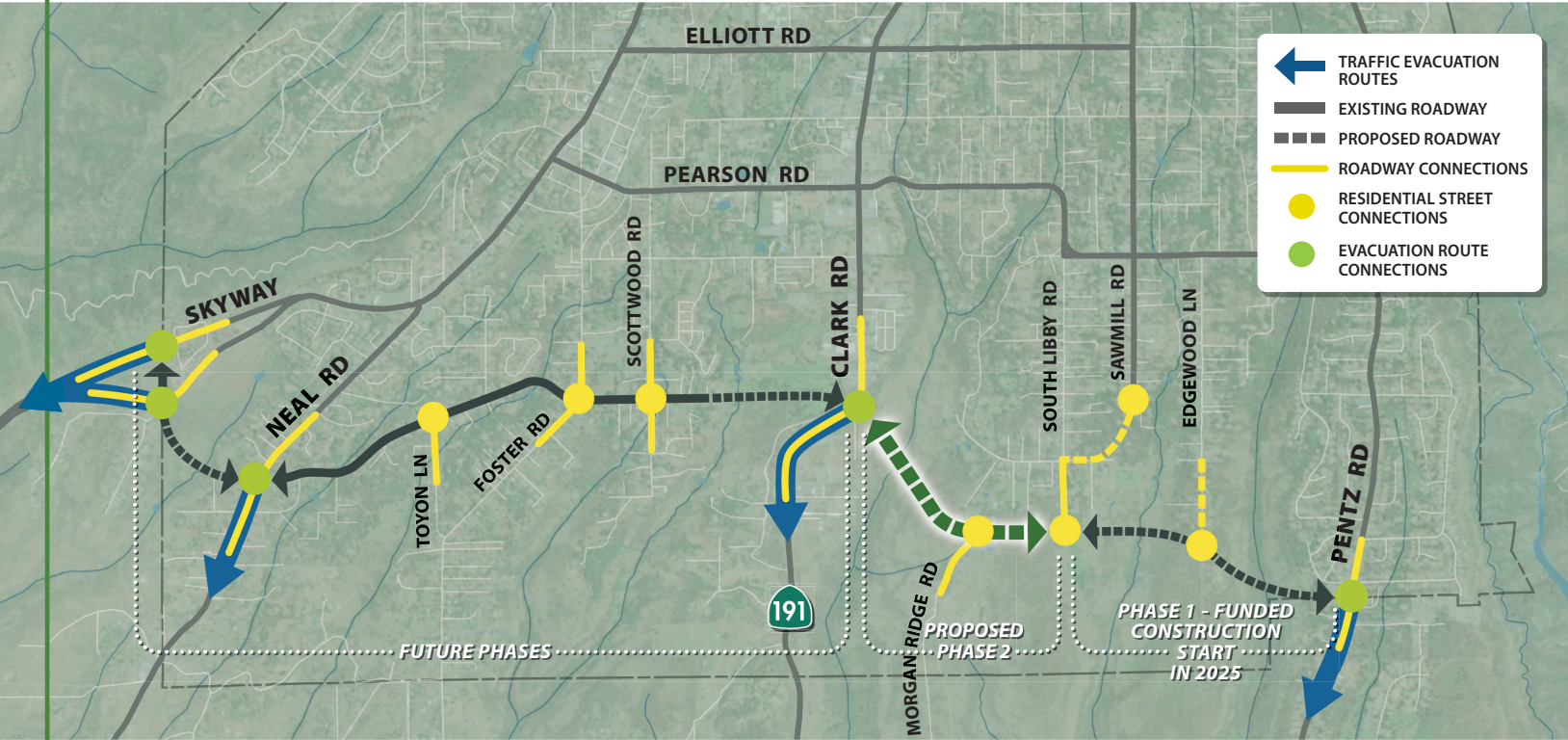
In August 2023, Paradise Town Council committed \$6,460,000 towards the Operations & Maintenance Assistance Program of the Paradise Sewer Project. The PRO Fund reserve will fund this program.

If the \$3.8M allocation towards the Roe Rd Extension Phase 2 Project is approved, the PRO Fund Reserve will stand at \$11,740,000.

ROE ROAD EXTENSION PROJECT - PHASE 2



Implementing Agency: Town of Paradise



PROJECT BENEFITS

- Provides new access to State Route 191/Clark Road traffic evacuation route
- Avoids 4 miles out of way travel during traffic evacuation
- Provides second route option for 5 residential dead-end streets
- Transportation grid network supports First Responders daily operations and emergency evacuation events

PROJECT INFORMATION

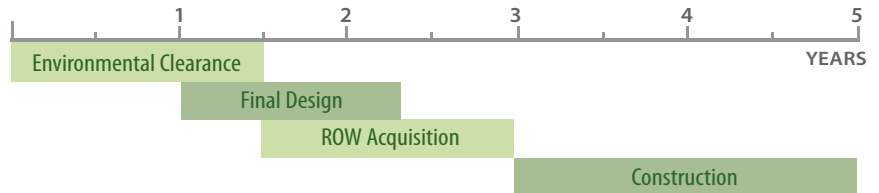
- Phase 2 continues the cross-town connection between Skyway and Pentz Road. The future 5-mile roadway will address circulation system deficiencies, build transportation options, add on-street bicycle lanes, and improve disaster evacuation route access.
- Phase 2 will close gap to 5 roadways which serve disconnected residential areas.
- Directly benefits evacuation corridors which experienced a high concentration of traffic-related fatalities during the Camp Fire.
- Phase 2 prioritizes new roadway link serving long dead-end streets including South Libby, Circle, Warnke, and Bennett and eliminate a barrier created by Clear Creek and a ridge.

PHASE 2 COST

Environmental	\$2,700,000
Design	\$6,800,000
Right of Way	\$4,500,000
Construction	\$52,000,000

TOTAL \$66,000,000
Funding Secured \$37,200,000

PHASE 2 SCHEDULE



PROJECT OUTCOMES

- Improves Safety
- Increases Mobility Options
- Provides Disaster Resilience
- Gap Closure
- Supports Economic Recovery
- Benefits Disadvantaged Communities



Town of Paradise
 5555 Skyway
 Paradise, CA 95969
 (530) 872-6291

February 14, 2024

Laurie Waters
 Associate Deputy Director
 California Transportation Commission
 1120 N St
 Sacramento, CA 95814

Re: Roe Road Extension – Phase 2 Funding Updates

Dear Ms. Waters:

On behalf of the Town Council of the Town of Paradise, I write this letter to express our full gratitude for the California Transportation Commission’s selection of the Roe Rd Extension Phase 2 Project under the Local Transportation Climate Adaption Program.

The Roe Road Extension Phase 2 Project aims to provide a missing link in evacuation infrastructure which would have benefited the 2018 Camp Fire as well as improve resiliency for future evacuation events.

Since the Commission’s approval of the \$33,000,000 award, the Project budget and other funding commitments have changed. This letter aims to memorialize a revised funding plan and the Town’s robust efforts to ensure the Project is fully funded and constructed. Please find below a revised funding table which highlights newly allocated funding and pending grant applications:

Phase	Allocation FY	Amount	Funding Source	Funding Status
PA&ED	2023/24	\$1,000,000	CDBG-DR	Committed
PA&ED	2023/24	\$1,770,000	LTCAP	Committed
PS&E	2025/26	\$2,000,000	CDBG-DR	Committed
PS&E	2025/26	\$2,155,000	LTCAP	Committed
ROW	2025/26	\$4,788,000	LTCAP	Committed
ROW	2025/26	\$1,197,000	CDBG-DR	Committed
CON	2026/27	\$24,287,000	LTCAP	Committed
CON	2026/27	\$25,000,000	RAISE	Uncommitted
CON	2026/27	\$3,803,000	Local	Committed
Total		\$66,000,000		

As noted in the table above, the Town has made two allocations of own funds towards the project, (1) \$4.2M in CDBG-DR funds to ensure that all project development phases (PA&ED, PS&E and ROW) are fully funded and remain on schedule, and (2) \$3.8M to cover gap funding following the Town's \$25M pending federal Rebuilding American Infrastructure with Sustainability and Equity (RAISE) application. The RAISE application will be submitted before February 28, 2024 and funding announcements are expected in June 2024.

In the event the Town's RAISE application is not successful, Town staff will continue to seek remaining funds through other grant opportunities. The Town of Paradise understands that the project will not be eligible to allocate the LTCAP Construction phase funds unless the phase is fully funded.

Town staff will continue to keep you apprised of project updates as soon as they come available. In the meantime, should you have any questions or needs please do not hesitate to contact us at (530) 872-6291 x125.

Sincerely,

Ron Lassonde
Mayor



Town of Paradise
5555 Skyway
Paradise, CA 95969
(530) 872-6291

February 14, 2024

The Honorable Pete Buttigieg
Secretary of the United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Letter of Support and Funding Commitment for the FY2024 RAISE Application
Roe Road Extension – Phase 2

Dear Secretary Buttigieg:

On behalf of the Town Council of the Town of Paradise, I write this letter to express our full and complete support for the Town's application to the U.S. Department of Transportation's FY2024 RAISE grant program.

The Roe Road Extension Phase 2 Project aims to provide a missing link in evacuation infrastructure which would have benefited the 2018 Camp Fire as well as improve resiliency for future evacuation events.

The Town (population 10,000) qualifies as a Rural applicant. We will commit \$3.8 million in local funds toward the proposed project. The source of these funds is the Town's Paradise Recovery & Operations Fund Reserve. These funds were approved by the Town Council on February 13, 2024 and will be available in FY2026-27.

The Town has been fortunate to receive federal and state funding since the 2018 Camp Fire disaster. As a result, we have the experience and technical capacity to administer the RAISE grant including knowledge of federal contract and procurement regulations, and experience implementing grant-funded projects of similar size and scope. These state and federal-funded projects include: \$90 million from FEMA and FHWA for roadway rehabilitation, and \$200 million from the California Department of Housing and Community Development to build transformative infrastructure. The Town's Public Works Director/Town Engineer will serve as the Project Manager, bringing more than 15 years of directly-related experience to the project.

The proposed project is listed in the Town's 2019 *Long-Term Recovery Plan* and 2022 *Transportation Master Plan*. During significant public outreach conducted in the wake of the fire, 'projects to address gaps in the evacuation route network' emerged as a HIGH PRIORITY. The proposed project will address this concern while building back better: the project will include active transportation infrastructure that will provide new transportation choices for residents, and the new roadway will improve circulation in this small rural town.

The project is also consistent with all of the RAISE Merit Criteria, as described in our application. The Town is underserved, disadvantaged, and rural, and this project is crucial to our recovery. We sincerely thank you for considering our funding request. We are available to answer your questions at your convenience by contacting us at (530) 872-6291 x125.

Sincerely,

Ron Lassonde
Mayor



Town of Paradise
Council Agenda Summary
Date: February 13, 2024

Agenda Item: 6(d)

ORIGINATED BY: Colette Curtis, Recovery and Economic Development Director
REVIEWED BY: Jim Goodwin, Town Manager
SUBJECT: Chico Regional Airport Investment Opportunity
LONG TERM RECOVERY PLAN: Yes

COUNCIL ACTION REQUESTED:

1. Hear information on the opportunity to invest in the Chico Regional Airport from the Chico Airport Manager; and
2. Give Staff direction on starting negotiations regarding an investment agreement.

Background:

Prior to 2011, The City of Chico operated the Chico Regional Airport which provided flights to SFO. AS of 2010, yearly ridership was 47,000.

Recently, the City of Chico has made a renewed effort to reestablish air service to the region and is actively working with airlines to do so. Their Airport Manager reports they are anticipating the airport will provide 2 flights per day to LAX, will offer plane sizes between 50-160 seats, and have a goal of active flight service by Fall of 2025.

Reestablishing air service in the region provides a benefit to Paradise residents and businesses. The availability of a nearby airport is a factor in the decision to relocate to Paradise, and during recovery Paradise is interested in supporting these types of services for residents.

Analysis:

Recently, Town staff was approached by the Chico Airport Manager with an investment opportunity in the Chico Regional Airport which would help reestablish service. The investment would go towards the Revenue Guarantee Fund which is required in order for Chico to make an agreement with an Airline.

The Chico Airport Manager is looking for five substantial investors, along with small investors, to generate this fund which has a goal of \$1.5 Million in total. The opportunity was presented as a way to reestablish air service in the region which would benefit Paradise as we recover. A secondary opportunity presented through this investment was the offer of significant branding and advertising in the Chico Regional Airport.

Financial Impact:

Any investment made to the Chico Regional Airport would impact the Town’s General Fund unless a grant opportunity was identified. Currently there are no known grants available for this purpose.

The investment opportunity has been presented as a one-time investment towards the Revenue Guarantee Fund, however any content for the advertising space, and the periodic updating of that content would be an additional cost.