



City Council Meeting Agenda

Monday, September 15, 2025 at 6:00 PM

33 Church Street, Sutter Creek, CA 95685

The Agenda can be found on the City's Website: www.cityofsuttercreek.org

The City of Sutter Creek City Council Meeting will be available in person and LIVE on YouTube at

<https://www.youtube.com/@CityofSutterCreek>.

You can also watch the meeting on Zoom (please note Zoom participation is only available for viewing.

<https://us02web.zoom.us/j/81391466458?pwd=4jXmBm1AP5bEbiID3iDwuxk4GpreRY.1>

Or Dial by phone: 301 715 8592 Webinar ID: 816 8589 0182 Passcode: 186036

Unless stated otherwise on the agenda, every item on the agenda is exempt from review under the California Environmental Quality Act ("CEQA") per CEQA Guidelines Sections 15060(c), 15061(b)(3), 15273, 15378, 15301, 15323 and/or Public Resources Code Section 21065.

- 1. Call to Order and Establish a Quorum for Regular Meeting**
- 2. Pledge of Allegiance to the Flag**
- 3. Public Forum**

At this time, the public is permitted to address the City Council on items not appearing on the agenda. Comments may not exceed 5 minutes. In accordance with State Law, however, no action or discussion may take place on any item not appearing on the posted agenda. The City Council may respond to statements made or questions asked or may request Staff to report back at a future meeting on the matter. The exceptions under which the City Council may discuss and/or take action on items not appearing on the agenda are contained in Government Code §54954.2. Public comment on any item listed below shall be limited to five minutes, unless additional time is permitted by the Mayor/Council.

- 4. City Manager's Report**

This section is an opportunity to provide Council members with a brief status update on staff activities. No action is expected to be taken by the Council.

- 5. Presentations**

6. Approval of Minutes

- A. [City Council Minutes of September 2, 2025](#)

[Recommendation: By motion approve minutes as presented.](#)

7. Consent Agenda

Items listed on the consent agenda are considered routine and shall be enacted in one motion. Any item may be removed for discussion at the request of Council or the Public.

8. Ordinances and Public Hearing

- A. [Public Hearing and Acceptance of City of Sutter Creek Annual Impact Fee Report Fiscal Year 2024-2025](#)

- B. [Wastewater Treatment Plant Design Build Contract with Schneider Electric](#)

[Approval Resolution to enter into a Design Build Agreement with Schneider Electric](#)

9. Administrative Agenda

10. Mayor and Council Member Reports

This section is to provide Council members an opportunity to present updates on their activities and to request items be placed on future agendas.

11. City Attorney's Report

This section provides an opportunity for the City Attorney to report on any activities or upcoming legislation of importance to the City. No action is expected to be taken by the Council.

12. Future Agenda Items

This section provides an opportunity for Council members to request items to be added to the agenda in the future with a majority Council vote.

13. Information and Correspondence

- A. [August 2025 - Treasurer Report](#)
- B. [August 2025 - City Clerk Report](#)
- C. [August 2025 - Police Report](#)
- D. [August 2025 - Engineering Report](#)
- E. [August 2025 - Public Works](#)
- F. [August 2025 - Planning Department Report](#)
- G. [August 2025 - Marketing Report](#)
- H. [August 2025 - Finance Department Report](#)
- I. [August 2025 - Expense & Revenue Report](#)
- J. [August 2025 - Check Register](#)

K. [August 2025 - Cash Report](#)

14. Closed Session

15. Report from Closed Session

16. Adjournment

The next regularly scheduled meeting is October 6, 2025 at 6PM.



City Council Meeting Minutes

Tuesday, September 02, 2025 at 6:00 PM

33 Church Street, Sutter Creek, CA 95685

The Agenda can be found on the City's Website: www.cityofsuttercreek.org

1. Call to Order and Establish a Quorum for Regular Meeting

The meeting was called to order at 6:00 PM.

Present: Mayor Claire Gunselman, Council Member Riordan, Council Member Swift, Council Member Feist

Absent: Council Member Sierk

City Treasurer: Victoria Runquist

Staff Present: City Manager Tom DuBois, City Clerk Aaron Wolcott, Project Manager Will Watson, City Attorney Derek Cole, Finance Supervisor Mason Peters

2. Pledge of Allegiance to the Flag

The pledge of allegiance was led by Mayor Gunselman

3. Public Forum

There were no public comments on items not on the agenda.

4. City Manager's Report

City Manager Tom DuBois provided updates on several items:

Old Highway 49 Sewer Repairs: The project, originally scheduled for one week, has taken five weeks due to challenges including the proximity of PG&E lines, concrete-encased pipes, contractor equipment issues, and a recent asphalt shortage. The road is expected to reopen by the end of the week

Local Sales Tax (Measure P): Revenue for April-June came in at \$145,000, exceeding the forecast of \$118,000. If this trend continues, the City could see a surplus of approximately \$120,000 for the fiscal year.

Henderson Reservoir: Work is progressing. The drainpipe was found to be encased in concrete, causing delays. The City is delivering water to affected ranchers and is working with the Department of Dam Safety to switch to a more efficient cured-in-place pipe lining method. The project is expected to remain on budget.

Economic Development: Sutter Creek was selected to participate in an economic development competition with the University of Southern California, which will provide graduate students to assist with developing an economic strategy for the city.

76 Main Street: Opaque screening has been added to the fence, and the City is coordinating with the Visitors Center to display historical photos of the former building. The property owner has indicated plans to rebuild a similar structure.

General Updates: The annual weed abatement program has concluded with good compliance. The pool season, managed by ACRA, was successful. Upcoming events include the Summer Concert in the Park, an iron pour at the Knight Foundry, the Scarecrow Festival, Big Crush, the Car Show, and the Witches Walk.

5. Presentations

A. Sutter Creek Business Association

Greg McLeod, President of the SCBA, gave a presentation. Membership has grown from 32 to 56 members. He highlighted upcoming events including the Scarecrow Festival, the Annual Car Show, and the Witches Walk. Mr. McLeod shared feedback from members, who appreciate the City's social media promotion and Public Works' assistance with events. He also raised concerns regarding the need for stricter enforcement of parking time limits, street cleanliness, flexibility on permit fees for events, and improved landscaping in key areas like City Hall and near the bridge.

6. Approval of Minutes

A. City Council Minutes of August 18, 2025

Motion to approve the Minutes from August 18, 2025 with edits provided by Treasurer Runquist by Council member Riordan, second by Council member Feist.

AYES: Council members Gunselman, Swift, Feist, Riordan

ABSENT: Sierk

NOES:

MOTION CARRIED 4-0

7. Consent Agenda

A. Weed Abatement 2025 Update

Motion to approve the Consent Agenda by Council member Swift, second by Council member Feist.

AYES: Council members Gunselman, Swift, Feist, Riordan

ABSENT: Sierk

NOES:

MOTION CARRIED 4-0

8. Ordinances and Public Hearing

9. Administrative Agenda

A. Record Retention Schedule

City Clerk Aaron Wolcott presented a new Record Retention Schedule. The schedule is required by law and will help the city manage records and respond to Public Records Act requests more efficiently.

Motion to approve the Resolution approving the updated Record Retention Schedule by Council member Riordan, second by Council member Swift.

AYES: Council members Gunselman, Swift, Feist, Riordan

ABSENT: Sierk

NOES:

MOTION CARRIED 4-0

B. Update to General Fund Reserve Policies

City Manager Tom DuBois introduced the item, noting that the city's reserves are healthier than previously understood. The Council discussed the Government Finance Officers Association (GFOA) recommendation to maintain a reserve equivalent to 2-3 months of operating expenses. Council Member Riordan expressed concern that the proposed 20% minimum was too low and sought a more conservative figure. Council Member Feist suggested changing language in the policy from "should be used" to "may be used" to give the Council more discretion over the funds. The Council coalesced around these suggestions to create a more robust policy.

Motion to adopt the General Fund Operating Reserve Policy with the following amendments: 1) Increase the minimum operating reserve from 20% to 25% of annual expenses. 2) Change the wording in the "Use and Replenishment" section from "should be used" to "may be used." 3) Require a four-fifths (4/5) Council vote to approve any use of funds that would draw the reserve below the 25% minimum by Council member Swift, second by Council member Riordan.

AYES: Council members Gunselman, Swift, Feist, Riordan

ABSENT: Sierk

NOES:

MOTION CARRIED 4-0

10. Mayor and Council Member Reports

Council member Swift: Reported that the Sutter Creek Fire District board expressed its appreciation for the Public Works department's cleanup efforts.

Council member Riordan: Thanked the organizers of the recent Fireman's Ball for their hard work, with a special mention for Mayor Gunselman.

Mayor Gunselman: Announced a non-profit and volunteer open house scheduled for October 8th at the Grammar School to connect residents with local organizations.

Council member Feist: Had nothing to report.

11. City Attorney's Report

None

12. Future Agenda Items

Council member Feist requested that staff investigate a "dark sky initiative" to address light pollution. Staff will review the City's current ordinances.

Council member Swift also suggested streamlining the agenda by consolidating future agenda item requests into the reports section, rather than having it appear in two separate places.

13. Information and Correspondence

The City received a letter from the organizers of the Ragtime Festival offering to donate and help raise funds to install air conditioning in the City Auditorium. Staff will investigate the costs and potential for this project.

14. Closed Session

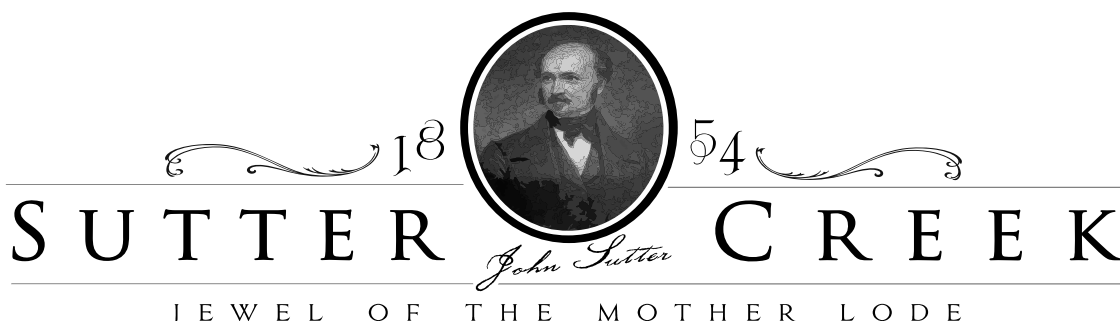
None

15. Report from Closed Session

16. Adjournment

The meeting was adjourned at 7:05pm

The next regularly scheduled meeting is September 15, 2025.



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

MEETING DATE: SEPTEMBER 2, 2025

FROM: MASON PETERS, FINANCE SUPERVISOR

SUBJECT: CITY OF SUTTER CREEK CAPITAL FACILITIES FEES ANNUAL REPORT

RECOMMENDATION:

1. Hold a Public Hearing regarding the Capital Facilities Fees Annual Report.
2. Accept by motion the City of Sutter Creek Capital Facilities Fees Annual Report for Fiscal Year 2024-2025.

BACKGROUND:

California Government Code §66006(b) requires that a local agency make the following information available to the public for each separate impact fee fund on an annual basis and that the local agency review that information at a public meeting.

DISCUSSION:

The Capital Facilities Fees Annual Report must contain the following information:

1. a brief description of the type of fees,
2. the beginning and ending amount of each fee account,
3. the amount of the fees collected and interest earned,
4. An identification of each public improvement on which the fees were expended and the amount of the expenditures on each improvement,
5. The amount of the fees,
6. A description of each Interfund transfer or loan made from the account.

Staff has prepared a report with all of the required information.

BUDGET IMPACT:

None.

City of Sutter Creek Capital Facilities Fees Annual Report Fiscal Year 2024-25

Prepared By:

City of Sutter Creek

August 25, 2025



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Capital Facilities Fees Annual Report Fiscal Year 2024-25

LEGAL REQUIREMENTS

A. What Are Impact Fees?

California Government Code §66000 allows a local jurisdiction to establish an impact fee to mitigate the impacts of new development. These fees may be used for the purchase, construction, expansion, rehabilitation, or acquisition of public facilities, and must be consistent with the adopted fee program, which is updated every five years.

New development increases the demand for health and safety service provided by a city, affects the quality of the community's infrastructure, and increases the need for public facilities. Typically, impact fees are paid to a city at the time a building permit is issued and assist in paying for the cumulative impact of new development through infrastructure improvements and additions. Facilities partly funded by impact fees include police, fire and administrative buildings, park sites, bike trails, public landscape areas, community centers, transportation and transit facilities and roadway improvements. Impact fees cannot be used for maintenance of existing or future city facilities.

B. Establishing An Impact Fee Program

The City of Sutter Creek ("City") impact fee program, more commonly known as the Capital Facilities Fees Program ("CFF Program"), was established in 2008. Impact fees imposed on new development must have the proper nexus to any project on which they are imposed. The CFF Program sets forth the relationship between contemplated future developments, facilities needed to serve future development and the estimated cost of those improvements based on the current General Plan for build-out.

C. Adoption of a Capital Improvement Program (CIP)

California Government Code §66002 requires local agencies that have implemented an impact fee program to adopt a Capital Improvement Program (CIP) indicating the approximate location, size, and time of projects, plus an estimate for the costs of all facilities or improvements to be financed by the impact fees. At a minimum, a formal CIP is recommended as a five-year plan.

The City's CIP connects annual capital expenditures to a long-range plan for public improvements. The City's CIP also assists in maximizing the funds available, connecting the plan for public improvements to the City's capacity for funding, and projecting expenditures over a period of years. This type of fiscal management is particularly

City of Sutter
Capital Facilities Fees Annual Report
Fiscal Year 2024-25

LEGAL REQUIREMENTS (Cont.)

important during periods where budgetary demands exceed financial resources. The City's CIP is financed in part by the impact fees collected through the CFF Program.

D. Reporting

Annual reporting of a local agency's impact fee program is required by Government Code §66006. The impact fees collected must be segregated from general and other funds containing fees collected for other improvements. Interest on each impact fee fund or account must be credited to that fund or account and be used only for the purpose for which the impact fee was collected.

California Government Code §66006(b) requires that a local agency make the following information available to the public for each separate impact fee fund on an annual basis and that the local agency review that information at a public meeting. The law also requires the annual report include the following information for the prior fiscal year and be made available within 180 days after the last day of each fiscal year:

- Describe the type of impact fee in the account or fund.
- Identify the amount of the impact fee.
- Provide the beginning and ending balance of the account or fund.
- Provide the amount of impact fees collected and interest earned.
- Identify each public improvement on which impact fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the impact fee.
- Identify an approximate date by which the construction of the public improvement will commence, if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement and the public improvement remains incomplete.
- Describe each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned impact fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan.
- Provide the amount of refunds made due to sufficient funds being collected to complete financing on incomplete public improvements, and the amount of reallocation of impact funds made to administrative costs of refunding unexpended revenues exceeding the amount to be refunded.

If an agency no longer needs the funds for the purposes collected or fails to make the required findings or perform certain administrative tasks prescribed, the agency may be

**Capital Facilities Fees Annual Report
Fiscal Year 2024-25****LEGAL REQUIREMENTS (Cont.)**

required to refund, on a prorated basis to owners of the properties upon which the impact fees for the improvement were imposed, the monies collected for that project and any interest earned on those funds.

California Government Code §66001(d) also requires that the local agency make all the following findings every fifth year with respect to that portion of the account remaining unexpended, whether committed or uncommitted:

- Identify the purpose to which the impact fee is to be allocated.
- Demonstrate a reasonable relationship between the impact fee and the purpose for which is it charged.
- Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements.
- Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.
- In any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the impact fee and the cost of the public facility or portion of the public facility attributable to the development on which the impact fee is imposed.

Capital Facilities Fees Annual Report Fiscal Year 2024-25

DESCRIPTION OF CAPITAL FACILITIES FEES

The CFF Program mitigates the impacts associated with new development on certain public facilities. The CFF Program is used to finance the acquisition, construction, and improvement of public facilities as a result of new development. The City has the following eleven (11) CFF Program fee categories:

Police Capital Facilities Fee

This fee is collected to provide funding for the construction of a police station, police vehicles, parking facilities, communication systems, and equipment.

Fire Capital Facilities Fee

This fee is collected for construction of a new fire facility, fire trucks, a fire engine, and special equipment.

Historical Fee

This fee is collected to fund the City's General Plan policy of preserving historic structures in the City.

City Hall Capital Facilities Fee

This fee is collected to provide funding for the construction of a new city hall.

Corporation Yard Capital Facilities Fees

This fee is collected to provide funding for a fair-share portion of the cost to construct facilities for a new corporation yard.

Program Update Fee

This fee is collected for future updates of the Nexus Study to ensure that the facilities, costs, and fees in the Fee Program are current and accurate.

Administration Capital Facilities Fee

This fee is collected for the administration of the CFF Program. This includes preparation of an Annual CFF Program Report, preparation of a Five-Year CFF Report, day-to-day management of the CFF Program including preparation of annual CIP budgets, CFF Program annual inflationary updates, land value analyses and updates and CFF Program Proformas.

Traffic Mitigation Fee

There are two traffic mitigation fees collected, one for local and the other for regional. The local fee is collected to offset the direct, indirect, and cumulative impacts of new

City of Sutter

Capital Facilities Fees Annual Report

Fiscal Year 2024-25

DESCRIPTION OF CAPITAL FACILITIES FEES (Cont.)

Traffic Mitigation Fee (cont.)
development projects upon the City of Sutter Creek’s road system. The regional fee is collected for the Amador County Transportation Commission (ACTC).

Parks and Recreation Fee
This fee is collected to provide funding for parks, recreational buildings and master plan updates.

Sewer Connection Fee
This fee is collected to provide funding for the city's sewer facilities.

CURRENT FEE SCHEDULES

The current CFF Program allows for an annual inflationary adjustment equal to the increase in the annual change in the Engineering News Record Construction Cost Index through the month of December of the preceding year. Table 1 & 2 provides the adopted fee schedule for Fiscal Year 2024-25.

COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES

The Combining Statement of Revenues, Expenditures and Changes in Fund Balances provided in Table 3 outlines the beginning and ending balance of each fund for Fiscal Year 2024-25. Expenditures are identified by general categories. All revenue is collected at the time a building permit is issued. Since the CFF Program is a “pay-as-you-go” program, the City must accrue enough revenue prior to commencing construction of a project, resulting in an “aging” of fund balances. The aging or accumulation occurs until enough revenue has been collected to construct a project.

FIVE YEAR REVENUE AND EXPENSE HISTORY

As previously discussed, most revenue is collected when a building permit is issued for new development. Total CFF Program revenues decreased by \$107,471 and expenditures increased by \$38,798 between Fiscal Years 2023-24 and 2024-25. We had a strong year for impact fee collection in FY24, but went back to only 1 impact-fee-eligible new structure in city limits in FY25. Tables 4 and 5 provide a five-year snapshot of the CFF Program revenues and expenditures, respectively.

City of Sutter County
Capital Facilities Fees Annual Report
Fiscal Year 2024-25

Table 1: Capital Facilities Fee Schedules Effective July 1, 2024 through June 30, 2025

Fee Category	Unit Measure Per	Police	Fire	Historical	City Hall	Corporation Yard	Program Updates	Admin	Park & Recreation	Sewer Connection	Total
Single-Family Residential/Mobile Home/Congregate Care	Dwelling Unit	\$ 1,430.96	\$ 2,808.31	\$ 654.57	\$ 1,638.86	\$ 776.39	\$ 186.79	\$ 224.15	\$13,700.65	\$10,247.56	\$ 31,668.24
Multi-Family Residential	Dwelling Unit	\$ 933.94	\$ 1,832.14	\$ 427.18	\$ 1,068.75	\$ 506.76	\$ 121.82	\$ 146.18	\$13,700.65	\$10,247.56	\$ 28,984.98
Retail / Food / Other	SF	\$ 0.28	\$ 0.54	\$ 0.05	\$ 0.31	\$ 0.15	\$ 0.03	\$ 0.03	n/a	\$10,247.56*	1.39
Office/Professional	SF	\$ 0.50	\$ 0.97	\$ 0.08	\$ 0.57	\$ 0.28	\$ 0.06	\$ 0.08	n/a	\$10,247.56*	2.55
Industrial	SF	\$ 0.15	\$ 0.29	\$ 0.03	\$ 0.18	\$ 0.08	\$ 0.02	\$ 0.02	n/a	\$10,247.56*	0.76

*Sewer connection for Retail, Office/Professional and Industrial is per connection not per SF and is not included in the Total column.

Table 2: Traffic Mitigation Fee Schedules Effective July 1, 2024 through June 30, 2025

Category	Unit Measure Per	Fee Amount
Local Traffic, Single Family	Dwelling Unit	\$ 5,134.22
Local Traffic, Multi-Family	Dwelling Unit	\$ 3,644.80
Local Traffic, Mobile Home Park or Subdivision	Dwelling Unit	\$ 5,134.22
Local Traffic, Congregate Care Facility	Dwelling Unit	\$ 5,134.22
Local Traffic, Retail- High Volume	SF	\$ 10.27
Local Traffic, Retail- Medium Volume	SF	\$ 6.67
Local Traffic, Retail- Low Volume	SF	0.77
Local Traffic, Office/Professional	SF	5.65
Regional Traffic, Residential	Dwelling Unit	3,878
Sutter Crest Estates (Gopher Flat)	Dwelling Unit	1,624.24
Sutter Crest East/Golden Hills (Gopher Flat)	Dwelling Unit	1,624.24
Sutter Glen (Gopher Flat)	Dwelling Unit	1,624.24
Crestview Estates	Dwelling Unit	2,861.91
Mesa De Oro	Dwelling Unit	584.73
Powder House Estates	Dwelling Unit	1,624.24

City of Sutter County
Capital Facilities Fees Annual Report
Fiscal Year 2024-25

Table 3: Combining Statement of Revenues, Expenditures and Changes in Fund Balances Year Ended June 30, 2025

	Police	Fire	Historical	City Hall	Corporation Yard	Program Update	Admin	Traffic Mitigation Local	Traffic Mitigation Regional	Parks & Rec.	Sewer Connection	TOTAL
REVENUES:												
Fees Collected	1,431	2,808	655	1,639	776	186	224	5,134	3,878	13,701	10,248	39,664
Interest	1,018	906	339	1,018	509	170	338	2,474	124	2,436	2,944	12,276
Miscellaneous												
TOTAL REVENUES	\$2,449	\$3,714	\$994	\$2,657	\$1,285	\$356	\$562	\$7,608	\$4,002	\$16,137	\$13,192	\$52,956
EXPENDITURES:												
General Gov't.									15,512			15,512
Community Development												0
Public Works					360							360
Parks & Recreation										24,859		24,859
Public Safety	37,031											37,031
Capital Outlay:												0
TOTAL EXPENDITURES	\$ 37,031	\$ 0	\$ 0	\$ 0	\$ 360	\$ 0	\$ 0	\$ 0	\$ 15,512	\$ 24,859	\$ 0	\$77,762
EXCESS OF REVENUES OVER EXPENDITURES - SUBTOTAL	-\$34,582	\$3,714	\$994	\$2,657	\$925	\$356	\$562	\$7,608	-\$11,510	-\$8,722	\$13,192	-\$24,806
FUND BALANCES, July 1, 2024	55,135	38,006	34,941	47,185	38,165	4,936	2,090	244,215	17,224	103,428	122,356	707,681
SUBTOTAL	-34,582	3,714	994	2,657	925	356	562	7,608	-11,510	-8,722	13,192	-24,806
FUND BALANCES, June 30, 2025	\$20,553	\$41,720	\$35,935	\$49,842	\$39,090	\$5,292	\$2,652	\$251,823	\$5,714	\$94,706	\$135,548	\$682,875

City of Sutter County
Capital Facilities Fees Annual Report
Fiscal Year 2024-25

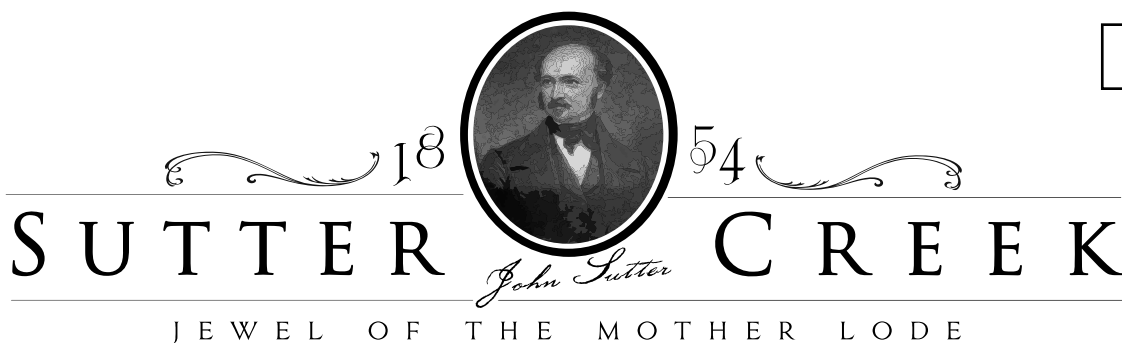
Table 4: Five Year Revenue History

Fund	2020-21	2021-22	2022-23	2023-24	2024-25	Five Year Total
Police						
Fees Collected	1,174	3,655	0	5,260	1,431	11,520
All Other Revenue Sources	69	60	175	337	1,018	1,659
Subtotal	1,243	3,715	175	5,597	2,449	13,179
Fire						
Fees Collected	2,305	7,173	0	10,322	2,808	22,608
All Other Revenue Sources	135	118	343	661	906	2,163
Subtotal	2,440	7,291	343	10,983	3,714	24,771
Historical						
Fees Collected	537	1,672	0	2,406	655	5,270
All Other Revenue Sources	32	28	80	154	339	633
Subtotal	569	1,699	80	2,560	994	5,902
City Hall						
Fees Collected	1,345	4,185	0	6,022	1,639	13,191
All Other Revenue Sources	79	69	200	385	1,018	1,751
Subtotal	1,424	4,254	200	6,408	2,657	14,943
Corporation Yard						
Fees Collected	637	1,983	0	2,854	776	6,250
All Other Revenue Sources	37	33	95	183	509	857
Subtotal	675	2,016	95	3,037	1,285	7,108
Program Update						
Fees Collected	153	477	0	686	186	1,502
All Other Revenue Sources	9	8	23	44	170	254
Subtotal	162	485	23	730	356	1,756
Administration						
Fees Collected	184	572	0	823	224	1,803
All Other Revenue Sources	11	9	27	53	338	438
Subtotal	195	582	27	876	562	2,242
Traffic Mitigation						
Local Fees Collected	4,692	13,111	0	18,868	5,134	41,805
Regional Fees Collected	3,878	11,634	17,133	15,512	3,878	52,035
All Other Revenue Sources	2,911	438	758	1,489	2,598	8,194
Subtotal	11,481	25,183	17,891	35,869	11,610	102,034
Parks & Recreation						
Fees Collected	8,760	26,280	0	35,708	13,701	84,449
All Other Revenue Sources	476	72	0	608	2,436	3,592
Subtotal	9,236	26,352	0	36,316	16,137	88,041
Sewer Connection						
Fees Collected	7,063	21,984	0	51,522	10,248	90,817
All Other Revenue Sources	5,844	1,921	0	6,530	2,944	17,239
Subtotal	12,907	23,905	0	58,052	13,192	108,056
TOTAL	\$ 40,331	\$ 95,481	\$ 18,834	\$160,427	\$52,956	\$368,029

City of Sutter County
Capital Facilities Fees Annual Report
Fiscal Year 2024-25

Table 5: Five Year Expenditure History

Fund	2020-21	2021-22	2022-23	2023-24	2024-25	Five Year Total
Police	-	-	-	329	37,031	37,360
Fire	-	-	-	-	-	0
Historical	-	-	-	-	-	0
City Hall	-	-	-	23,123	-	23,123
Corporation Yard	-	-	-	-	-	0
Program Update	-	-	-	-	-	0
Administration	614	659	-	-	-	1273
Traffic Mitigation - Local	-	-	-	-	-	0
Traffic Mitigation - Regional	3,878	11,634	17,133	15,512	15,512	63,669
Park & Recreation	-	-	-	-	25,219	25,219
Sewer Connection	-	-	-	-	-	0
TOTAL	\$ 4,492	\$ 12,293	\$ 17,133	\$ 38,964	\$ 77,762	\$ 150,644



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
MEETING DATE: SEPT 15 2025
FROM: TOM DUBOIS, CITY MANAGER
SUBJECT: DESIGN-BUILD CONTRACT FOR NEW WASTEWATER PLANT

RECOMMENDATION:

Staff recommends approval of the design-build energy services contract with Schneider Electric.

BACKGROUND:

The City has been evaluating and planning for the future of the wastewater plant for many years. At Council's direction, staff proceeded with the preferred alternative, a tertiary treatment plant with disposal of high-quality recycled water into Sutter Creek. Tonight is potentially a major milestone, the approval of a design-build energy services contract with Schneider Electric, who bid successfully during the RFP process.

Many meetings and steps have been taken by Council to get to this point. Attachment B, a Staff Report from Jan, 2023 contains a timeline and history of the wastewater system. Recent meetings in 2025 have included:

2/18/2025	Update on WW projects including completion of the Carollo project, and plans for I/I projects.
3/17/2025	Contract to hire HydroScience as our WW Engineer/Owner Advocate for new plant construction and approving I/I projects.
5/19/2025	Approval of the Design-Build RFP
8/18/2025	Approval of the advanced Solar and Battery solar components to be eligible for grant funds.

Staff communicated with six wastewater construction firms before issuing the RFP. Two companies submitted complete proposals to our design-build proposal request using the energy savings procurement path under California state law section 4217. We developed a proposal and interview scoring matrix. A six-member team reviewed the received proposals, conducted two days of interviews, and then scored responses according to our defined scoring metric. The metric considered price as well as other objective criteria. Schneider Electric had the winning bid and staff have been working to negotiate the contract before you tonight.

DISCUSSION:

Because we want Council and the public to have time to digest the agreement, we are publishing a version on September 9. There may be minor updates published on the website between Sept 9 and Sept 15 of the contract or the scope of services.

Working with HydroScience, the City started with a design-build contract heavily negotiated by Valley Sanitary District over the course of nearly a year. We used that as our base and then updated several components of the agreement relying on Schneider's more recent engagements, adding clauses dealing with long lead time materials, supply chain costs, cybersecurity, and the future potential to incorporate outside state or federal funding. We also developed a detailed Scope of work relevant to our project in Sutter Creek.

Schneider's proposal included a team of well-qualified experts to address our particular issues, including expertise with our Regional Water Board, with FEMA and floodplains, with local environmental conditions, and with packaged Membrane Bioreactor (MBR) plants. The team felt their proposal best addressed our known design challenges in the most cost-effective, expedient manner.

Design Build Process

Design Build is a collaborative process that involves a single company managing the design and the construction. The company works with City representatives to iterate the design to ensure it works for the site and is cost effective. An Energy Savings Company (ESCO) procurement under California Government Code 4217 allows an agency (the City) to consider cost savings, including energy and avoided capital costs. Because of changing water quality standards, the City expects regulators to issue a new permit, requiring higher quality treatment which would lead to higher energy usage regardless of what alternative was built (creek disposal or continuing to use the ARSA pipeline). By designing for creek disposal, and because we have large, deferred capital expenses associated with the Henderson Reservoir and ARSA pipeline, we anticipate the new plant will save the City over \$30M in the long run in avoided capital costs.

Design-build, when it works well, allows for closer collaboration and a more streamlined process that saves the City money and expedites procurement and construction. In the traditional design-bid-build, we would hire an engineering company to do the design and then put that design out for construction bids. There would be a handoff from one firm to the other and a time delay where the project stopped for the bidding, increasing our total costs. Long lead equipment cannot be procured in this model until a construction contract has been awarded, whereas in design-build, early procurement can begin at approximately the 60% design stage.

Project Phasing

To reduce cost and risk, the city adopted a three-phase approach to Design-Build. Phase 1 is the Assessment and Project Definition stage; Phase 2 is Design (with Phase 2a delivering a 30% design and Phase 2B delivering a 60% design and guaranteed price). Phase 3 is construction. This stepwise approach facilitates timely checkpoints at each stage of project development to confirm the project direction, anticipated costs, and schedules before committing to the next project phase.

The City could have worked out a lot of the regulatory questions and more detailed design inputs prior to starting this contract, but we would have had to pay those out-of-pocket costs. By including Phase 1 in the

agreement, we have the same company collecting the data to go into the design process and we can finance it as part of the overall project.

Funding

Currently, the plant cost is projected in Schneider's proposal to cost between \$25M - \$41M. We anticipate a 6 – 8-year timeline to complete the project, during which time a firm price will be developed that can be negotiated with the City. City staff must now turn from planning the technical aspects of the plant to a funding strategy.

The City has made an initial application for a loan to fund the project and been told we can anticipate getting a 30-year loan at below market rates for about \$30M. The City added language to the contract to enable us to apply to federal and state grants. Staff will hire a financial advisor and begin to look for an additional \$10M of funding prior to reaching the Contract Agreement phase.

Risks

With approval tonight, Council is approving Phase 1 and Phase 2, which will get us to a guaranteed maximum price (GMP). A construction agreement will be negotiated, and the completed design and construction agreement will come back to Council for approval before moving into the Construction Phase.

We will never have perfect information, and time is money on this project. Staff believe they are striking a good balance between gathering information, planning, and action. By moving the project forward at this point, with about 10 years left on the ARSA agreement, we are giving the City the best shot at creating an affordable plant with a smooth transition, avoiding as much investment in the current system as possible.

Risks include:

1. Regulatory Risk – The Water Board has told us they are supportive of Sutter Creek pursuing a solution independent of the current complex disposal situation. As part of the Schneider team, we are hiring one of the recognized experts in the field to represent us to the Regional and State Water Boards.
2. Floodplain Risk – Many wastewater plants have flood risk because of their locations. We need to work with FEMA to determine an accurate flood plan for existing components and locations that we want to reuse. We are mitigating the risk by hiring a team that includes one of the recognized experts in the field to work for us with FEMA.
3. Funding – Our largest risk. As a small community we do not immediately have the funds available. As your City Manager, my plan is to shift into major fundraiser mode and pursue every available option. We will also streamline planning and evaluation of alternatives, with a bias towards action to try to save costs.
4. Community Backlash – There is a risk that the community may not like part of the plan, for example construction at the site or effluent disposal into the creek. Many communities do this under strict standards, including the City of Jackson. This will be a communication issue for all of us to make sure people understand the approach.
5. Design Risk – Many wastewater plants are unique, custom designs, which can have issues that take awhile to resolve when they become operational. We are mitigating this risk and attempting to save costs by focusing on using the Cloacina packaged plant. Cloacina, <https://www.cloacina.com/>, a company started in 2007 and based in San Luis Obispo, is one of the leading manufacturers of packaged plants. They iterate on their design, manufacturing it in volume. Bill Slenter at HydroScience has worked on multiple plants using this technology. They have a number of operating installations in California producing Title 22 recycled water.

BUDGET IMPACT:

As part of the design-build, iterative process, we will be continuing to refine the project costs, ultimately getting to a GMP. If the City proceeds with construction, all costs will be rolled into the total project cost and will be able to be financed over 30 years. If the City decides not to proceed at any phase, the City will be responsible for paying for work completed up to that point (and will own the work product).

Several decision points with not to exceed costs are included in the agreement before you:

Phase 1 – Not to exceed \$543,107

Phase 2 – Not to exceed \$2.2M (initial estimate, to be revisited after completion of Phase 1)

So, if the city were to proceed through the end of Phase 2 to a 60% design and then decided to stop the project, for whatever reason, we would owe up to approximately \$2.7M.
All funds will come from the Enterprise Wastewater Fund.

RECOMMENDTION:

Staff is excited to reach this point and believes it is in the best interest of the City to move forward with the Design-Build of a new wastewater treatment plant.

We recommend you pass the resolution before you.

ATTACHMENT:

Attachment A – Resolution to Approval Contract

Attachment B – Staff Report from Jan 17, 2023

Attachment C – Design Build Contract for Energy Services – Treatment Plant Project (online)

Attachment D – Attachment 1 – Scope of Services (online)

RESOLUTION NO. 25-26-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH
SCHNEIDER ELECTRIC BUILDINGS, INC. FOR DESIGN-BUILD SERVICES
REGARDING THE CITY WASTEWATER TREATMENT PLANT AND MAKING
FINDINGS IN DETERMINING THAT EXECUTION OF THIS AGREEMENT IS IN
THE BEST INTERESTS OF THE CITY**

WHEREAS, California Government Code section 37103 authorizes cities to contract with any specially trained and experienced person, firm, or corporation for special service and advice in financial, economic, accounting, engineering, legal, or administrative matters;

WHEREAS, more specifically, California Government Code section 4217.10 et seq. authorizes local agencies to develop energy conservation, cogeneration, and alternate energy supply sources at agency facilities;

WHEREAS, to achieve these public benefits, the City desires to engage a single design-build entity to engineer and implement the a design-build energy services contract for the City's wastewater treatment plant ("WWTP");

WHEREAS, following the administration of a competitive request-for-proposal process, conducted consistently with Government Code section 4217.16, the City has identified Schneider Electric Buildings, Inc. ("Schneider") as best qualified to provide design-build services to the City regarding the WWTP;

WHEREAS, the City has negotiated a design-build agreement with Schneider that will provide for a three-phase scope of work;

WHEREAS, the City provided notice of a public hearing regarding the approval of this agreement as required by Government Code section 4217.12;

WHEREAS, the City duly held a public hearing regarding approval of the agreement and the making of the below findings on September 15, 2025;

WHEREAS, after holding the required public hearing, the City Council finds and determines that execution of this agreement is in the City's best interests because the anticipated cost to the City for thermal or electrical energy or conservation services provided by the WWTP under the agreement will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases;

WHEREAS, in making the foregoing finding, the City Council relied upon all available sources of projections as provided in Government Code section 4217.15;

WHEREAS, the City Council further finds and determines that the approval of an agreement with Schneider is not a project under the California Environmental Quality Act ("CEQA") because it can be determined under the "Common Sense" Exemption (14 Cal. Code Regs., § 15061(b)(3)) that approval of the agreement would have no potential impact on the environment; and

WHEREAS, the City Council further finds and determines that approval of the agreement is subject to the Class One, or Existing Facilities, Exemption under CEQA (14 Cal. Code Regs.,

§ 15361), as any modifications or changes to the WWTD would have no potential environmental impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Sutter Creek authorizes the City Manager to execute the Design-Build Energy Services Contract for the Wastewater Treatment and Energy Related Capital Improvements Project attached as **Exhibit A** to this Resolution (“The Agreement”).

BE IT FURTHER RESOLVED that the City Council of the City of Sutter Creek authorizes, in accordance with Government Code section 4217.14, the execution of contracts for electricity, electrical generating capacity, or thermal energy as specified in the Agreement.

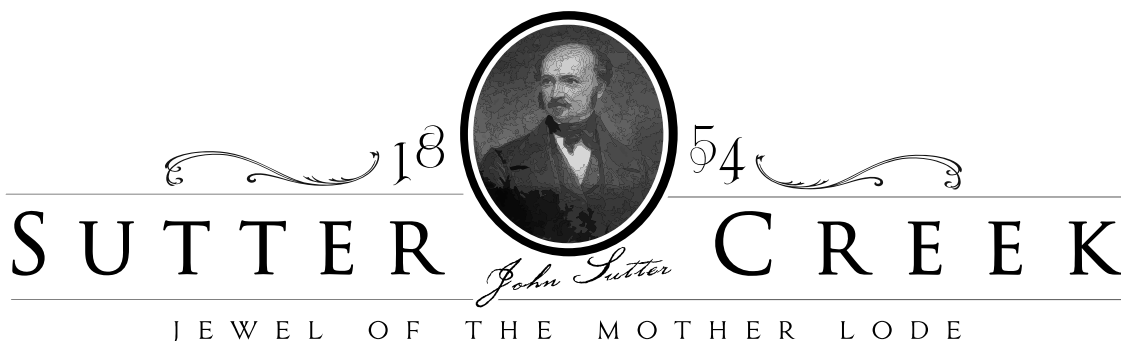
The foregoing resolution was duly passed and adopted at a regular meeting of the City Council of the City of Sutter Creek on the 15th day of September, 2025 by the following vote.

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Claire Gunselman Mayor

Aaron Wolcott, City Clerk



DATE: JANUARY 17, 2023

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: AMY GEDNEY, CITY MANAGER & GRANT REYNOLDS, WASTEWATER ENGINEER

SUBJECT: UPDATE REGARDING WASTEWATER TREATMENT PLANT PLAN OF STUDY

REQUESTED ACTION:

For information and staff direction.

BACKGROUND:

Since the early 2000s, the City of Sutter Creek's wastewater treatment plant has been an ongoing issue for the City Council. The costs for upgrade exceed the ability of the City to pay for such an expansive upgrade- even with grants. In general the system is an antiquated system with ties to multiple agreements linked to outside agencies from the 1980s. Over the years, the City has looked at multiple ways to address the collection system, while updating the treatment system and finding alternatives for the discharge of secondary effluent. Below is a synopsis of the overall system as well more recent information that pertains to the City's current grant funding.

Timeline:

1949 – City's first main collection system installed. First clarigester was built at current location.

1974 – Second clarigester was built along with the current trickling filter. Initial overflow storage Pond constructed. Permitted Average Daily Dry Weather Flow 200,000 gals./day.

1979-1980 – Line from WWTP added to ARSA system for disposal.

1982-1983 – Plant upgrade (Larry Baker) (2) rotostrainers installed in building. Chlorine contact chamber built. O&M Manual created by Larry Baker outlining WWTP expansion steps for additional capacity. Permitted Average Daily Dry Weather Flow increased from 200,000 gals./day to 300,000 gals./day.

1990 – Sludge Drying Bed constructed.

1991 – Plant Upgrade (Gene Weatherby). New bar screen installed. New grit chamber built. (2) additional rotostrainers installed with building. Office with Lab area below constructed. Permitted Average Daily Dry Weather Flow increased from 300,000 gals./day to 480,000 gals./day.

1993 – Existing Chlorine Building constructed.

1995 – Emergency Overflow Pond Expanded.

2000 – Replaced Trickling Filter Tower.

2001 – Shaftless Screw Conveyor from Bar Screen to Grit Bin Installed.

2001 – Smoke Testing of Collection System completed to address I & I at WWTP. City staff and a contractor completed repair items on findings list related to sewer lines maintained by the City. Action related to repairing laterals identified to be fixed was never taken.

2004 – WWTP/ARSA System Title 22 Engineering Report prepared by Thompson-Hysell Engineers as a part of Gold Rush Ranch proposed WWTP expansion.

2007

Original HDR Engineers Sutter Creek Wastewater Master Plan completed in August, 2007 as a condition of the Gold Rush Ranch Project. This Master Plan was updated June 2009 and February 2010.

Preliminary Design Report Interim Treatment Facility (PDRITF) completed by HDR.

September: ARSA, Ione, and California Department of Corrections and Rehabilitation, CDCR, sign an agreement on how Preston Reservoir water allocations will be managed.

2008

Plant Upgrade (HDR). This was completed as a result of the findings from PDRITF. Emergency Overflow Pond Expanded to approximately 1 million gallons. HDPE Liner for Pond was installed. Electrical Service Panel replaced and upgraded. Panel for

emergency pumps and recirculation pumps was not upgraded. Sludge Screw Press installed. Building for Sludge Screw Press, Emergency Generator, and sludge flocculation chemicals constructed. No additional treatment capacity occurred as a result of this upgrade.

2009 – June 2009 HDR Master Plan Updated. (Document available in City Files).

2010 – February 2010 HDR Master Plan Updated. (Document available in City Files).

2011

Wastewater Treatment Plant WWTP Process Evaluation completed by IRM/WL Troxel & Associates (Document available from WRFED). Capacities for each Unit Process at the WWTP are evaluated in this document.

Smoke testing of portions of the collection system completed to address I & I problems at WWTP. City staff completes some correction work. Rabb Street main line replaced by contractor.

2012

In conjunction with Aquality Engineers, who was a subconsultant to the City at the time, a Repair and Replacement plan for the WWTP was created for the window of the next four years (2013-2017). This plan was not implemented at the time due to direction of WWTP replacement. (Document available form WRFED).

November - Draft Wastewater Master Plan Update completed by HydroScience. (Document available in City Files)

2017

January – February – significant rain events increased the amount of water in both Henderson and Preston Reservoirs.

March: City Council authorized work on the Master Plan to commence.

May: Preston Reservoir nearly overtops.

July: Ione sends a letter to ARSA indicating that they would like to end the 5-year agreement.

September: The Regional Water Quality Control Board issued a Cleanup and Abatement Order, CAO, which would require ARSA to alter its operations significantly. (It should

be noted that ARSA does not own its facilities. They are leased from the State with the lease ending in 2037.)

November: ARSA, Ione, and CDCR settle negotiations regarding the 2007 Agreement and agree on terms of payment for tertiary treatment to Ione.

December:

HydroScience completed an additional Master Plan Update. (Document available in City Files). From this update the City decided to pursue the best economic alternative presented in the Update. The cost to build a Tertiary Plant with direct discharge was \$33.0 million (2017 dollars).

Trickling Filter Arms replaced at WWTP. Thoroseal applied to contact chamber.

Completed Creek Line CCTV and Manhole Lining Projects to attempt to track and reduce Infiltration & Inflow (I & I) to WWTP. After this work was completed three additional years of manhole lining projects were completed (2018-2020).

2018

January - February: Carollo Engineers completed a Peer Review of Hydroscience's 2017 Master Plan Update. They generally agreed with the conclusions presented in the 2017 Update. Carollo's conclusion on which WWTP alternative to pursue agreed with the City's decision. A Tertiary WWTP with discharge to Sutter. (Document available in City Files).

June- August: A grant application in the amount of \$500,000 is submitted and revised to develop a Plan of Study for a Design – Build of a tertiary treatment plant with a direct discharge option. (A Plan of Study is a required document for submittal for all grant funding opportunities.)

2019

May: Sewer Rate Study begins.

December: City Council adopted a Sewer Rate Study, effective January 2020. **(See Attachment A: Sewer Rate Study).**

2020

August: City of Sutter Creek approved for grant to pursue Design – Build option to construct Tertiary WWTP at existing site. City contracts with Carollo Engineers to present preliminary engineering and funding avenues for the construction of a Tertiary WWTP.

2021

February - May: Carollo Engineers completed a preliminary design for proposed Tertiary WWTP. The estimated cost to design and construct the new Tertiary WWTP increased from \$33.0 million (Hydrosience, 2017 MP Update) to \$50 million in capital costs (Carollo, 2021). The I & I problem that the city was already investigating was brought up as large concern for the sizing of the new WWTP and its components. Due to the time constraints and difficulties in obtaining new Waste Discharge Requirements no additional WWTP capacity is planned with this upgrade. The attached documents (**See Attachment B: Carollo**) outline the discussions regarding estimated costs for tertiary treatment as well as exploration of alternatives and possible options. After further deliberation, the working group determines, it would be best to pursue other alternatives for discharge before moving forward. In the meantime, the City will investigate its I&I issues.

Regarding the grant, to date, we have expended a total of \$197,931.50. We have been reimbursed for \$184,979.00 as there is a retention. Through quarterly reports, this progress has been documented. Staff met with the grant administrators and indicated the situation regarding alternatives, costs, and trying to pave a path forward.

December: ARSA sends Ione letter indicating the 5-year agreement is null as they did not satisfy the terms of the Agreement.

2022

March: ARSA staff began pursuing discussions with the City of Ione regarding 2022 water balances.

With the assistance of California Rural Water, staff completed smoke testing of the existing collection system to try and find I&I. No large infiltration points were found.

Summer:

The Sewer Committee met six times over the course of 2022. A WWTP Capital Improvement Plan was created from the 2012 Repair and Replacement (R&R) Plan to outline items at the existing plant that were in need of R&R that could help extend the

life of the existing WWTP. A priority chart for the implementation of plan was also created. **(See Attachment C: Sewer Agendas).**

Ione continues to refuse to accept ARSA water.

Additional coating of Thoroseal applied to Chlorine Contact Chamber. *Last coating was applied in 2017.*

Staff continues to actively pursue I&I. City Council approved the purchase of two Manhole Flow Metering set-ups. To help track I&I during storm flows. Prior to this approval, a search for rental companies that provided meters was pursued with no results. But, prior to purchasing the new meters the City was contacted by a company that provides the rental service. A rental agreement for 10 meters, for use for a month for \$14,400/month was obtained. This includes software for monitoring, staff training for moving and installing meters, and delivery and pick up of the meters. We are hoping this produces better information regarding I&I.

Two (2) new Emergency Pumps and (2) new Recirculation Pumps are on order for the WWTP.

The current permitted capacity at the WWTP is 480,000 gals./day. Current Average Daily Dry Weather Flow to the WWTP is 301,000 gals./day. The Current Committed Flow Capacity to the WWTP is approximately 422,000 gals./day. This Committed Capacity includes 39,000 gals./day to Amador City and 115,500 gals./day to the Amador Water Agency who operates CSA #4 (Martell Area).

September: ARSA files lawsuit against Ione and CDCR. **(See Attachment D: ARSA)**

DISCUSSION:

The Sewer Committee has diligently worked with staff and our consultants to vet the many details and angles regarding the City’s WWTP system as well as the ARSA system. While on its face, solutions appear straightforward, their associated costs have made moving forward difficult and cost prohibitive. With the proposed Capital Improvement Plan (CIP) no additional capacity is planned. Many of the items on the list are delayed maintenance due to the direction of WWTP replacement planning. The plan of the CIP is to extend the life of the WWTP approximately 8-10 years in order to allow a solution for replacement and the possibility of eventual expansion to be obtained. As a slow growth

community, capacity expansion would require significant growth to pay for the additional capacity. The City has been grappling with wastewater issues for many years in an effort to keep costs to a minimum and devise a best-case scenario, as all of the options require a significant capital investment.

City of Sutter Creek

Design/Build Contract for

ENERGY SERVICES - TREATMENT

PLANT PROJECT

City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

DESIGN-BUILD ENERGY SERVICES CONTRACT BETWEEN CITY OF SUTTER CREEK AND SCHNEIDER ELECTRIC BUILDINGS AMERICA, INC. FOR THE WASTEWATER TREATMENT AND ENERGY RELATED CAPITAL IMPROVEMENTS PROJECT

This Design-Build Energy Services Contract (“Contract”) is made and entered into this ____ day of _____, 2025 by and between the **City of Sutter Creek**, a California municipal corporation (hereinafter referred to as “City”) and **Schneider Electric Buildings Americas, Inc.**, with its principal place of business at 1660 Scenic Avenue, Costa Mesa, CA 92626 (hereinafter referred to as “ESCO”) for the purpose of designing and constructing the Wastewater Treatment And Energy Related Capital Improvements Project (“Project”). City and ESCO are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

- A. The City’s mission is to collect, treat, and reuse wastewater in a safe and cost-effective manner as prescribed by state and federal law.
- B. In order to serve its customers, the City is dedicated to forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness.
- C. The City therefore desires to strategically invest and reinvest in operational cost reductions into a sustainable facility with technology enhancements that will lead to compliance with regulatory authorities, minimal operating costs and streamlined operations. To achieve these goals, the City intends to engage ESCO to perform a comprehensive audit of existing facilities for potential energy cost and operational cost savings, develop conceptual and final designs for improvements, and implement physical changes to effectuate energy cost and operational savings.
- D. Because of the unique nature of the Project, City desires to engage a single design-build entity to engineer and implement the Project as authorized by California Government Code section 4217.10 *et seq.*
- E. ESCO desires to perform and assume responsibility for the provision of design and construction services, and such other services as required by the City on the terms and conditions set forth in this Contract. ESCO represents that it is experienced in providing professional planning, design, and construction services to public entities, is appropriately licensed in the State of California to perform such services, and is familiar with the scope of work.

TERMS

1. Incorporation of Documents.

The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Design-Build Energy Services Contract
- (b) Attachment 1 to this Contract – Scope of Services
 - (A) Schedule A - Scope of Work
 - (B) Schedule B – Project Implementation
 - (C) Schedule C – Project Performance
- (c) Attachment 2 to this Contract - General Conditions
- (d) Attachment 3 to this Contract – Performance Bond
- (e) Attachment 4 to this Contract – Payment Bond
- (f) Attachment 5 to this Contract – Hourly Rate Schedule
- (g) Attachment 6 to this Contract - Workers Compensation Certification
- (h) Attachment 7 to this Contract – Asbestos & Other Hazardous Materials Certification
- (i) Attachment 8 to this Contract – Wastewater Treatment Performance Guarantee
- (j) Attachment 9 to this Contract – Grant/Loan Compliance Rider
- (k) City approved Amendments and Change Orders
- (l) Completed and approved Construction Documents in accordance with the General Conditions

2. The ESCO’s Basic Obligations and Compensation.

The ESCO promises and agrees, at its own cost and expense, to furnish to City all design and construction services, labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work” or “Work”). The Scope of Work shall consist of four phases: Phase 1 Preliminary Assessment (Project Scoping), Phase 2a Design - Investment Grade Development (Mid-Term Meeting), Phase 2b Design Development (Final Planning), and Phase 3 Construction. The Scope of Work, including all four phases, is more particularly described in Attachment 1. The City shall issue a Notice to Proceed for each Phase.

(a) Phase 1 – Preliminary Assessment

The ESCO shall commence Phase 1 after receipt of City’s Notice to Proceed and complete Phase 1 work within 240 Days of the Notice to Proceed date, unless mutually agreed by both parties to extend. After ESCO fulfills all its Preliminary Assessment responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Preliminary Assessment deliverables whether to terminate the Contract for convenience or move to Phase 2. City shall notify ESCO in writing of its decision. At a scoping meeting to be held as part of this phase, ESCO

shall confirm for City whether recommended improvement measures are viable and financial benefits can be derived by their implementation and guaranteed in an amount sufficient to cover all costs associated with the Project. This includes the ESCO providing a rough order of magnitude of the Price Proposal.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, City shall pay ESCO only for fees and expenses incurred in this Phase 1 at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, and data shall become the exclusive property of City. The total cost for Phase 1 shall not exceed \$543,107 without written approval of the City.

(b) Phase 2A – Mid-Term Investment Grade Audit (IGA)

The ESCO shall commence Phase 2A after receipt of City’s Notice to Proceed and complete Phase 2A work within a to be determined period based of Phase 1 deliverable and scope agreement. After ESCO fulfills all of its Mid-Term IGA phase responsibilities as noted in Attachment 1, including providing a reasonable estimate of the Price Proposal based on the most current developed Construction Documents, City must determine within sixty (60) days of receiving all Mid-Term IGA deliverables whether to terminate the Contract for convenience or move to Phase 2B. City shall notify ESCO in writing of its decision.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phase 1, City shall pay ESCO only for design fees and expenses incurred in this Phase 2A at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of City.

(c) Phase 2B – Final IGA

The ESCO shall commence Phase 2B after receipt of City’s Notice to Proceed and complete Phase 2B work within a to be determined period based of Phase 2A deliverable and scope agreement. After ESCO fulfills all of its Final IGA responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Final IGA deliverables whether to terminate the Contract for convenience or move to Phase 3.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phases 1 and 2A, City shall pay ESCO only for design fees and expenses incurred in this Phase 2B at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of City upon receipt of payment. The deliverables shall include the Construction Documents. The total cost for Phase 2 shall not exceed \$2.2M without written approval of the City

At or before the Final Planning Meeting, ESCO shall present a final scope and price (“Price Proposal”) to City in accordance with this Agreement which will include proposed terms for a contractually binding Performance Guarantee in accordance with framework in attachment #8. In addition to Phase 3 costs, the Price Proposal shall include all design fees and expenses from phases 1, 2A and 2B (subject to the not-to-exceed limits) and shall be a firm offer valid for ninety (90) days from submission. The Price Proposal shall include a schedule of values for the Work, including without limitation a complete breakdown of costs of labor, materials, tools and equipment (“Net Cost”) and a statement of their basis, Mark-Up fees for combined overhead and profit, which shall not exceed 25% of the Net Cost of the Work, and taxes which are applicable at the time the Price Proposal is established. Upon receipt of ESCO’s Price Proposal, the City may enter into negotiations with ESCO to achieve a mutually acceptable basis on which to proceed. In the event the City discovers any inconsistencies or inaccuracies in the Price Proposal, the City shall promptly give written notice to ESCO, who shall make appropriate adjustments to the Price Proposal, its basis, or both.

(d) Option to Procure Long-Lead Time Materials.

During the performance of Phases 1, 2A and/or 2B, but prior to completion of Phase 2B, ESCO may submit one or more proposals to the City for the procurement of certain materials and equipment that have long manufacturing and/or delivery lead times (“Long-Lead Time Material Procurement Proposal(s)”). The pricing in each Long-Lead Time Material Procurement Proposal shall remain valid for sixty (60) days. The City may accept a Long-Lead Time Material Procurement Proposal by issuing a Long Lead-Time Material Notice to Proceed (an “LLTM-NTP”) authorizing and directing ESCO to order those materials and equipment at the price specified in the particular Procurement Proposal.

Concurrently with the issuance of each LLTM-NTP, the City shall allocate, appropriate, and encumber additional funds sufficient to pay for the Long Lead-Time Materials to be procured pursuant to that LLTM-NTP.

Each LLTM-NTP will contain a schedule of values delineating the items to be completed pursuant to each Procurement Proposal. Notwithstanding anything to the contrary contained herein, beginning on the date that is one (1) month following the effective date of an LLTM-NTP, ESCO shall provide monthly invoices to the City seeking payment for the Long Lead-Time Materials procured in the prior month (based on the percentage completion of items delineated on the applicable schedule of values). All such payments shall be separate and apart from, and not included in, the Contract Price. Payment by the City is due within thirty (30) days of the date of each invoice. If any payment is over thirty (30) days late from the due date stated on the invoice, ESCO may charge interest of one percent (1%) of the amount(s) owed for each month overdue and/or may terminate the Agreement.

Upon payment for the solar and battery storage Long Lead-Time Materials, title to the equipment purchased as a result of an LLTM-NTP shall pass to the City and the City shall be responsible for the risk of loss of said equipment, including but not limited to damage, destruction or theft thereof, unless and until a Contract Amendment for the Construction Phase is entered into for installation of said equipment by ESCO. Other Long Lead-Time Materials Procurement

Proposals will specify terms of ownership, financing, and storage for that specific materials or equipment.

(e) Phase 3 – Construction Phase

If the City elects to proceed to Phase 3 and is satisfied with ESCO’s Price Proposal, then City shall issue a formal Contract Amendment (“Contract Amendment” or “Amendment”) establishing the Scope of Work for the Construction Phase, the Contract Price and the Project Completion Date. Approval of the Contract Amendment shall be contingent upon City Council holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

If a Contract Amendment is approved and executed, the City will issue a Notice to Proceed with Construction and ESCO shall begin construction work. ESCO shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 3.

3. **Guaranteed Maximum Contract Price for Construction; Project Completion Date**

(a) Contract Price.

If a Contract Amendment is approved and executed, the City shall pay ESCO a contract price (hereinafter the “Contract Price”, “Guaranteed Maximum Price” or “GMP”) equal to ESCO’s Price Proposal as full and complete compensation for Contractor’s obligations under the Contract Documents. Payment shall be made in installments in accordance with the progress payment milestones and as set forth in the Attachment 2.

In accordance with Section 22300 of the California Public Contract Code, ESCO may substitute securities for any monies withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of ESCO. Securities equivalent to the amount withheld may be deposited with City or with a state or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code, bank or saving and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.

Except as otherwise provided in this Contract, ESCO shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should the ESCO believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to Attachment 2.

(b) Material Storage.

As the ESCO is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from City, to assure that there will be no delays, payment by the City for stored material shall be made only in unusual circumstances where the City specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by City, the payments shall be conditioned upon submission by ESCO, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to City to establish City’s title to such materials or equipment free of all liens and encumbrances, and otherwise protect City’s interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to City by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

(c) Project Completion Date.

Time is of the essence. The ESCO guarantees that it shall perform and complete all work necessary for Completion which shall be set forth by Contract Amendment prior to the Notice to Proceed with Construction (the “Project Completion Date”). The ESCO agrees that it shall be liable to the City for liquidated damages in an amount of One-Thousand Dollars (\$1,000) per calendar day for each and every calendar day beyond the Project Completion Date that completion of the Project has not been achieved at the Project Site and said damages shall be the City’s sole remedy for ESCO’s delay and shall not exceed twenty percent (20%) of the Contract Price. If not completed by the Project Completion Date, it is understood that the City will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the ESCO’s failure to complete the work, and therefore the ESCO shall pay to the City the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the ESCO may be retained to cover liquidated damages.

The City is under no obligation to consider early completion of the Project and the Project Completion Date shall not be amended by the City’s receipt or acceptance of the ESCO’s proposed earlier completion date. Any difference in time between the ESCO’s early completion and the Project Completion Date shall be considered a part of the Project float. ESCO shall not be entitled to compensation, and the City will not compensate ESCO, for delays which impact early completion.

4. Funding Compliance

The City anticipates that the Project may be financed in whole or in part through loans, grants, or other funding assistance provided by state or federal agencies. Attachment 10 “Grant/Loan compliance Rider will be utilized as needed. ESCO acknowledges and agrees that:

(a) Additional Requirements.

If such funding is secured, the ESCO shall comply with all additional terms, conditions, and requirements imposed by the funding agency, including without limitation:

- Federal cross-cutting requirements under 2 CFR Part 200 (“Uniform Guidance”),
- Davis-Bacon and Related Acts and applicable state prevailing wage requirements,
- Domestic preference requirements under the Build America, Buy America Act (BABA),
- Equal Employment Opportunity (EEO) and nondiscrimination requirements under Title VI of the Civil Rights Act of 1964 and related authorities,
- Section 3 (24 CFR Part 75) labor-hour benchmarks & reporting
- Environmental compliance obligations (CEQA, NEPA, or agency equivalents),
- Recordkeeping, audit, and reporting obligations, and
- Procurement, subcontracting, and small/minority/disadvantaged business enterprise (S/MBE/DBE) requirements.

(b) Contract Amendments.

The City may incorporate such requirements by amendment, rider, or supplemental conditions. ESCO shall execute such instruments and cooperate in good faith to implement them.

c. Supersession.

In the event of a conflict between this Agreement and a funding agency requirement, the agency’s requirement shall control to the extent required as a condition of funding.

d. Cost Adjustments.

If compliance with a subsequently imposed funding requirement materially increases ESCO’s cost of performance, ESCO may request an equitable adjustment, subject to approval by the City and, where required, the funding agency.

1. Performance and Payment Bonds and Insurance

ESCO shall execute and provide to City both a Performance Bond and Payment Bond in the amount of the GMP on the forms provided in Attachments 3 and 4. ESCO shall timely submits bonds to the City in accordance with the General Conditions. ESCO shall furnish all insurance as required by the General Conditions. Notwithstanding any provision to the contrary herein, any Payment and Performance Bonds associated with this Contract guarantee only the performance of the construction/installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings performance guarantees, or (2) any support or maintenance service agreements or work or (3) any other warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract. The obligations of the Performance Bond Surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City’s rights or the ESCO’s or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure

section 337.15.

2. **Standard of Performance.**

The ESCO’s performance shall be consistent with the standards set forth in the Contract and the General Conditions. ESCO shall perform all Work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. ESCO represents and maintains that it is skilled in each professional calling necessary to perform the Work. ESCO warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. ESCO represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Agreement. ESCO shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the ESCO’s failure to comply with the standard of care provided for herein. Any employee of the ESCO or its sub-consultants or subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the Project by the ESCO and shall not be re-employed to perform any of the Work on the Project.

3. **City’s Representative.**

The City hereby designates **Bill Slenter – Owner’s Representative** or his or her designee, as the person to act as its representative for the performance of this Contract (“City’s Representative”). The City’s Representative shall be authorized to act as liaison between City and the ESCO in the administration of this Contract and all work on the Project. The City’s Representative shall have the power to act on behalf of the City for all purposes under this Contract, including for the purpose of approving the design. City may designate new and/or different individuals to act as City’s Representative from time to time upon written notice to the ESCO .

4. **ESCO’s Representative.**

The ESCO hereby designates **Moses Bchara, Program Manager**, or his or her designee, to act as its representative for the performance of this Contract (“ESCO’s Representative”). ESCO’s Representative shall have full authority to represent and act on behalf of the ESCO for all purposes under this Contract. ESCO’s Representative shall supervise and direct all work on the Project, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

5. **ESCO’s Contractor License and Registration.**

The ESCO shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The ESCO (**License No. CA# 708952**) shall act as the licensed contractor for the Project. ESCO shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards

generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (**DIR Registration No.** To be provided at time of Phase 3 Construction Phase).

6. **ESCO’s Design Professional.**

The ESCO shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the City. The ESCO hereby designates **Bryan Childress** from **Wallace Group** to act as the Design Professional and Architect of Record for the Project. ESCO’s Design Professional shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to the City’s prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that City and ESCO cannot agree as to the substitution of a new Design Professional, the City shall be entitled to terminate this Contract as described in the General Conditions.

7. **ESCO’s Indemnification.**

The ESCO shall provide indemnification and defense as set forth in the General Conditions.

8. **Substitution of Key Personnel.**

ESCO has represented to City that certain key personnel will perform and coordinate the Work under this Contract. Should one or more of such personnel become unavailable, ESCO may substitute other personnel of at least equal competence upon written approval of City. In the event that City and ESCO cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Contract for cause. Any personnel who fail or refuse to perform the Work in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the ESCO at the request of the City. The key personnel for performance of this Contract are as follows: **Moses Bchara** and **Brian Pottinger**.

9. **Notices.**

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY
Attn: Tom DuBois, City Manager

City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

ESCO
Attn: Tammy Fulop, Vice President
Schneider Electric Buildings Americas, Inc.
1650 W. Crosby Road
Carrollton, TX 75006

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10. Authority of Signatories.

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES CONTINUED ON NEXT PAGE]

Entered into as of the Effective Date first above written, the Parties hereby execute this Design-Build Contract, as follows:

ON BEHALF OF THE ESCO

ON BEHALF OF THE CITY

Schneider Electric Buildings Americas, Inc.

City of Sutter Creek

By:

Name:

Title:

Federal Tax ID No.:
75-2066352

By:

Name:

Title:

Attest:

[NAME AND TITLE]

Approved as to Form:

[NAME AND FIRM]

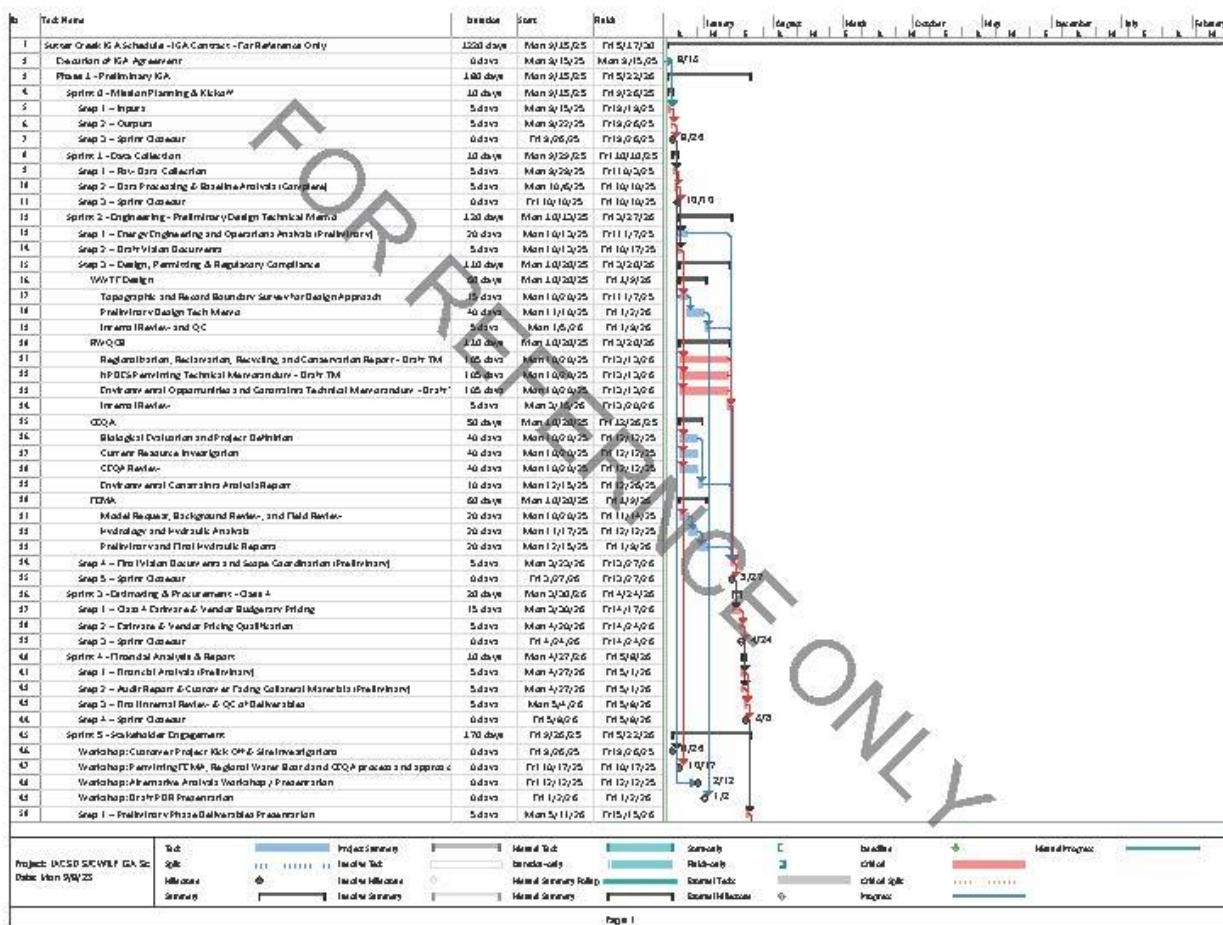
Legal Counsel

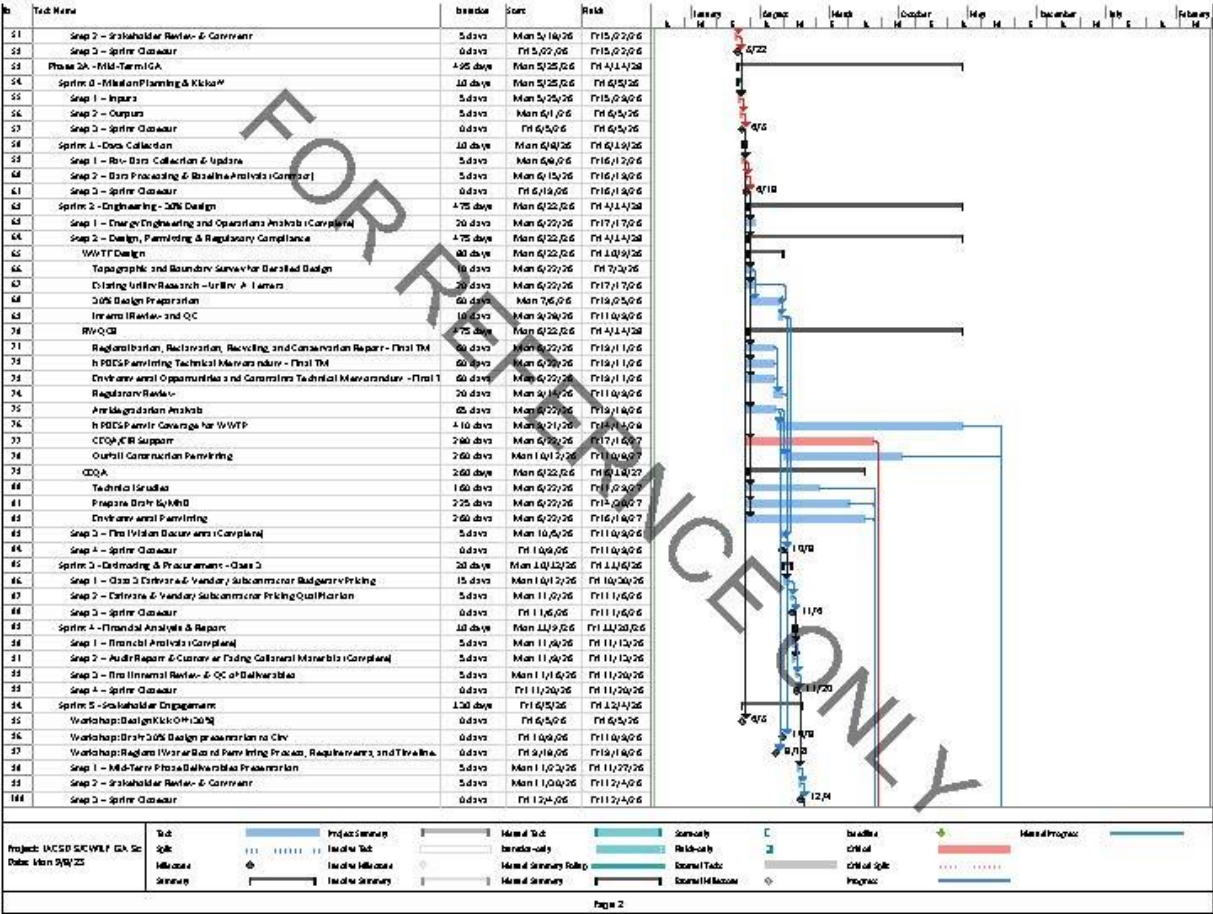
ATTACHMENT 1
SCOPE OF SERVICES
Schedule A
Scope of Work
[INSERT SCOPE]

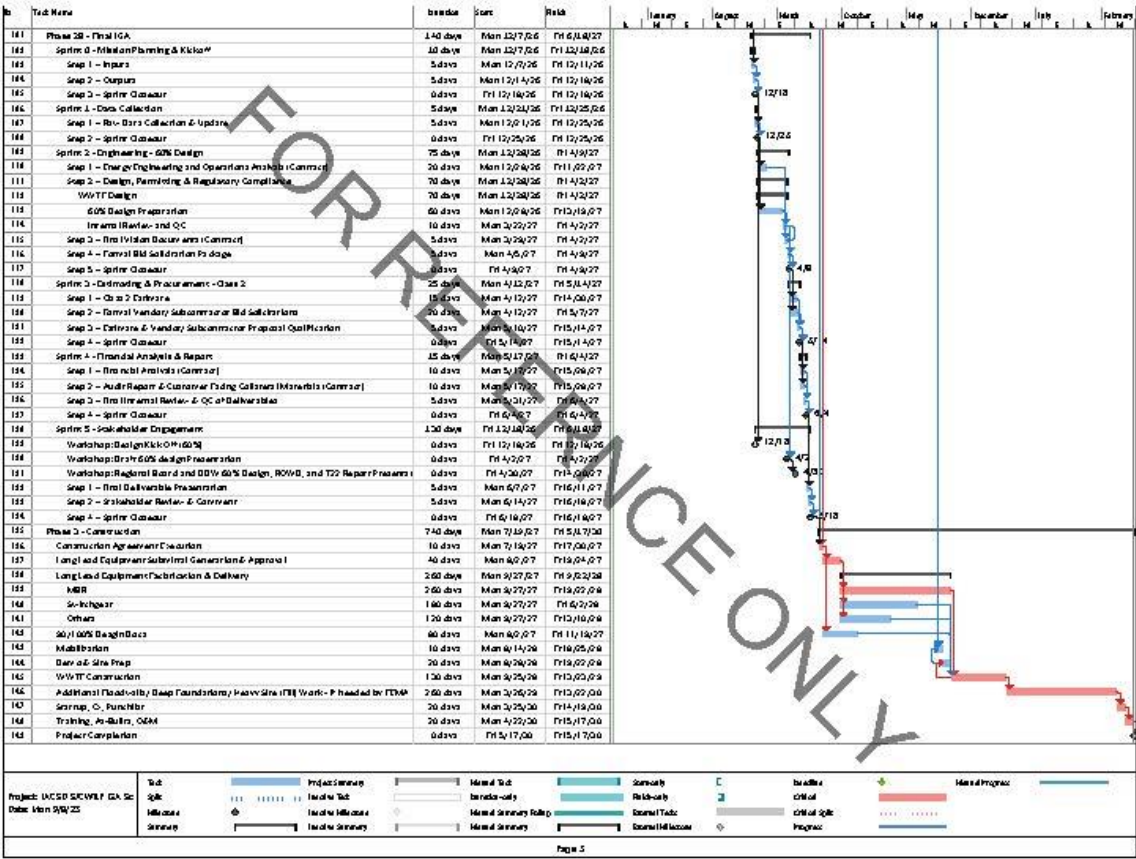
Schedule B

Project Implementation

Reference Schedule for Phase 1 attached. Phase 2 schedule will be developed in Phase 1, and Phase 3 will schedule will be part of the construction agreement.







Schedule C
Draft Project Performance Guarantee
[Reserved for Construction Amendment]

ATTACHMENT 2 GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 2. Additional Work -- New or unforeseen work will be classified as “Additional Work” when City’s Representative determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Application for Payment -- Standard AIA form which is to be used by the ESCO during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Architect of Record or Engineer of Record (“A/E”) -- The individual, partnership, corporation, joint venture, or other legal entity named as the Design Professional in the Contract or any succeeding entity designated by City.
 6. Certificate for Payment -- The form signed by City’s Representative attesting to the ESCO’s right to receive payment for certain completed portions of the Work on the Project in accordance with Article 13.
 7. Change Order (“CO”) -- A document that authorizes Additional Work or deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
 8. Change Order Request (“COR”) -- A request made by the ESCO for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a ESCO-claimed change to the Work.
 9. Claim -- A demand or assertion by City or ESCO seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 10. Construction Documents -- The plans and Technical Specifications prepared by the ESCO for the Project and approved by City. The Construction Documents shall set forth in detail

all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by City. All amendments and modifications to the Construction Documents must be approved by City in writing.

11. Construction Documents Phase – The third of four phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
12. Construction Phase -- The fourth phase of the Work and will commence upon final approval of the Construction Documents by City .
13. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
14. Contract -- The entire integrated written agreement between City and ESCO concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
15. Contract Documents -- The documents listed in Section 1 of the Contract. Some documents provided by City, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
16. Contract Times -- The number of days or the dates stated in the Contract Documents and Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
17. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
18. Defective Work -- Work that is faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
19. Demobilization – The complete dismantling and removal by the ESCO of all of the ESCO’s temporary facilities, equipment, and personnel at the Site.
20. ESCO -- The individual or entity with which City has contracted for performance of the Work.
21. ESCO Representative -- The person or firm identified as the primary contact person and representative of the ESCO as designated in the Contract and who shall not be changed without prior written consent of City .
22. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the ESCO:

- (1) to City under the Contract Documents or; (2) developed or prepared by or for the ESCO specifically to discharge its duties under the Contract Documents.
23. Design Professional -- The individuals or entities who will provide the ESCO with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
 24. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
 25. City's Representative -- The individual or entity as identified in the Contract to act as City's Representative.
 26. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
 27. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
 28. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of City's provided equipment which is installed in the Project by the ESCO.
 29. Excusable Delay -- A delay as described in Article 11 of these General Conditions.
 30. Governmental Approvals -- Those governmental actions required to be obtained by City and necessary for the completion of the Project.
 31. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price City will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in the Contract and further described in the cost proposal submitted by the ESCO.
 32. Hazardous Materials -- Any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by

the ESCO or the City; or as defined in the California Health and Safety Code. For the purposes of this Contract, "Hazardous Materials" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

33. Holidays -- Holidays occur on:

New Year's Day – January 1
 Martin Luther King Jr. Day – Third Monday of January
 President's Day – Third Monday of February
 Memorial Day – Last Monday in May
 Juneteenth - June 19
 Independence Day – July 4
 Labor Day – First Monday in September
 Columbus Day - Second Monday in October
 Veteran's Day – November 11
 Thanksgiving Day – Fourth Thursday in November
 Friday after Thanksgiving
 Christmas Day – December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

34. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
35. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
36. Notice of Award – The written notice by City to the ESCO stating that upon timely compliance by the ESCO with the conditions precedent listed therein, City will sign and deliver the Contract.
37. Notice of Completion – The form which may be executed by City and recorded by the county where the Project is located constituting final acceptance of the Project.
38. Notice to Proceed -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the applicable work and when Contract Time will commence to run.
39. Notice to Proceed with Construction -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the Construction Phase and when Contract Time will commence to run.

40. Partial Utilization – Use by City of a substantially completed part of the Work prior to Completion of all the Work.
41. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work.
42. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by City or by Separate Contractors for the Project.
43. Project Completion Date -- The date by which the ESCO and City agree that the Work is operational, ready for use by the City, and fully complete, except for minor items. The Project Completion Date is set forth in the Contract.
44. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times. The detailed requirements for the Project Schedule are stated in Article 7.
45. Proposal -- The construction proposal submitted by the ESCO in response to the Request for Proposal for this Project For Phase 3, based on results from Phases 1 and 2.
46. Request for Proposal (“RFP”) -- The request for proposal issued by City for the Project and includes all documents, exhibits, attachments, and addenda thereto.
47. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
48. Schematic Design Phase -- The second of four phases of the Work. The scope of the Schematic Design Phase is further defined in the Contract Documents.
49. Separate Contractor -- A person, or firm, under separate contract with City performing other work at the Project site which may affect the Work.
50. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for ESCO and submitted by ESCO to illustrate some portion of the Work.
51. Site -- Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of ESCO.
52. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
53. Subcontractor – An individual or entity that has a contract with the ESCO or with a Subcontractor of the ESCO to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
54. Submittal - Written or graphic information and physical samples prepared and supplied by the ESCO demonstrating various portions of the Work.

55. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with ESCO or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
56. Technical Specifications -- All documents developed by the ESCO and which are ready for final construction.
57. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the ESCO. For example, a first tier Subcontractor is under subcontract with the ESCO, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
58. Unexcusable Delay -- Any delay other than an Excusable Delay, as further described in Article 11 of these General Conditions, that does not entitle the ESCO to an adjustment of the Guaranteed Maximum Price and does not entitle the ESCO to an adjustment of the Project Completion Date.
59. Warranty -- A written guarantee provided to City by the ESCO that the Work will remain free of defects and perform in accordance with specifications in the Contract Documents for one (1) year from the Project Completion Date
60. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
- B. Furnish, Install, Perform, Provide.
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of ESCO is implied.

- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

- A. Before City will execute the Contract, the ESCO shall furnish and file with City a signed Contract in duplicate and the necessary, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

- A. ESCO shall submit the Performance and Payment bonds within 5 business days of the City's issuance of a Notice to Proceed with Construction and on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California conditioned upon the faithful performance by the ESCO of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

- A. ESCO shall obtain, at its sole cost and expense, all insurance required by Article 6. Certificates of such insurance and endorsements shall be delivered to City within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by City.

2.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed with Construction.

- A. Work shall commence within fifteen (15) Days of the date stated in City's Notice to Proceed with Construction. No Work shall be done at the Site prior to the date on which the Contract Time commence to run. Nothing herein shall affect the Project Completion Date.

2.6 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by City, ESCO, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures

for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

- B. At this conference City and ESCO each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.7 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by ESCO, City's Representative, and others as appropriate will be held to review for acceptability to City's Representative the schedules submitted, as required by the Contract Documents. ESCO shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to ESCO until acceptable schedules are submitted to City's Representative.
- B. Acceptance of the schedules by City's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve ESCO from ESCO's full responsibility therefor.

2.8 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor's site work, the ESCO, the involved Subcontractor, and City's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.9 Project Signage.

- A. City will permit a single project sign, which shall be subject to City's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3: CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City. Clarifications and interpretations of the Contract Documents shall be issued by City's Representative as provided in these General Conditions.

- B. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work.
- C. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the ESCO in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

- A. Standards, Specifications, Codes, Laws, and Regulations.
 - 1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of City, ESCO, or City's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or City's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

- A. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the ESCO. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the ESCO shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law;
 2. Amendments, Change Orders or Pending Change Orders, most recent first;
 3. Design-Build Contract;
 4. General Conditions;
 5. RFP and all addenda, attachments and appendices;
 6. Construction Documents prepared by ESCO ; and
 7. Drawings prepared by ESCO ;
- C. With reference to the Drawings the order of precedence shall be as follows:
8. Figures govern over scaled dimensions;
 9. Detail drawings govern over general drawings;
 10. Amendment or Change Order drawings govern over Drawings;
 11. Drawings govern over standard drawings.
- D. Notwithstanding the orders of precedence established above, in the event of conflicts, the parties shall meet and confer and reach a mutually acceptable understanding of the applicable standard.

3.4 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a formal Contract Amendment or Change Order.

3.5 Interpretation and Use of Contract Documents.

- A. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by City, the Construction Documents become a part of the Contract Documents and define the entire scope of work. The ESCO shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.
- B. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the ESCO in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.
- C. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

- D. The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- E. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- F. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
- G. Before commencing any Work on the Project, the ESCO shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the ESCO observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the ESCO shall immediately notify City’s Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The ESCO shall be solely liable for any such violation, inconsistency or special requirement, if ESCO fails to conduct such review or notification to City.
- H. Before commencing any Work on the Project, the ESCO shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the ESCO as to Project requirements. The ESCO shall immediately notify City’s Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the ESCO nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to ESCO. If the ESCO or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the ESCO shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any

Subcontractor proceed with Work if uncertain without the ESCO's written direction and/or approval.

3.6 Reuse of Documents.

- A. ESCO and any Subcontractor shall not: have or acquire any title to or Ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and A/E and specific written verification or adaptation by the A/E.
- B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude ESCO from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

- A. The data furnished by City or City's Representative to ESCO, or by ESCO to City or City's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the ESCO are the property of City, provided the ESCO has been appropriately compensated in accordance with the terms of the Contract. City and the ESCO explicitly agree that all materials and documents developed in the performance of this Contract are the property of City pursuant to the requirements of City, provided the ESCO has been appropriately compensated under this Contract. The ESCO agrees to, and hereby does, grant to City a royalty free license to all such data developed in the performance of this Contract for the Project and that the ESCO may cover by copyright and to all designs as to which the ESCO may assert any right or establish any claim to under the patent or copyright laws. The ESCO, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of City. Any use or reuse by City of the Construction Documents on any project without employing the services of the

ESCO shall be at City's own risk. If City uses or re-uses the Construction Documents without employing the services of the Design Build Entity, it shall remove the A/E's seal from the Construction Documents and hold harmless ESCO, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. ESCO shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the ESCO, a party for which the ESCO is legally responsible or liable, or anyone approved by the ESCO .

3.9 Administration of the Contract by City's Representative.

- A. During the term of this Design-Build Contract, City's Representative shall have the right to review the ESCO's Work at such intervals as deemed appropriate by City's Representative. However, no actions taken during such review or site visit by City's Representative shall relieve the ESCO of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the ESCO's responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and the ESCO shall communicate through City's Representative. Communications by the ESCO with City's consultants and City's Representative's consultants shall be through City's Representative. Communications by City and City's Representative with Subcontractors will be through the ESCO. Communications by the ESCO and Subcontractors with Separate Contractors shall be through City's Representative. The ESCO shall not rely on oral or other non-written communications.
- D. Based on City's Representative's Project site visits, review of the Work, and evaluations of the ESCO's Applications for Payment, City's Representative will recommend amounts, if any, due the ESCO and will issue Certificates for Payment in such amounts.
- E. City's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. City's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever City's Representative considers it reasonably necessary, or advisable, for implementation of the intent of the Contract Documents, City's Representative will have the authority to require additional inspection or testing of the Work on the Project, at the City's expense and in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of City or City's Representative to the ESCO, or any person or entity claiming under, or through, the ESCO .
- F. City's Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Completion, such determination shall not be unreasonably delayed; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the ESCO; and

will issue a final Certificate for Payment upon the ESCO's compliance with the requirements of the Contract Documents.

- G. City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. Should the ESCO discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the ESCO shall notify City's Representative in writing and request interpretation, or clarification. City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the ESCO proceed with the Work affected before receipt of a response from City's Representative, any portion of the Work on the Project which is not done in accordance with City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the ESCO shall be responsible for all resultant losses.
- H. City may at any time and from time to time, without prior notice to or approval of the ESCO, replace City's Representative with a new City Representative. Upon receipt of notice from City informing the ESCO of such replacement and identifying the new City's Representative, the ESCO shall recognize such person or firm as City's Representative for all purposes under the Contract Documents.

ARTICLE 4: AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

- A. City shall furnish the Project site. City shall notify ESCO of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which ESCO must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. ESCO shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to City.

4.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of ESCO or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by City. Neither ESCO nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. ESCO will, as determined by City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided City shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Material at Site.

- A. The ESCO shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project

Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. In the event that the ESCO becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the ESCO shall stop work in the affected area and inform City by notice immediately. Notwithstanding anything to the contrary herein, the ESCO shall not be responsible for, and the City shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the ESCO on the Project Site resulting from the ESCO's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. The City shall not be responsible for, and the ESCO shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO.

- B. The ESCO hereby specifically agrees to indemnify, defend and hold the City, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the ESCO of, a Hazardous Material introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the ESCO except where the violation relates to Hazardous Materials not introduced onto the Project Site by ESCO.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. ESCO shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. ESCO shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. ESCO shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of City. ESCO shall report to City's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5: BONDS AND INSURANCE

- 5.1 Time for Compliance. ESCO shall not commence Work under this Contract until it has provided evidence to City that it has secured all insurance required under this Article. ESCO shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. ESCO shall not allow any subconsultant or subcontractor to

commence work on any subcontract until it has provided evidence to City that the subconsultant or subcontractor has secured all insurance required under this Article.

- 5.2 Insurance Requirements. ESCO shall, at its expense, procure and maintain for the duration of the Contract the following policies of insurance (each a “Policy”, and collectively the “Policies”):
- A. Commercial General Liability Insurance. A policy of commercial general liability insurance, written on an “occurrence” basis, with a liability limit of ten million dollars (\$10,000,000) per occurrence and fifteen million dollars (\$15,000,000) in the aggregate (“General Liability Policy”).
 - B. Automobile Liability Insurance. A policy of automobile liability insurance, written on an “occurrence” basis, with a combined single limit of ten million dollars (\$10,000,000) per accident for bodily injury and property damage (“Auto Liability Policy”). The Auto Liability Policy must include coverage for owned, hired and non-owned automobiles.
 - C. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance as required by State law, and employer's liability insurance, written on an “occurrence” basis, with a liability limit of five million dollars (\$5,000,000).
 - D. Professional Liability Insurance. Professional liability insurance, written on a claims-made (and reported) basis, with a liability limit of five million dollars (\$5,000,000) per claim and aggregate (“Professional Liability Policy”).
 - E. Contractor's Pollution Liability, written on an occurrence basis with liability limit of \$5,000,000 per loss and aggregate.
- 5.3 Duration of Insurance. The Policies shall be procured by ESCO prior to ESCO's commencement of the Project and, except for the Professional Liability Policy, shall be maintained in effect for at least one year following the earlier of the Project Completion Date or termination of this Contract. ESCO shall maintain the Professional Liability Policy in effect for at least three years following the earlier of the Project Completion Date or termination of this Contract.
- 5.4 Insurer Rating Standards. The insurance policies required pursuant to this Article must be issued by one or more insurers that are (i) licensed to do business in the State and (ii) have an A.M. Best Company rating of not less than “A-” and a financial size category of not less than “VII.”
- 5.5 Additional Insureds. ESCO shall include the City and the City's directors, officers, employees, and agents as additional insureds on ESCO's General Liability Policy, Auto Liability Policy and Contractor's Pollution Liability. The additional insured endorsements will be on ESCO's most current versions of ISO Form CG 2010 and ISO Form CG 2037 or their substantial equivalents.
- 5.6 Waiver of Subrogation. Each of the General Liability Policy, the Auto Liability Policy and the Contractor's Pollution Liability Policy shall provide a waiver of transfer of rights of recovery in favor of the City.
- 5.7 ESCO Insurance is Primary. The General Liability Policy, the Auto Liability Policy and Contractor's Pollution Liability Policy shall be endorsed to provide that they are primary and non-contributory.

- 5.8 Premiums, Deductibles and Self-Insured Retentions. ESCO shall be solely responsible for paying deductibles and self-insured retentions applicable to the Policies.
- 5.9 Evidence of Coverage. ESCO shall provide to the City a duly authorized and executed certificate of insurance evidencing that the required Policies and endorsements are in effect (each a “Certificate of Insurance”).
- 5.10 Notice of Change in Policies. ESCO shall notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a Policy will expire without renewal or will be canceled or terminated.
- 5.11 Review of Coverage. The City’s failure to identify any non-compliance with the requirements of this Article shall not be deemed as a waiver of such requirements.
- 5.12 Subcontractor and Subconsultant Insurance. ESCO shall require each Subcontractor and Subconsultant to maintain such levels and types of insurance coverage as are appropriate for the Work to be performed by such Subcontractor or Subconsultant
- 5.13 Builder’s Risk [“All Risk”]
- A. It is the ESCO’s responsibility to maintain or cause to be maintained Builder’s Risk [“All Risk”] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work, such acceptance not to be unreasonably withheld, is formally accepted by the City. The ESCO shall provide a certificate evidencing this coverage before commencing performance of the Work.
 - B. The named insured shall be ESCO. The City, its elected officials, officers, employees, agents and authorized volunteers shall be included as Additional Insureds. ESCO shall not be required to maintain Builder’s Risk insurance for any portion of the Work following acceptance by City.
 - C. Policy shall be provided for replacement value on an “all risk” basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, defective work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; and (4) coverage to insure the full replacement value of any property or equipment stored either on or off the Site.
 - D. In addition, the policy shall meet the following requirements:
 - 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - 2. Coverage shall include all materials stored on site and in transit.
 - 3. Coverage shall include ESCO’s tools and equipment.

4. Insurance shall include boiler, machinery and material hoist coverage.

5.14 Performance Bond and Payment Bond.

- A. The ESCO shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and reasonably acceptable to City conditioned upon the faithful performance by the ESCO of the Construction Phase of the Project and the requirements of the Contract Documents applicable to the Construction Phase of the Project. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The ESCO shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract. The obligations of the performance bond surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. Subject to the limitations in Article 4 of the Design Build Contract, the Payment Bond and Performance Bond shall be in effect on the date the ESCO commences performance of the Construction Phase of the Project. The premiums for the Payment Bond and Performance Bond shall be paid by the ESCO. The ESCO maintains and agrees that it will execute Payment and Performance Bonds in the amounts and manner required by the Contract Documents. No payment for performance of the Construction Phase of the Project will be made to the ESCO until the ESCO's Payment Bond and Performance Bond have been approved by City, such approval not to be unreasonably withheld.
- C. Should, in City's reasonable opinion, any bond become insufficient or surety found to no longer comply with requirements contained herein, the ESCO shall renew or replace the effected bond within 10 Days of receiving notice from City.
- D. In the event the surety or the ESCO intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to City, and the ESCO shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article are accepted by City.
- E. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the ESCO shall, upon request of City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to City. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the ESCO will release the surety. If the ESCO fails to furnish any required bond, City may terminate the Contract for cause.

ARTICLE 6 - INDEMNITY / DUTY TO DEFEND

- 6.1 Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, ESCO assumes liability for and agrees, at the ESCO's sole cost and expense, to promptly and fully indemnify, and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgements, liens, stop notices, penalties, damages, losses, anticipates losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in many manner connected with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment and claims of bodily injury or damage to tangible personal property made by third parties, to the extent any of the foregoing arise out of the negligent acts or omissions or willful misconduct, whether active or passive, of ESCO, its officials, officers, employees, consultants, contractors, Subcontractors or by anyone working under ESCO for services rendered to ESCO in the performance of this Agreement ("Indemnity Claims), notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by ESCO.
- 6.2 Duty to Defend. Design -ESCO agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of ESCO to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by ESCO of the tender of any Indemnity Claim from an Indemnitee. ESCO's obligation to defend the Indemnitees shall be at ESCO's sole expense, and not be excused because of ESCO's inability to evaluate liability or because ESCO evaluates liability and determines that ESCO is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. ESCO agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel reasonably acceptable to the City. ESCO will reimburse City for reasonable defense costs for claims arising out of ESCO's professional negligence based on the percentage of ESCO's liability.
- 6.3 Subcontractor Requirements. In addition to the requirements set forth hereinabove, ESCO shall ensure, by written subcontract agreement, that each of ESCO's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which ESCO is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event ESCO fails to obtain such defense and indemnity obligations from others as required herein, ESCO agrees to be fully responsible to the Indemnitees according to the terms of this Article.
- 6.4 No Limitation or Waiver of Rights. ESCO's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. ESCO's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any

way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by ESCO with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of ESCO, any Subcontractor, any supplier of ESCO or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ESCO or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

- 6.5 **Withholding to Secure Obligations.** In the event an Indemnity Claim arises prior to final payment to ESCO, the City may, in its sole discretion, reserve, retain or apply any monies due ESCO for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if ESCO provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole and reasonable discretion, determine whether such assurances are reasonable.

- 6.6 **Survival of Indemnity Obligations.** Design -ESCO's obligations under this Article are binding on ESCO's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of ESCO's performance of the Work.

- 6.7 **Independent Contractor.** ESCO shall at all times during its performance of the Work retain its status as an independent contractor. ESCO's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of ESCO or its employees and agents.

- 6.8 **If the ESCO's obligation to defend, indemnify, and/or hold harmless arises out of the ESCO's performance as a "design professional" (as that term is defined under Civil Code Section 2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, the ESCO's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ESCO, and, upon ESCO obtaining a final adjudication by a court of competent jurisdiction, ESCO's liability for such claim, including the cost to defend, shall not exceed the ESCO's proportionate percentage of fault.**

- 6.9 **Joint and Several Liability.** In the event the ESCO and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.

ARTICLE 7: ESCO'S RESPONSIBILITIES

7.1 Review of Contract Documents and Field Conditions by The ESCO; Single Point Responsibility of The ESCO.

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in the Contract, the ESCO shall carefully study and compare each of the Contract Documents provided by City with the others and with information furnished by City, and shall promptly report in writing to City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by City or inconsistencies with Applicable Law observed by the ESCO. The ESCO shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the ESCO fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to City in writing.
- B. The ESCO is responsible for the design and construction of the Project and shall use design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The ESCO shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The ESCO shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the ESCO before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to City's Representative.
- C. If the ESCO performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of City's Representative, the ESCO shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- D. City does not assume any obligation to employ the ESCO's services or pay the ESCO royalties of any type as to future programs that may result from Work performed under this Contract.
- E. The ESCO shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
- F. The ESCO agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize no less than the industry standard of design, engineering and construction practices. The ESCO has the duty to act in City's best interests at all times throughout the course and performance of this Contract.

7.2 Design, Supervision and Construction Procedures.

- A. The ESCO shall supervise, coordinate, and direct all Work on the Project using the ESCO's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The ESCO shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project.

- B. The ESCO shall be responsible to City for acts and omissions of the ESCO, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The ESCO shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO. Unless otherwise provided in the Contract Documents, the ESCO shall be entitled to any necessary adjustments in the Contract Time or Contract Price where ESCO is unable to perform all Work in accordance with the Contract Document because of the acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO.
- D. The ESCO shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. Unless otherwise provided in the Contract Documents, the ESCO shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The ESCO shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the City-approved Construction Documents, which are developed from the City-accepted Proposal, the ESCO shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.
- F. The ESCO is required to deliver to City, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- G. The ESCO is responsible for preparation of the Construction Documents for the entire Project. The ESCO is responsible for construction of the entire Project as required by the Contract Documents.
- H. The ESCO shall at all times maintain good discipline and order among its employees and Subcontractors. The ESCO shall provide competent, fully qualified personnel to perform all Work on the Project.

7.3 Labor; Working Hours.

- B. The ESCO shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The ESCO shall at all times maintain good discipline and order at the Site. The ESCO will provide all labor needed to complete the Work within the Contract Times.

- A. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 6:30 a.m. and 4:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The ESCO will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without City's written consent given after prior written notice to City's Representative. The ESCO shall be responsible for and shall reimburse City for, all inspection costs outside regular working hours, including overtime, unless requested by the City.

7.4 Progress Meetings.

- A. The ESCO shall schedule and hold regular progress meetings at least weekly and at other times as requested by the City or as required by progress of the Work. The ESCO, City's Representative, and all Subcontractors active on the Site shall attend each meeting. The ESCO may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.
- B. City's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the ESCO shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

7.5 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

- A. ESCO shall adhere to the Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:
 - 1. ESCO shall submit to City's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date.
 - 2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Contract Amendment or Change Order.
 - 3. Should any of the following conditions exist, City may require ESCO to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
 - a. The ESCO's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the ESCO's ability to complete the Work;
 - b. The Project Schedule shows the ESCO to be thirty (30) or more Days behind the critical path at any time during construction;

- c. The ESCO desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of City, are major in nature.
 - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how ESCO intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the ESCO to recover the schedule.
 - e. ESCO shall submit the recovery schedule within seven (7) Days of City's request:
 - (i) If ESCO asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request will be considered a concurrent delay event attributable to ESCO, and ESCO shall only be entitled to non-compensable adjustments to the Project Completion Date.
 - (ii) If ESCO is responsible for the delay, this provision will not limit or affect ESCO's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.
 - f. ESCO is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.
 - g. Regardless of whether City directs ESCO to prepare a recovery schedule pursuant to this Article 7.6, ESCO shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current Project Schedule shows that the ESCO will not achieve a milestone and/or complete the Work within the Project Completion Date.
- B. Unless otherwise specified in the Contract Documents, ESCO shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.
- C. Failure of City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the ESCO that the ESCO, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the ESCO from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.
- D. The ESCO shall perform all Work on the Project in accordance with the current accepted Project Schedule.

7.6 Materials.

- A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the ESCO shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.
- B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of City. If required by City's Representative, ESCO shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. ESCO shall be entirely responsible for damage or loss by weather or other causes to materials or Work until City has accepted the Work.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. ESCO warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to City free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of City or any independent contractor.
- G. Inspection of Materials.
 - 1. Materials furnished by the ESCO which will become a part of the Project shall be subject to inspection at the site of the Work. To allow sufficient time to provide for inspection, the ESCO shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made. ESCO shall provide written notice as to when Materials will be delivered at the Site of Work and City shall inspect upon arrival.
 - 2. The inspection of materials specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. ESCO will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.

7.7 Submittals.

- A. Industry Standard Submittals.

ESCO will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

ESCO will prepare and deliver a Schedule of Submittals to City's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which ESCO will deliver each Submittal to City's Representative. Each Submittal must be delivered to City's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. ESCO is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The ESCO will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Transmit one (1) electronic (PDF) copy of each with a Submittal Transmittal.
 - b. Transmittals will be sequentially numbered. The ESCO to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, the ESCO, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.
 - d. The ESCO must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When a Submittal is revised for resubmission, the ESCO shall promptly address City comments and resubmit. The ESCO shall identify changes made since previous submission.
 - g. City's review of Submittals shall not relieve the ESCO from responsibility for deviations from the Contract Documents unless the ESCO has, in writing, called City's attention to such deviations at time of submission and City's has taken no exception to the deviation. City's review of Submittals shall not relieve the ESCO from responsibility for errors in the Submittals.
 - h. Submittals not required by the Construction Documents or requested by City's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by City's Representative, unless approved in writing and required for timely ordering of equipment. Delays

resulting from incomplete submittals are not the responsibility of City's Representative.

- j. The ESCO shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process, unless the City is responsible for unreasonable delays in its review and approval.
- 2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to City's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the ESCO .
- 3. Schedule Milestones for Submittals. ESCO must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If ESCO fails to submit the submittals in accordance with the Schedule of Submittals, ESCO will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. ESCO will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

7.8 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, ESCO shall have:

- 1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- 3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- 4. determined and verified all information relative to the ESCO's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the ESCO shall give City's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to City's Representative for review and approval of each such variation.

C. Shop Drawings.

- 1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City's Representative the services, materials, and equipment ESCO proposes to provide and to

enable City's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
3. ESCO shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable City's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Representative's Review.

1. City's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals and within 10 days of receipt of submittals. City's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. City's Representative's review and acceptance shall not relieve the ESCO from responsibility for any variation from the requirements of the Contract Documents unless City's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- D. The ESCO shall make corrections required by City's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The ESCO shall direct specific attention in writing to revisions other than the corrections called for by City's Representative on previous Submittals.
- E. City will review the first resubmittal of Shop Drawings at its cost. City reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

7.9 Construction Documents.

A. Construction Documents.

1. The A/E shall prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. City's review of the Construction Documents shall be conducted in accordance with the approved Project Schedule with procedures set forth in this Article. Such review shall not relieve the ESCO from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by City of any deviation from, or of the ESCO's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the ESCO and approved by City.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The ESCO will submit the Construction Document packages to City for review in accordance with the agreed upon schedule, unless otherwise approved in writing by City. The Project Schedule shall indicate the times for City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
3. The ESCO shall submit completed packages of the Construction Documents for review by City at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the ESCO and City to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The ESCO will conduct these design meetings with City in accordance with the schedule approved by City. The ESCO will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.
4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to City for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the ESCO by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
2. The ESCO shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the ESCO's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The ESCO shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by City .

C. Field Engineering.

1. The ESCO shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The ESCO shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. City may provide a geotechnical report to ESCO that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by ESCO to form its basis of design. ESCO shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the ESCO's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by ESCO at its sole cost and expense.
2. The ESCO shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the ESCO.

7.10 Dust Control.

- A. ESCO, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

7.11 Air Pollution.

- A. To the extent applicable, ESCO must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Amador County Air Pollution Control District (APCD) and/or California Air Resources Board (CARB). Although the APCD and CARB limits and requirements are more broad, ESCO shall specifically be aware of their application to "portable equipment", which definition is considered by APCD and CARB to include any item of equipment with a fuel-powered engine. ESCO shall indemnify City against any fines or penalties imposed by APCD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by ESCO, its sub-consultants, or others for whom ESCO is responsible under its indemnity obligations provided for in this Agreement.
- B. The ESCO shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. ESCO shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

7.12 Patent Fees and Royalties.

- A. Except as otherwise indicated in the Contract Documents, ESCO shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. To the fullest extent permitted by Applicable Laws, ESCO shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.13 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by ESCO, unless otherwise specified in the Contract Documents.

- A. ESCO shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than City

- B. The ESCO shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as City's responsibility in the Contract Documents.
- C. Before acceptance of the Work, the ESCO shall submit all licenses, permits, certificates of inspection and required approvals to City.

7.14 ESCO Standard of Care.

- A. The ESCO warrants to City that all Design Work will be performed in accordance with the professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The ESCO warrants to City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by City's Representative, the ESCO shall furnish satisfactory evidence of compliance with this Article 7.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of City's Representative.
- B. The ESCO shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The ESCO shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

7.15 Applicable Laws.

- A. ESCO shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither City nor City's Representative shall be responsible for monitoring ESCO's compliance with any Applicable Laws.
- B. If ESCO performs any Work knowing or having reason to know that it is contrary to Applicable Laws, ESCO shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

7.16 Labor Laws and ESCO's Obligations.

A. Hours of Work.

- 1. The ESCO and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.

2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to City. Permissible working hours shall be between 7:00 a.m. to 8:00 p.m. and shall not be changed except with consent of City .
3. Eight (8) hours of work shall constitute a legal day's work. The ESCO and each Subcontractor shall forfeit, as penalty to City, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the ESCO or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
4. If the work done after hours is required by the Contract to be done outside the ESCO's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by City. If City allows the ESCO to do Work outside regular working hours for the ESCO's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment. If the ESCO elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment.
5. No Work on the Project or other activities by or on behalf of the ESCO which presents a hazard or unreasonable disruption to City staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to City staff shall be made by and pursuant to the sole discretion of a representative of City. All Work on the Project or other activities which could present a hazard or unreasonable disruption to City staff shall be performed before or after normal working hours, on weekends, or on a City recognized holiday. Neither the ESCO nor its Subcontractors or anyone working on behalf of the ESCO or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The ESCO, Subcontractors and persons working on behalf of the ESCO shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The ESCO is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the ESCO agrees to fully comply with such Prevailing Wage Laws. City has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at City's office and shall be made available to any interested party on request. the ESCO shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed

to perform the Project available to interested parties upon request, and shall post copies at the ESCO's principal place of business and at the Project site. The ESCO shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the ESCO is hereby advised that in the event that the ESCO fails to pay prevailing wages, the ESCO will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the ESCO and each Subcontractor shall forfeit as a penalty to City not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the ESCO .
3. The ESCO shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the ESCO and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The ESCO shall certify under penalty of perjury that records maintained and submitted by the ESCO are true and accurate. The ESCO shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. In accordance with Labor Code section 1771.4, the ESCO and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. ESCO shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. Any stop orders issued by the DIR against ESCO or any Subcontractor that affect ESCO's performance of Work, including any delay, shall be ESCO's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered ESCO caused delay subject to any applicable liquidated damages and shall not be compensable by the City. ESCO shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against ESCO or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the ESCO at a time designated by the City. The ESCO shall also provide the following:

- a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- 5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- 6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the ESCO awarded the Contract or performing the contract shall not be marked or obliterated.
- 7. In the event of noncompliance with the requirements of this Article 6.17C, the ESCO shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the ESCO shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
- 8. In submitting the Proposal on this Project, it shall be the ESCO's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
- 9. The ESCO shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to City .

D. Apprentices.

- 1. The ESCO's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the ESCO or any Subcontractor. The ESCO shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

E. Nondiscrimination.

- 1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the ESCO and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation,

marital status, or handicap on this Work. The ESCO will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

F. Workers' Compensation.

1. Pursuant to Labor Code section 1860, ESCO shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, ESCO shall sign and file with City the following certification:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

G. Public Works Registration.

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the ESCO and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, ESCO represents that it is aware of the registration requirement and is currently registered with the DIR. ESCO shall maintain a current registration for the duration of the Project. ESCO shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any Subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

7.17 Debarment

- A. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The ESCO shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

7.18 Taxes.

- A. The ESCO shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project. All such costs shall be included in the Contract Price. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the ESCO will be responsible.

7.19 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. The ESCO shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. ESCO shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such City or occupant because of the performance of the Work, ESCO shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris. During the progress of the Work ESCO shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.

C. Cleaning. Prior to Completion of the Work, ESCO shall clean the Site and the Work and make it ready for utilization by City. At the completion of the Work ESCO shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures. ESCO shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ESCO subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

7.20 Utility Usage.

A. Unless otherwise agreed to be provided by the City in writing and defined in the Scope of Work, all temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by ESCO. ESCO shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, ESCO shall remove all temporary distribution systems.

B. ESCO shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. As Work is to be performed in existing City's facilities, ESCO may, to the extent authorized by City in writing, use City's existing utilities.

C. All permanent meters installed shall be listed in the ESCO's name until the Work is accepted.

7.21 Record Drawings.

A. ESCO shall maintain in a safe place at the Site one record copy of the Contract Documents and written interpretations and clarifications in good order and annotated to show changes made during construction. On these, it shall mark all Project conditions, locations, configurations,

and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.

- B. Record drawings shall be accessible to City's Representative at all times during the construction period. Upon Completion of the Project and as a condition of final acceptance, the ESCO shall finalize and deliver a complete set of record drawings to City's Representative. The information submitted by the ESCO will be assumed to be correct, and the ESCO shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

7.22 Safety and Protection.

- A. ESCO shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. ESCO shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. ESCO shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. ESCO shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. ESCO shall comply with the applicable requirements of City's safety programs, if any. The Special Conditions identify any City's safety programs that are applicable to the Work.
- D. ESCO shall inform City and City's Representative of the specific requirements of ESCO's safety program with which City's and City's Representative's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by ESCO, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by ESCO.

- F. ESCO's duties and responsibilities for safety and for protection of the Work shall continue until City files the Notice of Completion in accordance with Contract Documents.

7.23 Safety Representative.

- A. ESCO shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. ESCO shall provide City's Representative the name and contract information of the safety representative in writing. ESCO shall provide City's Representative the name and contact information of the safety representative in writing.

7.24 Hazard Communication Programs.

- A. ESCO shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

7.25 Emergencies.

- A. In an emergency affecting safety of life or of Work or of adjoining property, ESCO, without special instruction or authorization from City, shall act to prevent such threatened loss or injury; and ESCO shall so act, without appeal, if directed or instructed by City. Any compensation claimed by ESCO on account of emergency work shall be determined in accordance with the Contract Documents.

7.26 Continuing The Work.

- A. ESCO shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless City and ESCO otherwise agree in writing.

7.27 Warranty.

- A. The ESCO warrants that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents and that all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date set forth on the certificates of Substantial Completion (the "Warranty Period"). Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and the respective Warranty Periods for such segments of Work will be set forth in the certificates of Substantial Completion. The ESCO shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to City; ordinary wear and tear and abuse excepted.
- B. The foregoing warranty excludes acts of god, improper operation, or normal wear and tear under normal usage under the control of City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set

forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of City to maintain an action for breach of contract against the ESCO. Nothing contained in these Contract Documents pertaining to warranty shall be construed as limiting any other rights City may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

- C. The ESCO further agrees, within thirty (30) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by City, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the ESCO shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If City finds that the ESCO fails to cure or diligently commence to cure the identified defects in the Work, City may elect to have the Work completed at the ESCO's expense and the ESCO will pay costs of the Work upon demand. City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the ESCO's refusal to pay the above costs.
- D. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- E. ESCO's obligations under this Article are in addition to any other obligation or warranty and do not limit City's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.
- F. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of City employees, property, or licensees, City may undertake, at the ESCO's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the ESCO not being in accordance with the requirements of the Contract Documents.

7.28 Superintendent.

- A. The ESCO shall employ a competent Superintendent satisfactory to City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the ESCO and communications given to, and received from, Superintendent shall be binding on the ESCO. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling City to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the ESCO fails to complete the Contract by the Project Completion Date, the ESCO will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the ESCO will provide all key personnel identified in the Contract for the time periods stipulated.

7.29 Project Staffing.

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

City shall have the right, but not the obligation, to require the removal from the Project of the ESCO's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by City, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

7.30 Compliance With State Storm Water Permit for Construction.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. ESCO hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. ESCO shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order No. R8-2009-0030 (NPDES Permit No. CAS 618030), Order No. R9-2009-0002, Order No. R8-2009-0045, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof.
- C. The ESCO shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The ESCO shall be responsible for filing the Notice of Intent and for obtaining the Permit. If applicable, the ESCO shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the ESCO's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address storm water impacts. The ESCO shall comply with all requirements of the State Water Resources Control Board. The ESCO shall include all costs of compliance with specified requirements in the Price. For those Sites where construction activity results in the disturbance of less than one

acre of total land area and/or do not need coverage under the Permit, the ESCO shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order No. R8-2009-0030, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100 and any amendment or renewal thereof.

- D. The ESCO shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The ESCO shall provide copies of all reports and monitoring information to the City's Representative. The ESCO shall comply with the lawful requirements of any applicable municipality, the County, drainage authority, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- E. Failure to comply with laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in this Contract, ESCO agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers. City reserves the right to defend any enforcement action or civil action brought against the City for ESCO's failure to comply with any applicable water quality law, regulation, or policy. ESCO hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.

The ESCO shall prepare and submit to City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the ESCO's projected progress for the forthcoming month.

The ESCO will cooperate with City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

- A. If the ESCO has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the ESCO shall immediately give written notice including all relevant information to City.
- B. The ESCO agrees to insert the substance of this Article 7.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the ESCO, as the case may be, of all relevant information concerning the dispute.

7.34 Documents and Samples At Project Site.

- A. The ESCO shall maintain the following at the Project site:
1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
 2. One copy of the prevailing wage rates applicable to the Project.
 3. The current accepted Project Schedule.
 4. Shop Drawings, Product Data, and Samples.
 5. All other required submittals.

7.35 Cutting, Fitting, and Patching.

- A. The ESCO shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. The ESCO shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The ESCO shall not cut or alter the work of any Separate Contractor without the prior written consent of City's Representative.

7.36 Access to Work.

- A. City, City's Representative, their consultants, and other persons authorized by City will at all times have access to the Work on the Project wherever it is in preparation or progress. The ESCO shall provide safe and proper facilities for such access and for inspection.

7.37 Concealed Or Unknown Conditions.

- A. If conditions are encountered at the Project Site which are (i) concealed physical conditions which differ materially from facts or information of which ESCO has actual knowledge or which are reasonably foreseen or inferable from such knowledge or (ii) unknown physical conditions, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, hereinafter ("Concealed Conditions"), then, ESCO shall give the City notice of such Concealed Conditions within three (3) Days in writing and City shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and if they do actually cause an increase or decrease in Contractor's cost or the time required for performing any part of the Work, the parties shall negotiate a Change Order modifying Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 10 and 11.

7.38 Liability for and Repair of Damaged Work.

- A. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work. ESCO shall be liable for any and all damages and losses to the Work (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to City's issuance of a

Certificate of Substantial Completion. Upon issuance of a Certificate of Substantial completion, Design-Builder shall be released from any damage and losses to that segment of Work identified in the Certificate of Substantial Completion.

7.39 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of City or the requirements with respect to which City is not subject, the ESCO shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The ESCO shall deliver to City all original licenses, permits, and approvals obtained by the ESCO in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

7.40 Environmental Quality Protection

A. Landscape and Vegetation Preservation

1. General. The ESCO shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

B. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the ESCO shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.
3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance

with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

4. False Siting. Any costs or delays incurred by City or the ESCO due to unreasonable or false notification of an endangered plant or animal will be borne by the ESCO.

C. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, ESCO should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the ESCO notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.
2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.
3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the ESCO will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The ESCO shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.
4. ESCO's Liability. Should ESCO, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The ESCO shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. ESCO shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

7.41 Cybersecurity

- A. For the avoidance of doubt, ESCO is not responsible for implementing or maintaining a security program to safeguard and protect the City's computer network, systems, machines, and/or data (collectively, "Systems"), including those Systems on which it runs the Deliverables provided by ESCO, against Cyber Threats ("Security Program"). "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt the City's or the end user's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of the City's Systems, including through malware, hacking, or similar attacks. Failure by the City to maintain an appropriate Security Program in accordance with industry standards may result in the Deliverables or Systems becoming vulnerable to certain Cyber Threats or result in

impaired functionality, and ESCO shall not be liable or responsible for any losses or damages that may result.

7.42 Technical Manuals; Spare Parts.

- A. The ESCO shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff. The ESCO shall furnish to City six (6) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.
- B. The ESCO shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The ESCO shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

ARTICLE 8: OTHER WORK AT THE PROJECT SITE

8.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to ESCO exclusive occupancy at the Project site. City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The ESCO shall cooperate with City's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the ESCO prior to starting any such other work. The ESCO shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The ESCO shall make necessary revisions to the Project Schedule after such joint review.
- B. ESCO shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. ESCO shall not be entitled to additional compensation from City for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, ESCO shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by City or Separate Contractors, the ESCO shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The ESCO shall promptly report to City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by City's Representative, the ESCO shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the ESCO to so report within a reasonable time after discovering

such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

- C. ESCO shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. ESCO shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. ESCO shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that ESCO may cut or alter others' work with the written consent of City's Representative and the others whose work will be affected.
- D. If the proper execution or results of any part of ESCO's Work depends upon work performed by Separate Contractors, ESCO shall inspect such other work and promptly report to City's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of ESCO's Work. ESCO's failure to so report will constitute an acceptance of such other work as fit and proper for integration with ESCO's Work except for latent defects and deficiencies in such other work.
- E. If any claims are made by Separate Contractors arising out of ESCO's performance of the Work, ESCO shall be responsible to immediately resolve the dispute and indemnify City pursuant to the Contract Documents.
- F. City's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between ESCO and any Separate Contractor shall be submitted to City's Representative for a decision in the matter. ESCO shall comply with direction from City's Representative whose decision on coordination matters will be final.

8.2 For Delays by Others.

- A. By entering into this Contract, ESCO acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of ESCO. ESCO expressly warrants and agrees that ESCO will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, City, or City's Representative. ESCO also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. ESCO will have no remedy, and hereby expressly waives any remedy, against City or City's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

8.3 ESCO's Delay Or Damage.

- A. ESCO shall be liable to City and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of ESCO's wrongful action or inactions.

ARTICLE 9: SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. The ESCO shall not, without the consent of City: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; or permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal, without written notification to City. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the ESCO or its Subcontractors from their obligations under the terms of the Contract. All requests by the ESCO for substitution will be handled through City's Representative.
- B. The ESCO shall submit to City's Representative after selecting Subcontractors, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the ESCO awards a contract for any portion of the Work to a Subcontractor not originally listed in the ESCO's Proposal.
- C. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article, shall be borne solely by the ESCO. The ESCO shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution, unless such a substitution is required by City. In that case, ESCO may be entitled to increases in the Contract Price and/or extension of time.
- D. Any part of the Work on the Project performed for the ESCO by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, to assume toward the ESCO all the obligations and responsibilities which the ESCO assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The ESCO is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

ARTICLE 10: CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

- A. City, without invalidating the Contract, may order changes in the work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and/or Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed under the applicable conditions of the Contract Documents. A

Change Order signed by the ESCO indicates the ESCO's agreement therewith, including any adjustment in the Guaranteed Maximum Price and/or Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the work authorized by the Change Order. No changes in the Work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order. No dispute, disagreement or failure of the Parties to reach agreement on the terms of a Change Order shall relieve the ESCO from the obligation to proceed with performance of the changed work promptly and expeditiously. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

- B. ESCO shall promptly execute changes in the Work as directed in writing by City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the ESCO shall be presented in writing. In the event the parties cannot reach agreement on the terms of a Change Order then the parties can submit the claim for dispute resolution. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by ESCO. ESCO shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.

10.2 Contract Change Order Procedures.

A. City Directive

1. The City may direct changes in the Work, including deletion of Work, by delivering a written work directive. To the extent the work directive results in a change to the Guaranteed Maximum Price and/or Contract Time, ESCO must timely submit a Change Order Request and comply with all Change Order procedures in accordance with this Article. ESCO's failure to timely submit a Change Order Request shall constitute a waiver by ESCO of any adjustment to the Guaranteed Maximum Price and/or Contract Time for work performed under the directive. The City shall not be liable to ESCO for work performed or omitted by ESCO in reliance on verbal orders.
2. The City shall have the right to order changes in the Work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time.

B. ESCO Change Order Requests

1. The ESCO agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum.
2. The ESCO may request changes to the Guaranteed Maximum Price and/or Contract Time for City directed changes in the Work or for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, or caused by

unforeseen or Concealed Conditions if, and only if, the ESCO follows the procedures specified in this Article . Any Work necessary to achieve the agreed upon energy savings and that the ESCO should have reasonably foreseen and included in the Construction Documents, and/or any Work resulting from ambiguities in the Design and Construction Documents shall not be considered Additional Work and the City will not issue a Change Order for said work.

3. If ESCO intends to initiate a Change Order Request, then ESCO shall provide the City with written notice of the underlying facts and circumstances that give rise to the proposed change. ESCO shall submit the notice of change/delay prior to performance of the work and no later than five (5) business Days after the City's work directive or ESCO discovers the circumstances causing the need for the Change Order. A Change Order Request will only be deemed timely submitted if it is submitted prior to incurring any expense and within fourteen (14) Days from ESCO's notice of change/delay.
4. A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Contract Time, if any. The Change Order Request shall include all of the following information (unless inapplicable to the change): A detailed description of the circumstances giving rise to the request; A complete itemized cost proposal, including itemized pricing for Reimbursable Costs; Supporting documentation for all costs; A time impact analysis showing the impact of the delay to the critical path to completion; If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and Certification to the accuracy of the Change Order Request under penalty of perjury. The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The City may demand, and ESCO shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. ESCO shall provide the requested additional information within five (5) Days of the request.
5. If the City denies the Change Order Request or disagrees with the proposal submitted by ESCO, it will notify the ESCO, and the City will provide its opinion of the appropriate change to the Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, the City shall have the right to order the work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time, if any. The City's determination shall become final and binding if the ESCO fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require. If the Change Order includes additions to the Work to be performed, the City shall continue to pay ESCO in accordance with the City's determination of the addition to the GMP, subject to resolution of the Dispute pursuant to Article 15.

C. Change Order Format

1. The City may designate the forms to be used for notices, Change Order Requests, and Change Orders. If so designated, ESCO may only use such forms. ESCO shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The ESCO may not change or modify the City's Change Order form in an attempt to reserve additional rights.

10.3 Determining Adjustments to Compensation.

- A. Limitation on Costs. ESCO shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall be mutually acceptable, negotiated in good faith between the City and ESCO, and shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
- B. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the ESCO and the Agency.
- C. Time and Materials Change Orders. The Agency may direct the ESCO to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the ESCO exceeds at its own risk.
- D. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows
 1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the ESCO establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
 2. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer's invoice.
 3. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies,

or distributors, at the time the work is performed. The ESCO shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the Agency for the total period of use. The Agency shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less.

- a. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - b. All equipment shall, in the opinion of the Agency, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 - c. Before construction equipment is used on any Additional Work, the ESCO shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency, in duplicate, a description of the equipment and its identifying number.
 - d. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.
4. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- a. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the ESCO and Subcontractors at cost only, without mark-up. ESCO shall provide the Agency with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Agency may reasonably request.
 - b. For Work performed by the ESCO's forces the allowed mark-up for overhead and profit combined shall not exceed twenty-five (25%) percent of labor costs, twenty-five percent (25%) of material costs, and twenty-five percent (25%) of the cost of tools and equipment use.
 - c. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed ten percent (10%) of the Subcontractor's Net Cost of the Work to which the ESCO may add up to fifteen percent (15%) of the Subcontractor's Net Cost.
 - d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed five percent (5%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor may add up to an additional five percent (5%) and ESCO

may add up to an additional fifteen percent (15%) of the Net Cost of the lower tier subcontractor.

- e. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Agency exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

5. Documentation of Time-and-Material Costs.

- a. T&M Daily Sheets. ESCO must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Agency's agreement to ESCO's entitlement to the cost.
- b. T&M Summary Sheet. ESCO shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. ESCO's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. ESCO's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in ESCO's waiver for any reimbursement of any costs associated with the Additional Work.
- c. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the ESCO's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
 - d. Overhead Cost. Payroll costs and other compensation of ESCO's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by ESCO whether at the Site or in ESCO's principal office or any branch office, material yard, or shop for general administration of the Work;
 - e. Office Expenses. Expenses of ESCO's principal and branch offices;
 - f. Capital Expenses. Any part of ESCO's capital expenses, including interest on ESCO's capital employed for the Additional Work and charges against ESCO for delinquent payments;
 - g. Negligence. Costs due to the negligence of ESCO or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - h. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of ESCO;

- i. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
- j. Anticipated Lost Profits. Expenses of ESCO associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
- k. Home Office Overhead. Costs derived from the computation of a “home office overhead” rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
- l. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of ESCO, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- m. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

10.4 ESCO’s Wavier of Further Relief.

- A. **ESCO’S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF A CHANGE ORDER REQUEST OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY ESCO OF THE RIGHT TO AN ADJUSTMENT OF THE GUARANTEED MAXIMUM PRICE AND/OR PROJECT COMPLETION DATE ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**
- B. ESCO recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

10.5 Materials and Equipment.

- A. Notwithstanding anything to the contrary contained herein, where the cost for materials or equipment from an Equipment Manufacturer or Supplier increases or decreases greater than five percent (5%) from the NTP Date by no fault of the ESCO, ESCO shall submit a Change Order request to City for an adjustment to the Contract Price for (i) costs that it incurs directly arising out of or relate to said increase in pricing by the Equipment Manufacturer or Supplier or (ii) a deduction in the Contract price to reflect said decrease in costs. In the case that the cost of materials or equipment increases greater than five percent (5%) from the NTP Date, ESCO agrees that overhead and profit will not be applied to that portion of the cost of materials or equipment that exceeds the original cost set forth at the time the NTP is issued. .. City, at its sole option, may reject the Change Order and terminate the Contract for convenience.
- B. In the event of a delay in acquiring said equipment or materials from an Equipment Manufacturer or Supplier and the ESCO can demonstrate conditions 1 through 9 of Section 11.3(A) in the General Conditions, it shall be considered as an Excusable Delay and the Project Completion Date will be extended. Design Build Entity shall not be held to contractual sanctions (including without limitation delay penalties, liquidated damages or other damages) or termination for default for such a Excusable Delay. In the case of the foregoing, the Parties shall negotiate in good faith to execute a Change Order. ESCO shall exercise all reasonable diligence, and the City shall cooperate with ESCO, to ensure said equipment and materials are ordered in a timely manner to prevent an increase to the Contract Price or extend the Project Completion Date.

10.6 City Reservation of Rights.

- A. By signing the Contract, the parties agree that City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - 1. To order changes in the Work, including without limitation: Changes to correct errors or omissions caused by City, if any, in the Contract Documents; Changes resulting from City's decision to change the Work subsequent to execution of the Contract; and Changes due to unforeseen conditions.
 - 2. To suspend Work on the Project or any part thereof.
 - 3. To delay Work on the Project, including without limitation, delays resulting from the failure of City or City's Representative to timely perform any Contract obligation and delays for City's convenience.
- B. If the City exercises any or all of the rights contained herein then ESCO shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time.
- C.. If the City suspends Work for a period of time in excess of 180 days then ESCO shall have the right to terminate the contract and City shall compensate ESCO for all work performed up to the time of termination plus reasonable termination and demobilization costs.

ARTICLE 11: PROJECT COMPLETION DATE

11.1 Progress and Completion.

A. By signing the Contract:

1. The ESCO represents to City that the Project Completion Date is reasonable for performing the Work and that the ESCO is able to perform and complete the Work within the Project Completion Date.
2. The ESCO agrees that City is purchasing the right to have the ESCO present on the Project for the full duration of the time period necessary to complete the Work.

B. The ESCO shall not, except by agreement or instruction of City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by to be furnished by the ESCO. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.

C. The ESCO shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If City's Representative determines and notifies the ESCO that the ESCO's progress is such that the ESCO will not achieve full completion of the Work by the Project Completion Date, the ESCO shall immediately and at no additional cost to City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from City's representative, the ESCO shall immediately notify City's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date.

11.2 Delay.

A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 10 and 11, by signing the Contract, the ESCO agrees: to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project and that the Proposal was made with full knowledge of this risk.

B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the ESCO understands that, except and only to the extent provided otherwise in Articles 10 and 11, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the ESCO from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the ESCO to an adjustment of the Guaranteed Maximum Price.

11.3 Adjustment of The Project Completion Date for Excusable Delay.

A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the ESCO demonstrates that all of the following conditions are met:

1. When the event causing the delay commences, the ESCO has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
2. The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
3. If the Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
4. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
5. The delay is supported by the Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 11.4A(2).
6. Within fourteen (14) Days of the date the ESCO discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the ESCO has not been delayed when the ESCO discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the ESCO submits a timely Change Order Request that meets the requirements of Article 10.
7. The delay is not caused by:
 - a. The financial inability, negligence or fault of the ESCO , a Subcontractor or supplier; or
 - b. An error or omission in the Contract Documents caused by the ESCO or the ESCO's design consultants.
8. The delay arises from causes beyond the control of ESCO. Examples of these causes are : Fire; Strikes, boycotts, or like obstructive actions by employees or labor organizations; Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, pandemic, quarantine restrictions, epidemic, or other severe natural disaster; A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; An error or omission in the Contract Documents caused by City; City's decision to change the Work, where such decision is not the result of any default or misconduct of the ESCO; City's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the ESCO; or The failure of City, City's representative or a Separate

Contractor to timely perform any Contract obligation unless such failure is due to the ESCO's default or misconduct.

- B. If and only if a delay meets all conditions prescribed in this Article, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.
- C. If for any reason one or more of the conditions prescribed in this Article held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date.

11.4 Compensation for Excusable Delay

- A. City's liability to ESCO for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the ESCO in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. The Contract Price shall be equitably adjusted to cover damages caused by unreasonable City delay that impacts the critical path, including delays caused by items that are the responsibility of City pursuant to Government Code section 4215,.
- B. ESCO shall be deemed to waive any right to delay damages unless: ESCO complies with all requirements of the Contract for providing timely notice to the City and timely requests for adjustments to the Price and/or Guaranteed Completion Date and ESCO meets all conditions of an Excusable Delay and is granted an extension of the Guaranteed Completion Date.

11.5 Waiver

- A. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article, including without limitation the requirements of an Excusable Delay, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City from enforcing, such requirements in connection with any present or future delays. The ESCO agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.
- B. City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to ESCO for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by ESCO on or in connection with any other project or anticipated project.

ARTICLE 12: TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

- A. Prompt notice of all Defective Work of which City or City's Representative has actual knowledge will be given to ESCO. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

- A. City, City's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. ESCO shall provide them proper and safe conditions for such access and advise them of ESCO's safety procedures and programs.

12.3 Tests and Inspections.

- A. ESCO shall give City's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Except as provided by the Contract Documents, City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, ESCO shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City's Representative the required certificates of inspection or approval.
- D. ESCO shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City and City's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to ESCO's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City .
- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval, the 8.5 hour working day may be changed to other limits subject to City ordinance.

12.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by ESCO without written concurrence of City's Representative, ESCO shall, if requested by City's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at ESCO's expense unless ESCO has given City's Representative timely notice of ESCO's intention to cover the same and City's Representative has not acted with reasonable promptness in response to such notice.
- C. If ESCO has given City's Representative timely notice of ESCO's intention to cover the work and City's Representative has not acted with reasonable promptness in response to such notice, and City's Representative later considers it necessary or advisable that covered Work be observed by City's Representative or inspected or tested by others, ESCO, at City's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, ESCO shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and City shall be entitled to an appropriate decrease in the GMP.
 - 2. If the uncovered Work is not found to be defective, ESCO shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 City May Stop The Work.

- A. If the Work is defective, City may in its sole discretion order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the ESCO.

12.6 Correction of Defective Work and Warranty Period.

- A. Promptly after receipt of written notice, ESCO shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City or City's Representative, remove it from the Project and replace it with Work that is not defective.
- B. When correcting Defective, ESCO shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.
- C. The ESCO shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Warranty Period and (2) replace, repair, or restore to City's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The ESCO shall promptly commence such correction, replacement, repair, or

- restoration upon notice from City's Representative or City, but in no case later than fourteen (14) Days after receipt of such notice; and the ESCO shall diligently and continuously prosecute such correction to completion. The ESCO shall correct, replace, repair, or restore, such Defective Work, and perform any necessary additional testing, and inspection. The ESCO shall perform corrective Work on the Project at such times and in such a manner as to avoid, to the extent practicable, disruption to City's activities.
- D. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by City or Separate Contractors, the ESCO shall pay to City all reasonable costs of correcting such Defective Work. The ESCO shall replace, repair, or restore to City's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
 - E. The ESCO shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the ESCO nor accepted by City.
 - F. The ESCO's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to City under Article 67 or any other obligation of the ESCO under the Contract Documents. Enforcement of the ESCO's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Establishment of the Warranty Period relates only to the specific obligation of the ESCO to correct the Work on the Project and in no way limits either the ESCO's liability for Defective Work or the time within which proceedings may be commenced to enforce the ESCO's obligations under the Contract Documents.
 - G. If the ESCO fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) business days after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have, correct such failure at the ESCO's sole expense. In such case, City will be entitled to deduct from payments then or thereafter due the ESCO the cost of correcting such failure, including compensation for the additional services and expenses of City's Representative and City's consultants made necessary thereby. If payments then or thereafter due the ESCO are not sufficient to cover such amounts, the ESCO shall pay the additional amount to City.

12.7 Acceptance of Defective Work.

- A. If, after ESCO attempts to repair and/or replace the Defective Work, the City prefers to accept it, City may do so. If the City chooses to accept the Defective Work, then City shall accept the Work as-is, and releases the ESCO from any and all guarantee or warranty obligations related to the Work and the parties shall agree upon a reduction in the Guaranteed Maximum Price to address costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

12.8 City May Correct Defective Work.

- A. If ESCO fails within a reasonable time after written notice from City's Representative to correct or diligently commence to correct Defective Work, or to remove and replace rejected Work as required by City, City may, after seven (7) business days written notice to ESCO, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude ESCO from all or part of the Site, take possession of all or part of the Work and suspend ESCO's services related thereto, and incorporate in the Work all materials and equipment stored at the Site for which City has paid ESCO but which are stored elsewhere. ESCO shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the defective work.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the defective work will be charged against ESCO, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the GMP.
- D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
- E. If the Change Order is executed after all payments under the Contract have been paid by City, then an appropriate amount will be paid by ESCO to City.
- F. ESCO shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting defective work.

ARTICLE 13: PAYMENTS TO ESCO AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment agreed upon by the parties as a schedule of values, for purposes of payment and tracking progress of the Work only. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the ESCO's Design and Construction Fee shall be shown as a single separate item.

A. Applications for Payments.

- 1. Within ten (10) days of the Date of Commencement, Customer shall make payment to ESCO for project mobilization expenses, including but not limited to any design or engineering fees not already invoiced, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date ("Project Mobilization Payment") in the amount of not to exceed 15% of the implementation contract payment total of the Contract Price.

2. By the twenty-fifth (25th) day of each month ESCO shall submit to City's Representative for review an Application for Payment filled out and signed by ESCO covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
3. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the ESCO on account of that portion of the Work for which the ESCO has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.
4. To compute the amount of each progress payment, the amount of each progress payment shall first include: That portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of Work by the share of the GMP allocated to that portion of the Work in the most recent schedule of values; That portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the City, suitably stored off the site at a location agreed upon in writing; That portion of Change Orders reasonably justified; and The ESCO's Design and Construction Fee.
5. The amount of each progress payment shall then be reduced by: The aggregate of previous payments made by the City; The amount for failure of the ESCO to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the ESCO); The shortfall, if any, indicated by the ESCO in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's auditors in such documentation; and Retention.
6. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the ESCO stating that it has paid all amounts due on account of the Work paid by City in the prior Applications for Payment.

B. Review of Applications.

1. Within seven (7) days of receipt of a Payment Application, City's Representative will either indicate in writing a recommendation of payment to City or return the Application for Payment to ESCO indicating in writing City's Representative's reasons for refusing to recommend payment. In the latter case, ESCO may make the necessary corrections and resubmit the Application for Payment.

2. In taking action on the ESCO's Applications for Payment, the City shall be entitled to rely on the accuracy and completeness of the information furnished by the ESCO and shall not be deemed to represent that the City has made a detailed examination, audit or arithmetic verification of the documentation submitted in support of the Application for Payment or other supporting data; that the City has made exhaustive or continuous on-site inspections; or that the City has made examinations to ascertain how or for what purposes the ESCO has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's auditors acting in the sole interest of the City.
3. By recommending any such payment City's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to City's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle ESCO to be paid additionally by City or entitle City to withhold payment to ESCO.
4. Neither City's Representative's review of ESCO's Work for the purposes of recommending payments nor City's Representative's recommendation of any payment, including final payment, will impose responsibility on City's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for ESCO's failure to comply with Applicable Laws applicable to ESCO's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes ESCO has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to City free and clear of any Liens.
5. City's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. City retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in City's opinion to protect City from loss.

C. Payment Becomes Due.

1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to City's Representative, and subject to City's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by City to ESCO.

D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Contract Documents, City will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and ESCO shall be entitled to payment of the retainage amount corresponding to the value of any segment of Work that receives a certificate of Substantial Completion. Payment shall be released upon issuance of said certificate of Substantial Completion.
2. Pursuant to Public Contract Code section 22300, ESCO may substitute securities for any moneys withheld as a retention by City to ensure performance under the Contract. At the request and expense of ESCO, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to ESCO. Upon satisfactory completion of the Contract, the securities shall be returned to ESCO .
3. Alternatively, ESCO may request, and City shall make payment of retentions earned directly to the escrow agent selected by the ESCO. At the expense of ESCO, ESCO may direct the investment of the payments into securities and ESCO shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by ESCO. Upon satisfactory completion of the Contract, ESCO shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when City authorizes the escrow agent to release these funds to the ESCO, pursuant to the terms of Public Contract Code section 22300.
4. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.
5. ESCO shall be the beneficial City of any securities substituted for moneys withheld and shall receive any interest thereon.
6. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. City's Reduction in Recommended Payment.

1. In addition to reductions recommended by City's Representative, City may refuse to make payment of the full amount recommended by City's Representative because:
 - a. Claims have been made against City on account of ESCO's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.
 - d. Failure of ESCO to make proper payments to its subcontractors or suppliers.

- e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
- f. Damage to another contractor or third party.
- g. Amounts which may be due the City for claims against ESCO .
- h. Failure of ESCO to keep the record (“as-built”) drawings up to date.
- i. Failure to provide updates on the construction schedule.
- j. Site cleanup.
- k. Failure of the ESCO to comply with requirements of the Contract Documents.
- l. Liquidated Damages.

Upon completion of the Contract, City will reduce the final Contract Price to reflect costs charged to the ESCO, back charges or payments withheld pursuant to the Contract Documents.

13.2 ESCO’s Warranty of Title.

- A. ESCO warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

- A. City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the ESCO of its responsibilities under the Contract.

13.4 Final Inspection.

- A. Upon written notice from ESCO that the entire Work is complete, City’s Representative will promptly make a final inspection with City and ESCO and will notify ESCO in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. ESCO shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

- A. After ESCO has, in the opinion of City’s Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, City shall execute and

file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, ESCO may submit a final accounting for the cost of the Work and a final Application for Payment. Final payment, constituting the entire unpaid balance of the Contract Price.
2. Prior to Final Payment, the City may conduct an audit of the Work or notify the ESCO that it will not conduct an audit and issue a final Certificate for Payment. If the City conducts an audit of the Work, the City will either issue to the ESCO a final Certificate for Payment, or notify the ESCO in writing of the City's reasons for withholding a certificate. If the City's auditors report the cost of the Work as substantiated by the ESCO's final accounting to be less than claimed by the ESCO, the ESCO shall be entitled to make a claim. Pending a final resolution of the disputed amount, the City shall pay the ESCO the amount certified in the City's final Certificate for Payment.
3. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;
 - b. consent of the surety to final payment;
 - c. a fully completed Conditional Waiver and Release on Final Payment.

B. City's Representative's Review of Application and Acceptance.

1. If, on the basis of City's Representative's observation of the Work during construction and final inspection, and City's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, City's Representative is satisfied that the Work has been completed and ESCO has satisfied all other requirements for final payment, City's Representative will indicate in writing City's Representative's recommendation of payment and present the Application for Payment to City for payment. Otherwise, City's Representative will return the Application for Payment to ESCO, indicating in writing the reasons for refusing to recommend final payment, in which case ESCO shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to City's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by City's Representative, less any sum City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by City to ESCO.

13.7 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by ESCO against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

ARTICLE 14: SUSPENSION OF WORK AND COMPLETION

14.1 City May Suspend Work.

- A. City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to ESCO. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. ESCO shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, ESCO shall, unless the notice requires otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 - 3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 - 4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, ESCO shall be granted an adjustment in the GMP for ESCO's actual costs associated with the demobilized condition of the and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from ESCO's non-compliance with the requirements of the Contract. Further, in the event said suspension continues in excess of 180 days, then ESCO may elect to terminate for convenience.

14.2 City May Terminate for Cause.

- A. City may, without prejudice to any other right or remedy, serve written notice upon ESCO of its intention to terminate this Contract in whole or in part if the ESCO: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of City; or (ix) violates any of the provisions of the Contract Documents.

B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within thirty (30) Days after the service of such notice, ESCO resolves the circumstances giving rise to the Notice of Default to City's reasonable satisfaction, or makes arrangements reasonably acceptable to City for the required corrective action, City may terminate this Contract. In such case, ESCO shall not be entitled to receive any further payment until the Work has been finished. City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. ESCO and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Work. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the ESCO as may be on the Site.

14.3 Design Builder May Suspend or Terminate for Cause.

- A. ESCO may terminate the Contract or suspend the performance of the Work by providing written Notice to the City if: (i) the City repeatedly or materially fails, refuses or neglects to fulfill its obligations under the Contract or fails to make any undisputed payment(s) to ESCO as and when due hereunder, (ii) ESCO has provided written Notice of default to the City detailing the alleged failure, refusal, neglect, or payment default, and (iii) within thirty (30) days of the City's receipt of such written Notice, the City has neither cured nor commenced and diligently continued efforts to cure such default.

14.4 City May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, City may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to ESCO. The Notice of Termination shall specify that the termination is for the convenience of City, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by City, the ESCO shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 1. Stop Work as specified in the Notice.
 2. Complete any Work specified in the Notice of Termination in accordance with the Contract Documents.
 3. Leave the Site and any other property upon which the ESCO was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety. ESCO shall be relieved of this requirement in the event that Work necessary to ensure safety is not specified and authorized in the Notice of Termination.
 4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
 5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.

6. Submit to City, within thirty (30) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the ESCO for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the ESCO solely as a result of City's exercise of its right to terminate this Contract pursuant to this clause, which costs the ESCO is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience."
7. City's total liability to ESCO by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The actual cost to the ESCO for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Deductions shall be made for cost of materials to be retained by the ESCO (provided the materials may be reused for other projects or returned to the supplier), cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
 - b. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
 - d. Reasonable costs to the ESCO of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
 - e. A reasonable allowance for the ESCO's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall City be liable for unreasonable costs incurred by the ESCO or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the ESCO's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
9. City shall have no obligation to pay the ESCO under this Article unless and until the ESCO provides City with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

10. In arriving at the amount due the ESCO under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

- a. All unliquidated advances or other payments on account previously made to the ESCO, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
- b. Any claim City may have against the ESCO in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the ESCO and not otherwise recovered by or credited to City.

ESCO shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order ESCO to cease Work until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.

12. If City terminates ESCO for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, ESCO shall be entitled to receive only the amounts payable under this section, and ESCO specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15: CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Procedure for Resolving Claims

- A. ESCO shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, including but not limited to all requirements of Article 10 and Article 15.1, as a prerequisite to filing any Claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely submit a Change Order Request, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

- C. Claims. For purposes of this Article, "Claim" means a separate demand by the ESCO for (1) a time extension, including without limitation relief from damages or penalties for delay assessed by City, (2) payment of money or damages arising from Work done by or on behalf of the ESCO and payment of which is not otherwise expressly provided for or the ESCO is not otherwise entitled, or (3) payment of an amount which is disputed by City. A "Claim" does not include any demand for payment for which the ESCO has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until the ESCO completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, and ESCO's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16-point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. The ESCO will submit the claim justification in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to the Claim
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested
 7. Cover letter and certification of validity of the Claim

- F. **City Response to Claim.** Upon receipt of a Claim pursuant to this Article, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after City issues its written response.
1. If City needs approval from its governing body to provide ESCO a written statement as set forth above, 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, City shall have up to three (3) days following the next publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide ESCO a written statement identifying the disputed portion and the undisputed portion of the Claim.
 2. City may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the Claim or relating to defenses or Claims City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the ESCO. City's written response shall be submitted 30 days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the ESCO to produce the additional information, whichever is greater.
- G. **Meet and Confer Conference.** If the ESCO disputes City's response, or if City fails to respond within the statutory time period(s), the ESCO may so notify City, in writing, within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, City shall schedule a meet and confer conference within 30 Days.
- H. **Mediation.** 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 City shall provide the ESCO 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 City issues its written statement. Any disputed portion of the Claim, as identified by the ESCO in writing, shall be submitted to nonbinding mediation, with the City and the ESCO sharing the associated costs equally. The public entity and ESCO shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. 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.
 2. For purposes of this Article, 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 Article.

3. Unless otherwise agreed to by the City and the ESCO 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.
 4. The mediation shall be held no earlier than the date the ESCO completes the Work or the date that the ESCO last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the ESCO must file a Claim pursuant to 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 prior to initiating litigation. 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 ESCO submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. 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.
 2. 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- K. Government Code Claim Procedures.
1. 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 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the ESCO must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.
3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by ESCO. If ESCO does not comply with the Government Code claim procedure or the prerequisite contractual requirements, ESCO may not file any action against the City .
4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the ESCO last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to ESCO or that should reasonably be known to ESCO excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

L. Non-Waiver. The City's failure to respond to a Claim from the ESCO within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

15.2 Litigation.

A. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

15.3. Duty to Continue Performance.

A. Unless provided to the contrary in the Contract Documents, ESCO shall continue to perform the Work and City shall continue to satisfy its payment obligations to ESCO, pending the final resolution of any dispute or disagreement between ESCO and City .

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 Limitations On City's Responsibilities.

A. City shall not supervise, direct, or have control or authority over, nor be responsible for, the ESCO's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the ESCO to comply with Applicable Laws applicable to the performance of the Work. City will not be responsible for the ESCO's failure to perform the Project in accordance with the Contract Documents.

16.2 Successors

- A. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The ESCO may not either voluntarily or by action of law, assign any obligation assumed by the ESCO hereunder without the prior written consent of the City.

16.3 Cumulative Remedies.

- A. Except where explicitly stated otherwise, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

16.4 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the ESCO.

16.5 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

16.6 Jurisdiction; Venue.

- A. The ESCO and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Riverside County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

- 16.7 No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by ESCO or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

16.8 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

16.9 City's Right to Audit.

- A. The ESCO shall make available to City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to City. If the ESCO submits a Change Order Request or a Claim to City, City shall have the right to audit the ESCO's books, records, documents, and other evidence to the extent they are relevant.
- B. In accordance with Government Code Section 8546.7, records of both City and the ESCO shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

16.10 Assignment.

- A. ESCO shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of City, such prior written consent shall not be unreasonably withheld. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.
- B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body 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 Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

16.11 All Legal Provisions Included.

- A. ESCO shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If ESCO observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If ESCO performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

- B. ESCO shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. ESCO shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. ESCO acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in the Guaranteed Maximum Price or Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder. In the event an Applicable Law takes effect after execution of this Contract, and is inserted herein, and impacts the schedule or costs of the Project then either party may request changes to the GMP or Contract Time resulting from such new Applicable Law.
- F. Ethics. Each Party shall comply in all respects with all Applicable Laws governing the duties, obligations, and business practices of that Party. Neither Party shall take any action in violation of any Applicable Laws that could result in liability being imposed on the other Party. In the event the City has concerns related to ethics, compliance or ESCO’s Principles of Responsibility, and/or any potential violations of these policies, the City is welcome to make use of ESCO’s GreenLine. The GreenLine is ESCO’s global helpline for external stakeholders. It is a confidential channel through which public agencies can ask questions and raise concerns. Reports can be made using the following link:
<https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.
- G. Export Control. The products, software, services, information, other deliverables and/or the technologies embedded therein (hereinafter referred to as “Deliverables”) provided by ESCO under this Contract contain or may contain components and/or technologies from the United States of America (“US”), the European Union (“EU”) and/or other nations. The City acknowledges and agrees that the assignment and/or usage of Deliverables under this Contract shall fully comply with applicable US, EU and other national and international export control laws and/or regulations. Unless any applicable export licenses have been obtained from the relevant authority and the ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination or party (including without limitation to any individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. the City also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems, unmanned air vehicles, and/or nuclear weapons delivery systems, nor will they be used in any design, development, production or use for any weapons

(which may include, without limitation, chemical, biological or nuclear weapons). If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit ESCO from fulfilling any order, or would in ESCO's judgment otherwise expose ESCO to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, ESCO shall be excused from all obligations under such order and/or this Contract.

16.12 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the ESCO's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.13 Noise.

- A. The ESCO shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The ESCO shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the ESCO shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the ESCO.

16.14 Change In Name Or Nature of ESCO's Legal Entity.

- A. Should a change be contemplated in the name or nature of the ESCO's legal entity, the ESCO shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the ESCO's name or nature will affect City's rights under the Contract Documents, including but not limited to the bonds and insurance.

16.15 Complete Contract.

- A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the

subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

16.16 Notice of Third-Party Claims.

- A. Pursuant to Public Contract Code section 9201, City shall provide ESCO with timely notification of the receipt of any third-party claim relating to the Contract.

16.17 Signature Authority. The individuals executing this Contract and the instruments referenced herein on behalf of ESCO each represent and warrant that they have the legal power, right and actual authority to bind ESCO to the terms and conditions hereof and thereof.

16.18 Severability of Provisions.

- A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

16.19 Correction of Errors and Omissions.

- A. The ESCO agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to City .

16.20 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

**ATTACHMENT 3
PERFORMANCE BOND**

WHEREAS the CITY OF SUTTER CREEK (also herein "City") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the ESCO is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned ESCO and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the ESCO, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if the Design Build Entity shall fail to make full, complete, and satisfactory repair and replacements, and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

Whenever ESCO shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City shall be entitled to approve any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the ESCO, such approval shall not be unreasonably withheld by City .

Where ESCO has been terminated for default by the City, the Surety shall not utilize ESCO in completing the Project nor shall Surety accept a bid from ESCO for completion of the Project unless the City, when declaring the ESCO in default, notifies Surety of the City's written agreement to have ESCO's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including, but not limited to, the provisions of sections 2819 and 2845 of the California Civil Code.

Notwithstanding any provision to the contrary herein, this Performance Bond shall guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, or (2) any support or maintenance service agreement.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

ESCO/PRINCIPAL

Name

By _____

SURETY:

By: _____

Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

ATTACHMENT 4
PAYMENT BOND (LABOR AND MATERIALS)

WHEREAS the **CITY OF SUTTER CREEK** (hereinafter "Obligee") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in that certain contract for the said Public Work dated _____, (hereinafter the "Public Work Contract"); and

WHEREAS, the ESCO is required to furnish a bond in connection with said Public Work Contract providing that if the ESCO or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we _____, the undersigned ESCO (s), as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the ESCO, the sum of _____ Dollars, \$_____, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all

other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, and necessary disbursements. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day
on _____, 20____.

ESCO

By:_____
President

Surety

By:_____

Attorney-in-Fact

STATE OF CALIFORNIA)
)
 COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

 Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

 Signature

 Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

STATE OF CALIFORNIA)
)
 COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to

the within instrument as the Attorney-in-Fact of the _____
 (surety) and acknowledged to me that he subscribed the name of the
 _____ (surety) thereto and his own name as Attorney-in-Fact.

 Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
 Secretary of the corporation named as principal in the attached bond, that
 _____ who signed the said bond on behalf of the principal was
 then _____ of said corporation; that I know his signature,
 and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for
 and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

 Signature

 Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company
 may be attached hereto.**

ATTACHMENT 5 HOURLY RATE SCHEDULE

Attachment 5 to this Contract – Hourly Rate Schedule	
Schneider Electric Billing Classification	Hourly Rate
Vice President	\$ 350.00
Program Manager	\$ 250.00
Senior Project Manager	\$ 250.00
Senior Principal	\$ 270.00
Wastewater Technical Project Manager	\$ 250.00
Mechanical Engineer	\$ 215.00
Senior Electrical Engineer	\$ 225.00
Senior Energy Engineer	\$ 225.00
SCADA Integration Manager	\$ 215.00
Structural Engineer	\$ 225.00
Pre-Construction Manager	\$ 250.00
Senior Cost Estimator	\$ 195.00
Solar & Microgrid Technical Project Manager	\$ 250.00
Solar Solutions Manager	\$ 220.00
Senior Microgrid Solutions Architect	\$ 215.00
National Solar Developer	\$ 175.00
Regional Energy Engineering Manager	\$ 205.00
MEP Design Engineering Manager	\$ 195.00
Construction Project Manager	\$ 225.00
Project Superintendent	\$ 180.00
Commissioning & Quality Control Manager	\$ 250.00
Scheduler	\$ 165.00
Client Services/ M&V Manager	\$ 150.00
Finance Director	\$ 145.00
Rebates and Grant Writing/ Manager	\$ 140.00
Marketing Specialist	\$ 120.00

ATTACHMENT 6
WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of ESCO:_____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 6 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

ATTACHMENT 7

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

ESCO hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of ESCO's work on the Project for City.

ESCO further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the City’s determination. The costs of any such tests shall be paid by ESCO if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at ESCO's expense at no additional cost to the City.

ESCO has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of ESCO Design-Build Entity: _____

Signature: _____

Print Name: _____

Title: _____

Attachment 8

Wastewater Treatment Performance Guarantee

1. General

ESCO warrants that the Project, once completed and placed into operation, will be capable of treating wastewater and producing effluent meeting the applicable effluent limitations established under the Facility's NPDES and recycled water discharge permits, as such limits may be confirmed during the Design Phase and incorporated into the final design basis.

2. Basis of Guarantee

The performance guarantee is based on the influent flow and loading design criteria used in ESCO's final design (to be documented in the approved Basis of Design Report). The guarantee applies under Average and Peak Flow conditions and corresponding design loadings under both dry and wet weather conditions. The guarantee applies to the entire wastewater treatment process including pretreatment/screening, biological treatment, membrane filtration, effluent disinfection, and sludge dewatering.

3. Demonstration of Compliance

3.1 Performance Test Plan.

At least thirty (30) days prior to testing, ESCO shall prepare and submit a Performance Test Plan for review and approval by the Owner. The Plan shall include:

- a. Test schedule and operating conditions
- b. Sampling and monitoring locations and frequency
- c. Analytical methods and QA/QC procedures
- d. Data reporting format
- e. Pass/fail criteria tied to effluent limits
- f. Staffing and monitoring plan

Owner/Engineer approval is a condition precedent to starting the Performance Test.

The following shall be deemed complete prior to initiating Performance Testing:

- a. Substantial completion of construction
- b. Successful completion of all facility acceptance testing
- c. All Operations and Maintenance manuals submitted and accepted
- d. Comprehensive training of City operations staff completed
- e. All spare parts and special tools required for routine operation and maintenance delivered
- f. All required temporary or final permits for operation, including NPDES coverage and Title 22 approval, are in place or conditionally authorized to allow testing under regulatory oversight
- g. Permanent power, water supply, chemical systems, and other supporting utilities are fully installed, tested, and available for use

- h. City operations staff are available and scheduled to operate alongside ESCO personnel during the Performance Test to gain hands-on training and experience

3.2 Performance Testing Protocol.

Within thirty (30) days after Substantial Completion, ESCO shall initiate a Performance Test of the completed wastewater treatment facilities. The Performance Test shall:

- a. Be conducted over a minimum continuous thirty (30) day operating period,
- b. Be performed under average dry weather flow conditions at or near design loadings, as documented in the approved Basis of Design Report,
- c. Include influent and effluent sampling and analysis sufficient to demonstrate compliance with all applicable permit effluent limits, including but not limited to BOD, TSS, turbidity, coliform, pH, and disinfection criteria,
- d. Be performed in accordance with industry-recognized quality assurance/quality control practices and permit requirements.

3.3 Sampling and Monitoring.

- a. Sampling frequency, analytical methods, and reporting protocols shall be consistent with the Facility's discharge permit monitoring and reporting requirements.
- b. At a minimum, daily monitoring of critical parameters (BOD, TSS, turbidity, and coliform) shall be performed during the Performance Test.
- c. All samples shall be analyzed by a California ELAP-certified laboratory, unless otherwise agreed in writing.

3.4 Reporting.

At the conclusion of the Performance Test, ESCO shall prepare and submit a Performance Test Report including:

- a. Summary of operating conditions during the test period,
- b. Tabulation of all influent and effluent monitoring data,
- c. Comparison of results to guaranteed effluent limits,
- d. Identification of any exceedances and corrective actions taken,
- e. Certification by ESCO's design engineer of record that the test demonstrates the facility's capability to reliably meet the guaranteed performance.

3.5 Failure and Retest.

- a. If the Performance Test demonstrates non-compliance with any guaranteed effluent limit, ESCO shall, at its sole cost, promptly implement such modifications, adjustments, or additions to the treatment process as necessary to achieve compliance.
- b. Following completion of such modifications, ESCO shall repeat the Performance Test for a full thirty (30) day period, under the same terms as above.
- c. This process shall be repeated as necessary until the facility demonstrates compliance.

3.6 Warranty Terms.

The Performance Guarantee Warranty Period shall commence upon successful completion and City acceptance of the Performance Test. The following warranty requirements shall be proposed

by the ESCO for consideration by the City, and negotiated in good faith, at the completion of Phase 2:

- a. Duration of the Warranty Period.
- b. Corrective actions required to achieve compliance, in the event of noncompliance.
- c. Criteria for extension of the Warranty Period if repeated failures are encountered.
- d. Exclusions.

ATTACHMENT 9

GRANT / LOAN COMPLIANCE RIDER

This Rider is attached to and made part of the Design-Build Energy Services Contract between the City of Sutter Creek (“City”) and Schneider Electric Buildings Americas, Inc. (“ESCO”).

1. **Purpose.** This Rider is intended to incorporate and flow down the terms of any state or federal grant, loan, or funding assistance secured by the City for the Project.
2. **Incorporated Provisions.** ESCO shall comply with the following, as applicable to the funding source:
 - **Federal Cross-Cutting Requirements** (2 CFR Part 200, Subpart D, Appendix II, and related guidance).
 - **Labor Standards** (Davis-Bacon Act, Copeland Act, Contract Work Hours and Safety Standards Act, or California Labor Code prevailing wage provisions).
 - **Domestic Preference** (Build America, Buy America Act, 49 U.S.C. § 5323(j), or equivalent).
 - **Civil Rights / Equal Opportunity** (Title VI, ADA, Section 504 of the Rehabilitation Act, Executive Order 11246, etc.).
 - **Environmental and Permitting Compliance** (CEQA, NEPA, EPA SRF cross-cutters, etc.).
 - **Debarment and Suspension Certification** (2 CFR Part 180).
 - **Audit and Record Retention** (2 CFR §§ 200.334–200.338, minimum three years after final payment).
 - **Other Agency-Specific Provisions** as may be required by the funding agreement (examples: USDA RD Guide 27, EPA SRF loan conditions, CDBG contract provisions).
3. **Supersession.** Where this Rider conflicts with the base Agreement, the provisions of this Rider shall govern, but only to the extent necessary to comply with funding agency requirements.
4. **Amendments.** The City may replace this Rider with the funding agency’s standard form at the time of award. ESCO shall execute such replacement Rider as a condition of proceeding with the Work.

Appendix I - IGA Scope of Work

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WASTEWATER TREATMENT FACILITY (WWTF) - PROJECT SCOPE OF WORK

The WWTF is being designed for 0.5mgd average dry weather flow with buildout up to 0.8mgd. The system will be built to accommodate planned growth in the City and will treat effluent to disinfected tertiary standards for recycling as part of a future project. Major WWTF project scope elements include the following, subject to further definition and revision during Phases I and II:

- WWTF Wastewater Treatment System with Equalization
 - Influent equalization pond assumed to be a 1,100,000+ lined pond created by converting the existing effluent storage pond. Pond storage may be combined with additional membrane bioreactor (MBR) tankage to meet total equalization and emergency storage volume requirements. Reuse of the existing equalization pond is subject to FEMA review and any required approvals related to floodplain impacts or regulatory constraints. An alternate equalization strategy shall be developed as an optional scope item if reuse of the equalization pond is not feasible.
 - Skid-mounted and shop-assembled and tested MBR wastewater treatment system utilizing 304 SS tanks installed on concrete foundations. selected package shall be designed and supplied by Cloacina LLC, Arroyo Grande, CA.
 - Package to include influent fine screens, equalized flow delivery pumps, anoxic and aerobic treatment tanks, blowers, forward activated sludge pumps, membrane tanks, including additional membrane capacity for peak flow management, clearwell, outdoor inline UV disinfection system or chlorine disinfection system, auxiliary pumps, main control panel, stairs, platforms, and canopies
 - Flows pumped directly to WWTF influent fine screens from Lift Station (MBR tanks and equalization basin), with valving and controls system adjustments depending on the final site layout and theory of peak flow operation.
 - Chemical storage totes and metering pumps in an outdoor pad with sun/rain cover
 - Flow to Equalization Basins will pass through existing coarse screens, if suitable.
- Effluent Transfer Pump Station
 - Outdoor horizontal centrifugal variable speed pumps to deliver effluent from clearwell through UV system to Recycled Water Storage Tank or to surface water disposal
 - Pump station sizing to be similar to WWTF influent flow criteria, based on analysis of future recycled water demands
- WWTF Solids Handling
 - Shop-assembled packaged dewatering system consisting of sludge holding tank, feed pump, chemical addition, and volute or screw press dewatering unit installed outdoors under a canopy. Canopy designed by PTV and attached to shop-assembled system or the pad it is mounted on
 - Control panel integrated into SCADA
 - Discharge to a rolling bin for offsite disposal in a landfill
 - Evaluation of repurposing existing pond and trickling filter as equalization basin, in addition to an assessment of feasibility for utilizing other available basins as sludge holding basin(s)
Optional: provisions made for future Class A or B biosolids treatment. Provisions limited to allocating a space for additional equipment and stubbed out process connections
- Odor Control

- Provision site layout and connections for future odor scrubber utilizing dry absorptive media (GAC or similar) in a fiberglass scrubber vessel plumbed to scrub air spaces at influent screening, equalization tanks, and site drain pump station, if required by City. Site location and likely use of effluent storage pond for influent equalization may render odor control of influent screening and other areas less effective. To be analyzed during Phase 1 services
- Yard and Process Piping
 - All piping within the WWTF parcel interconnecting process units
- Site Features
 - Grading to create a flat site with sheet flow drainage offsite, except in process areas (drainage study of surrounding lands not included)
 - MOSes to add language on access road, topology survey should include roadway
 - A high-level assessment of the site drainage in phase 1 of the design, considering the final plant layout. Based on Phase 1 outcome, final scope and level of efforts will be determined in Phase 2.
 - Process areas drain to local drain pump station for return to treatment
 - Process drain pump station with submersible pumps discharging to headworks
 - LED site lighting with photocell and occupancy sensor
 - Fire hydrants connecting to existing nearby water supply. Design and Improvements to the existing water system near new plant site may be required to supply required flow and pressure to site for fire flow. Phase 1 should identify any deficiencies to be addressed in Phase 2. Hose bibs/yard hydrants for washdown water
 - Access for entry, exit, and staging of a crane to perform long-term heavy maintenance and plant expansion
 - Curbs and catch basins
 - Chain link fencing and gates
- Recycled Water Pumping Facility (future / by others)
 - The site layout will allocate space for future pump station, recycled water piping connections, and electrical/comms infrastructure for a future effluent pump station for the potential Gold Rush Ranch recycled water strategy. **provision for a future pump station and its associated electrical infrastructure is included in the current phase. The design and construction of future facilities related to pumping and conveyance of recycled water to GRR will be performed by others.** Anticipated to be a pressurized pipeline capable of disposing of 500 AF per year
- Power
 - 480-v 3-phase power distribution (power service and transformer designed by Utility and applied for by Owner, with technical support from ESCO for application and coordination with Utility)
 - Evaluation and design of an adjacent solar PV & battery storage system to supplement part of the new plant design power needs
 - Diesel standby generator(s) and automatic transfer switch, sized to allow plant to operate at full capacity. ESCO must obtain permit from Amador County Air Pollution District for generator operation.
 -
- Controls
 - Design a SCADA system and radio telemetry system or fiber optic connection as indicated in the Control System Block Diagram to provide for monitoring, trending, and

remote access. It is assumed this system will be linked to offsite utility monitoring systems

- Design the integration of the overall SCADA system with the included SCADA system as part of the packaged MBR system
- System integration and programming services will be by a qualified system integrator provided by the ESCO
- Influent Lift Station
 - Influent flows into the WWTF will collect in a new influent lift station. The lift station will convey influent to the packaged headworks system. Peak event flows will be screened if possible and buffered in the influent equalization pond.
 - Sized for peak hour wet weather flow and turndown for average dry weather flow
 - Concrete cast-in-place wet well with protective coating, concrete lid with spring assist H2O loaded access hatch and safety grating
 - Duplex or triplex submersible pumps with discharge elbows and rail systems, design to consider City phasing of influent flows
 - Davit crane for pump service and replacement
 - SCADA control panel
 - Odor scrubber

POTENTIAL OPTIONAL SCOPE ITEMS

The following is a list of potential optional scope items that we have identified during preparation of this RFP Response. We can provide detailed scopes and prices for these items upon request.

- Chemical storage building, base scope includes concrete equipment pad and sun/rain cover.
- Recycled Water System Model – base scope assumes future recycled water system curve is provided by others.
- Fire sprinkler design (if required) and Master Fire Protection Plan designed by Fire Protection Engineer.
- Operations and maintenance building for the WWTF
- Cast-in-place MBR
- Layout on the adjacent property (uphill) and new EQ strategy assuming project constraints are found to be such that constructing improvements on the existing site is determined to be infeasible
- CEQA+/NEPA documentation if Federal funding is pursued and requires this

GENERAL IGA SCOPE OF SERVICES

IGA PROCESS AND DELIVERABLES FOR WASTEWATER TREATMENT UPGRADES

In general, the IGA will be executed per the three following Phases of the ESCO Team's process:

1. Phase 1 – Preliminary Assessment: The goal of this phase is to Define Customer Problem(s) and a Create a Prioritized Scope List to Solve those Problem(s). This goal is achieved by completing the necessary due diligence to create Complete Utility, End Use Breakdown & Process Baseline, Preliminary Process Performance & Energy/ Operational Savings, Basis of Design Report, and Preliminary Construction Pricing based on AACE Class 4 Estimate. Goals of this Phase also include:
 - Advance, evaluate, and compare the cost, schedule, and feasibility of WWTF alternatives.
 - Advance permitting, cost estimating, scheduling, environmental review, and other critical project elements to a sufficient level that—at the conclusion of this phase—the City can make an informed decision about project feasibility, risks, costs, schedule, and regulatory concurrence.
 - Complete topographic survey and geotechnical investigations required to inform the evaluation and support a subsequent design phase.
 - Identify candidate Energy Conservation Measures (ECMs). Evaluate opportunities to reduce long-term operational costs, capital reinvestment needs, and regulatory exposure through replacement or major upgrade of the existing WWTF. The analysis shall quantify both energy savings and non-energy value streams, including cost avoidance, operational efficiency improvements, deferred capital costs, and other benefits.
 - Identify proposed project funding and potential impacts to City wastewater rates.
 - Develop a proposed detailed project schedule.
2. Phase 2A – Mid-Term IGA: The goal of this phase is to Obtain Customer Commitments for Technology, Scope and Contract Terms and Conditions. This goal is achieved by completing the necessary due diligence to create Contract Utility, End Use Breakdown & Process Baseline, Complete Process Performance & Energy/ Operational Savings, 30% Engineering and Design Docs, Complete Construction Pricing based on AACE Class 3 Estimate, and Complete Construction Terms and Conditions.
3. Phase 2B – Final IGA: The goal of this phase is to Engage in Customer Contract for Construction with Risks (Technically, Financially or Contractually) Mitigated. This goal is achieved by completing the necessary due diligence to create Contract Process Performance & Energy/ Operational Savings, 60% Engineering & Design Docs, Contract Construction Pricing based on AACE Class 2 Estimate, and Contract Construction Terms and Conditions.

The definitions below are applicable to the level of completeness used in the descriptions above:

- PRELIMINARY: Early versions of design documents that outline the general concepts, ideas, and direction of a project. Typically used to communicate the design concept to stakeholders and to seek feedback on the direction of the project.
- COMPLETE: Final versions of design documents that include all of the necessary information and details to fully execute and implement a project. Once issued, these documents are

considered frozen and may not be revised or changed without proper approval via the project change management process. With the approval of ESCO, these documents may contain clearly identified holds for missing information such as vendor provided details.

- CONTRACT: Complete versions of documents with final edits for use in contract between Customer and ESCO.

The deliverables of each IGA phase will be formatted to match the Energy Savings Performance Contract attachments, with the level of completeness generally advancing with each successive IGA phase. Some Schedules may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables. Based on previous construction contracts with other Customers, those attachments could include some or all of the following:

- Schedule A – Scope of Work
- Schedule B – Performance Assurances Support Services
- Schedule C – Performance Guarantee
- Schedule D – Measurement and Verification Plan
- Schedule E – Owner Responsibilities for Performance Guarantee
- Schedule F – Start-Up and Commissioning
- Schedule G – Standards of Performance
- Schedule H – ESCO's Training Responsibilities
- Schedule I – Construction Phasing Plan
- Schedule J – Final Construction Price and Payment Schedule

Each of the above IGA Phases consist of the following 6 sequential Sprints:

- a. Sprint 0: Kick-Off
- b. Sprint 1: Data Collection
- c. Sprint 2: Engineering
- d. Sprint 3: Estimating and Procurement
- e. Sprint 4: Financial Analysis and Report
- f. Sprint 5: Stakeholder Engagement

Tasks for each IGA Phase and Sprint are identified below, some tasks may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables:

1. Sprint 0: Kick-Off
 - a. Client Goals and Objectives
 - b. Prioritized Scope List
 - c. Funding Approach
 - d. Project Approval Process
2. Sprint 1: Data Collection
 - a. Site Investigation
 - b. Client RFI
 - c. Regulatory Agency Engagement
 - d. Analysis of Utility and Operational Bills
 - e. Energy Baseline and End Use Breakdown
 - f. Process Baseline and Theory of Operations
 - g. Verification of As-built Equipment Data and Existing Conditions

3. Sprint 2: Engineering
 - a. Energy and Operational Savings Calculations
 - b. Utility Rebates and Other Incentives
 - c. Engineering Control Documents and Regulatory Compliance (see deliverable details below, under **SPECIFIC IGA ENGINEERING SCOPES OF SERVICES** heading)
 - d. Phasing Plan
 - e. Inspection, Testing, Commissioning Acceptance and Turnover Plan (ITCAT)
 - f. M&V Approach
 - g. O&M Approach
 - a. Operator Training
4. Sprint 3: Estimating and Procurement
 - a. Construction Price Estimate
 - a. O&M Estimates
5. Sprint 4: Financial Analysis and Report
 - a. Cash Flow Analysis (25-year)
 - a. Contract Schedules
6. Sprint 5: Stakeholder Engagement
 - a. Workshop Meetings
 - b. Deliverables Presentation
 - c. Stakeholder Review and Comment
 - d. Comment Discussion, Resolution, and Closeout

PROJECT MANAGEMENT

ESCO and its subconsultants (Design Build Team) will perform internal management of the project, schedule, and budget, partner with the project team members, and attend meetings and workshops. The Design Build Team will prepare meeting agendas, handouts, and minutes for all design meetings. The Design Build Team will maintain a Project Decision and Action Item log for tracking of all decisions and actions and will update this at each progress meeting and distribute to the team. Project management shall include overall management of the project; team coordination; coordination with the City and any other consultants; regular progress meetings; workshops; and presentations. Project management includes the following meetings, progress reports, and milestones:

- Biweekly Project Team Meetings, virtual
 - The Design Build Team shall meet with the City team via virtual meetings on a biweekly basis during **Phase 1** and **Phase 2**
- Customer Project Kick Off & Site Investigation, in person
 - The Design Build Team will meet with the City at the project site to gather and review the necessary data and documentation required to develop the project design criteria, and to discuss key considerations for selecting the appropriate criteria
- Customer Meeting & Site Investigation Teams Recap, virtual
 - The Design Build Team will meet with the City via virtual meeting to review and discuss the findings from the site investigation and results of documentation review and discuss site planning and preliminary construction phasing observation
- Alternative Analysis Workshop/Presentation, in person
 - The Design Build Team will meet with the City via virtual meeting to review the results of the alternative analysis and make a decision on project direction as a result of the analysis.
- Technical Design and Alternatives Analysis Memorandum Review Meeting, in person

- The Design Build Team will meet with the City in person to discuss and review comments on the Tech Memo
- Preliminary Design Report (PDR), and 30% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff Phase 2 as a result of final approved PDR. The purpose of the meeting will be to align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- PDR Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the PDR and discuss risks, budget, and schedule
- 30% Design Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the 30% design phase and discuss risks, early procurement items, budget, and schedule
- 60% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff the 60% design efforts as a result of approval of the 30% design. The purpose of the meeting will be to, again, align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- 60% Design Internal Review , virtual
 - The Design Build Team will meet via virtual meeting to review the 60% design deliverables and prepare for presentation of the design to the City
- 60% Design Project Team Presentation, in person
 - The Design Build Team will meet with the City in person to review the results of the 60% design phase and discuss risks, early procurement items, budget, and schedule. This meeting will also prepare the Project Team for delivery of Guaranteed Maximum Price (GMP), based on approval of the 60% design
- 60% Design & GMP Project Final Scope, Scheduled, and Negotiation
 - The Design Build Team will meet with the City to address city's team review comments on the submitted 60% design and GMP . The goal is to discuss and negotiate final scope, pricing, schedule, risks, and early procurement
- Regional Board and DDW Permitting Agency Coordination Meetings, virtual
 - The Design Build Team will meet with the Region 5 Regional Water Quality Control Board and Division of Drinking Water staff assigned to the project to review the design intent at the 30% and 60% design level to align the agencies with the project direction and address any concerns early in the project to minimize schedule interruptions by agency approval. After completion of the first meeting, the Report of Waste Discharge and Title 22 Engineering Reports will be drafted and submitted in draft form to the agencies. After completion of the second meeting, the reports will be updated to draft/final and submitted for permit approval.
- Federal Emergency Management Authority (FEMA) Agency Coordination Meetings, virtual
 - The Design Build Team will meet with FEMA, if required based on our floodplain analysis, to discuss the potential requirement for a CLOMR and LOMR and work with the agency to determine sequencing, schedule, and next steps
- CEQA Coordination Meetings, virtual
 - The Design Build Team will meet with the environmental permitting representatives to support the CEQA application process.

Deliverables:

- Project Decision & Action Item Log, Excel format
- Alternative Analysis, PDR, 30%, 60% Presentations, PowerPoint Format

QUALITY MANAGEMENT

The Design Build Team will perform quality control and quality assurance throughout the design phase of the project. A Quality Assurance/Quality Control (QA/QC) officer will be designated within the firm that is responsible for implementation of the QA/QC plan. The scope items that are performed by the Design Build Team will be peer reviewed internally by Schneider Electric prior to submission to the City. This process ensures a high level of precision and completion on deliverables prior to release to the various project teams.

For each client deliverable presented for review, Design Build Team will create a Bluebeam Studio review session, for all City and City Representatives (as applicable) to provide comments, track Design Build Team responses, and document closeout of all comments and changes. City and City Representatives will have 2 weeks to review and provide comments for each phase deliverable.

Deliverables:

- Comment and response logs, available upon request

GENERAL ASSUMPTIONS AND EXCLUSIONS

1. No architectural or MEP engineering services are included at the time of proposal based on the fact that a new operations or maintenance building is currently not in the project scope. It is anticipated that the current operations and maintenance buildings will be protected in place.
2. The scope of facilities described under the heading "Water Reclamation Facility (WWTF) Project Elements," above, is the basis for estimating our design effort. If the Preliminary Design phase of the project results in changes to this assumed scope, the design and construction support efforts may change, and a scope amendment may be required.
3. Additional assumptions and limitations are provided under corresponding tasks below.
4. Plan checks by the Building Department, Regional Board, DDW, and FEMA will be conducted in accordance with the overall project schedule for design and implementation. Comments from the Building Department will be limited to applicable building, plumbing, fire, and electrical code matters.
5. ADA compliance design will not be required for the facilities included in this scope.
6. Design for repurposing existing effluent storage pond to proposed influent equalization basin is assumed to be limited to rough and finished grading, levees, liner, pipe penetrations for inlet and pump suction, associated pumping and filtering facilities, access roads, and fencing.
7. Operations and Maintenance manuals will be prepared by equipment suppliers, separate from this scope.
8. Drawings will be prepared in a current version of AutoCAD Civil3D and will be based on Consultant standard drawing format, layering, and title blocks. Use of BIM or 3D design not included.
9. Technical specifications will be based on consultant boilerplate specifications, with City preferences and standards incorporated. Front-end specifications are assumed to not be required for the project.
10. Environmental clearance and permitting will be by ESCO and coordinated with the design.

11. Perimeter landscaping, hardscaping, or decorative fencing or walls not included or by others.
12. City WWTF Operations Team will have the opportunity to assist ESCO with collaborative development of the Project Definition Report, by participating in workshops and through review/comment of deliverables. In addition, collaboration and engagement with operations team on different controls strategies.
13. Any partnering activities would be addressed as part of the bi-weekly meetings. We can optionally add additional scope for separate formal partnering sessions.
14. Sites for facilities will be relatively flat or moderately sloped sites that can be graded for construction of facilities without retaining walls or other special grading features. Drainage will sheet flow off the sites to surrounding lands or discharge from on-site storm drains to outlet structures at the perimeter.
15. Geotechnical recommendations, prepared by others, will allow for slab-on-grade foundations without special foundation measures such as piles.
16. If the water balance determines that additional effluent disposal by spray, leach field, or similar is required, an additional service proposal can be provided for the design of these systems. They are not included in the base scope.
17. Design scope assumes that all improvements included in this package will be prepared as a single set of plans and specifications with a limited number of early procurement packages.
18. Design fees assume the use of a packaged MBR treatment system manufactured by Cloacina LLC. Phase 2 and 3 design fees could increase by up to 50-100% if a cast-in-place MBR system is selected by the City.
19. Meeting agendas and notes will be the responsibility of ESCO as host of the meeting schedule for the overall project.

SPECIFIC IGA ENGINEERING SCOPES OF SERVICES

PHASE 1 – ALTERNATIVES EVALUATIONS AND PROJECT DEFINITION

During Phase 1, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 1 regulatory and permitting analyses will be incorporated into the Alternative Analysis, Technical Memo, and Schematic Design providing for cohesive technical deliverables.

Wastewater Treatment Facility Design - WWTF Design Phase 1

Overview of Tasks:

- Data and documentation gathering and review
- Site investigation including preliminary topographic and boundary survey as well as geotechnical investigation of subsurface conditions and infiltration testing for any storm water post construction requirements the project may face
- Alternatives analyses regarding WWTF technologies, construction type, location, and phasing approaches
- Review of permitting and regulatory drivers and constraints set forth by the Regional Water Quality Control Board, Division of Drinking Water, CEQA, CalTrans, FEMA, and the local building authority
- Project funding strategy, including potential customer rate impacts
- Develop technical design memoranda to describe project constraints, design criteria, and alternatives available to the City
- Preliminary schedule development
- Develop construction scope, schedule, and budget
- Complete a GMP estimate through repeated cost modeling

Task 1 – Phase 1 Topographic and Record Boundary Survey for Design Approach

ESCO will provide a limited topographic survey of the approximate limits as shown in green in Figure 1 using a combination of aerial and field mapping. The aerial mapping will be augmented by field survey to locate significant features and be completed by conventional techniques. During the Phase 1 design approach, the surveying effort will be limited to setting aerial control, locating three to four survey monuments and best fit pin the record boundary line work to the mapping, and a limited amount of significant feature measurements to be collected at the engineer's direction. For budgeting purposes, we have included three (3) ten-hour days, including mobilization, to complete this limited field work.

The survey mapping will be constrained horizontally to the California Coordinate System of 1983 (CCS83), Zone 2 projection and vertically to the North American Vertical Datum of 1988 (NAVD88). Survey control stations will be set near the edges of the project mapping limits so that they are available for construction survey staking control and likely will remain through construction and the next phases of design. The compiled mapping will be completed with a mapping scale of 1" = 20' with a one-foot contour interval.

A preliminary title report(s) will be needed to provide further research tools and a better understanding of the existing parcels and easements. For budgeting purposes, we assume that the title report(s) will be provided by the owner and that no more than four (4) easements will need to be plotted.

The mapping will be provided as a Civil 3d 2024, or newer, survey base map drawing file with digital terrain model (DTM) surface. For budgeting purposes, we have assumed that sufficient monuments exist, no material discrepancies will be discovered, and that filing a Record of Survey or Corner Record will not be required, including in the event that a Record of Survey is required according to Section 8762 of the California Business and Professions Code (BPC) or rehabilitating of controlling monuments used as part of this survey is required due to their condition being less than permanent and durable and other requirements specified by Section 8771.6 of the BPC. However, if as a part of the survey for this project, a Record of Survey or Corner Record is required, or existing monuments are found and determined to need re-establishment to comply with state law the client agrees to authorize additional scope and budget to satisfy these requirements.



Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 2 – Design Criteria and Alternatives Analysis

Task 2.1 - Technical Design and Alternatives Analysis Memorandum

Drafting the Technical Memorandum involves creating a summary document that outlines the initial design concepts, constraints, and alternative approaches for the project. This report serves as a crucial communication tool between stakeholders and team members. The memo will include design criteria, results of floodplain analysis, results of environmental and wastewater discharge permitting analyses, high level summaries of alternatives, and Class 4 AACE cost estimate. The memo will be presented to the City for approval to proceed.

The memo will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Establishment of future expandability requirements for the facility
- Location and treatment technology alternatives analysis, including evaluation of repurposing existing facilities to integrate hydraulically and confirm capacity for the intended purpose. The alternatives analysis includes membrane treatment technologies (does not include ceramic or flat sheet), disinfection processes (e.g., in vessel UV, in channel, and chlorine), solids handling and dewatering, and screening for future odor control with a carbon technology.
- Preliminary approach
- Capital cost estimate (Class 4 AACE), provided as an attachment and summarized in the report

Deliverables:

- Technical Design Criteria and Alternatives Analysis Memorandum, PDF format

Task 2.2 - Schematic Design

Develop the schematic design to 10% design completion. The purpose of the schematic design is to coordinate the configuration, layouts, sizes, and major features of the overall design with the City and project team; optimize the project to best meet the project goals; firm up decisions; and obtain consensus on these items for the detailed design. Schematic design drawings will include the following:

- Preliminary Process Flow Diagrams
- Preliminary Hydraulic Profile
- Site plans, including identification of the footprint of future expansion to get to Buildout flow capacity.
- Major yard piping
- Building and equipment footprints and major features
- Major design criteria, equipment sizes, and features
- Existing facilities proposed for reuse and schematic design of rehab/upgrades
- Preliminary electrical single-line diagrams
- List of anticipated early procurement items

Deliverables:

- 10% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 1:

Regionalization, Reclamation, Recycling, and Conservation Report

This report will address the Central Valley Regional Water Quality Board's (Central Valley Water Board) Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants. Submittal of this report to Central Valley Water Board executive management is needed before Board management will advance discussions with the City regarding the need for an NPDES permit to allow WWTF effluent discharge to Sutter Creek. Resolution No. R5-2009-0028 requires that the report address the following elements.

- a. Efforts that have been taken by the City to promote new or expanded wastewater recycling and reclamation opportunities and programs.
- b. Water conservation measures promoted by the City.

- c. Regional wastewater management opportunities and solutions (e.g. regionalization) available to the City.
- d. An evaluation of wastewater reclamation and land disposal as alternative disposal methods to a surface water discharge.

It will be critically important to explain in this report why remaining a part of the Amador Regional Sanitation Authority (ARSA) is not feasible and why the City seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

NPDES Permitting Technical Memorandum

This technical memorandum will characterize the projected WWTF effluent quality (e.g., conventional pollutants, temperature, priority pollutants) with the new treatment processes compared to expected NPDES permit effluent limitations and reclamation permit requirements, and receiving water quality, which can affect NPDES permit limitations, and other anticipated permitting requirements. Key elements of this task are listed below.

- a. WWTF Effluent and Receiving Water Quality Characterization: A characterization of WWTF effluent and Sutter Creek water quality is necessary to support design of the new WWTF, as well as support NPDES permitting and CEQA compliance processes to identify the effects of the WWTF discharge on Sutter Creek water quality and beneficial uses. The data will assist in identifying constituents (e.g., trace metals) or parameters (e.g., temperature) that may pose a challenge for NPDES permit compliance and, thus, require additional investigation into source control options or specific treatment technologies to be incorporated into the WWTF design.
- b. WWTF Effluent Quality Projections: Characterizing existing WWTF effluent quality establishes the baseline condition, with the expectation that the new WWTF effluent quality will be no worse, and likely better, for many constituents due to improved removal efficiencies.
- c. Anticipated Effluent Limitations: The Central Valley Water Board makes determinations regarding the need for water quality-based effluent limitations in an NPDES permit through a reasonable potential analysis (RPA). Completing an RPA will be informative because it gives the Project Team advance notice of anticipated NPDES permit limitations, which can be useful for determining the feasibility of the surface water discharge and/or if treatment compliance strategies need to be developed for the project.

Environmental Opportunities and Constraints Technical Memorandum

This technical memorandum will address the environmental opportunities and constraints related to the siting of the new WWTF, focused on potential impacts on biological resources, a listing of environmental permits that may be required for construction of the new outfall in Sutter Creek (e.g., Clean Water Act [CWA] Section 404 permit), an overview of the CEQA compliance process, and a timeline and estimated cost for environmental permitting and CEQA compliance. Key elements of this task are listed below.

- a. Site visit conducted by ESCO biologists to visually survey for biological resources and potential impact-related issues.
- b. Identify federal and state endangered plant, fish, and wildlife species that could be affected by project construction and operation.
- c. Generate a list of potentially relevant environmental permits, such as a CWA Section 404 permit from the U.S. Army Corps of Engineers (USACE) and a CWA Section 401 water quality certification from the Central Valley Water Board. It is expected that any outfall proposed would

require a Lake and Streambed Alteration Agreement (LSAA) from the California Department of Fish and Wildlife (CDFW).

- d. Develop a preliminary permitting and CEQA compliance schedule and cost estimate.

Completing an environmental opportunities and constraints analysis allows for identifying potential effects of the project, which allows the Project Team to make refinements to the project to reduce or avoid potential adverse environmental effects that would otherwise require costly mitigation or could not be mitigated to a less-than-significant level (i.e., be significant and unavoidable).

Task 1 - Regionalization, Reclamation, Recycling, And Conservation Technical Memorandum

The Central Valley Water Board adopted Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants.

This resolution states that wastewater treatment plants seeking a new NPDES permit shall provide information regarding regionalization, reclamation, recycling, and conservation upon request by the Central Valley Water Board and identifies the type of information to be supplied by the discharger. All wastewater dischargers requesting an NPDES permit must provide an evaluation of wastewater reclamation and land disposal as alternative disposal methods. Central Valley Water Board management staff require this report be prepared and submitted by potential surface water dischargers wanting a new NPDES permit prior to allowing NPDES permitting staff to work with the discharger on a new permit (e.g., hold meetings with discharger, review a report of waste discharge or NOI for coverage under the Municipal General Order).

ESCO will prepare a technical memorandum that addresses the following major topic areas (with anticipated length of discussion in parentheses).

1. Introduction (1/2 page)
2. Background (1 page)
 - a. Existing Wastewater Treatment Facilities
 - b. Planned Uses and Development
 - c. Existing Wastewater Treatment Facilities
3. Regionalization Opportunities and Constraints (1-2 pages)
4. Reclamation and Recycling Opportunities and Constraints (1-2 pages)
 - a. Land Application
 - b. Indirect Potable Reuse
 - c. Direct Potable Reuse
 - d. Local Water Transfer or Exchange
5. Water Conservation Activities (1/2 page)
6. Best Practical Treatment and Control (1/2 page)
7. Conclusions (1/4 – 1/2 page)

Task 1.1 - Introduction and Background

ESCO will prepare the “Introduction” and “Background” sections of the report using information ESCO has learned through project development, supplemented with information provided by the City regarding planned development and buildout of the WWTF.

Task 1.2 - Reclamation and Recycling Opportunities

ESCO will describe reclamation and recycling opportunities, with input from the City and Project Team.

Task 1.3 - Regionalization Opportunities and Constraints

ESCO will describe the regulatory, socioeconomic, and physical factors that make regionalization of the City's wastewater treatment not feasible, with input from the City and the project team. This section will briefly address why remaining part of ARSA is not recommended and why the City instead seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

Task 1.4 - Water Conservation Activities

In collaboration with the City, ESCO will describe the City's current and planned water conservation activities.

Task 1.5 - Best Practical Treatment and Control

Central Valley Water Board Resolution No. R5-2009-0028 regarding regionalization, reclamation, recycling and water conservation states the following:

"State and federal antidegradation policies require Dischargers to demonstrate that degradation from new or expanded discharges are necessary, and to implement best practicable treatment or control of the discharge necessary to maintain the highest water quality consistent with maximum benefit to the people of the State. Regionalization, reclamation, recycling and conservation may enhance the implementation of these policies."

In the state and federal regulations, achievement of "best practical treatment or control" (BPTC) is defined in terms of performance and maintenance of water quality standards via achieving appropriate NPDES permit limitations, rather than specific treatment technologies. ESCO will describe how the term BPTC is addressed in state and federal water quality regulations and policy, and the extent to which the treatment technologies at the existing and proposed new WWTF provide BPTC.

Task 1.6 – Technical Memorandum

ESCO will compile the information developed in Tasks 1.1 through 1.5 a technical memorandum. ESCO will provide the City and Project Team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Task 1.7 – Central Valley Water Board Meeting

ESCO will participate in an in-person meeting with Central Valley Water Board executive management at their Rancho Cordova, CA office to convey information contained in the technical memorandum, and solicit questions and input regarding the level of detail in the technical memorandum relative to that needed to advance obtaining an NPDES permit for the proposed WWTF.

Assumptions:

- The above scope and budget assumes that all information ESCO requests from the City and project team in support of the report preparation will be adequately provided in a timely manner.
- The scope and budget is limited the number of rounds of review specified above.
- Central Valley Water Board requests for revisions to the technical memorandum beyond those editorial in nature for clarity, will require additional budget beyond that identified for this task.

Deliverables:

- Draft Technical Memorandum
- Final Technical Memorandum

Task 2 – Phase 1 NPDES Permitting Technical Memorandum

- ESCO will prepare a technical memorandum that defines NPDES permitting considerations for a new surface water discharge from the City WWTF to Sutter Creek. This will be similar to the technical memorandum

Identify important NPDES Permit compliance challenges for application of chlorination as an effluent disinfection method. Compare to UV disinfection approach in terms of regulatory compliance benefits and risks and regulatory validation requirements. ESCO will prepare an updated version of the February 2012 technical memorandum. The update will address several of the above-listed topics. Secondary effluent produced at the City's WWTF would not represent effluent discharged following tertiary filtration and disinfection upgrades necessary to support surface water discharge. Therefore, updating the reasonable potential analysis is not warranted. Instead, ESCO will review NPDES permits for similarly sized and situated WWTFs (e.g., Jackson, Placerville, Lathrop, Mountain House) that use tertiary-level treatment (e.g., membrane bioreactor) discharge to surface water and communicate effluent limitations and permit conditions issued to such facilities, relative to treatment technology utilized. ESCO will identify compliance strategies utilized to ensure compliance with such effluent limitations.

The technical memorandum also will include current effluent and receiving water monitoring requirements based on current Central Valley Water Board plans and policies. Finally, the process for obtaining an NPDES permit will be updated to reflect documentation needed to satisfy CEQA and Central Valley Water Board policies, as well as effluent and receiving water data needs. An estimated timeline and cost for each process component will be provided. No updates are needed to address critical design creek flows because all available data (for water years 1936–41 and 1961–80) was compiled previously.

ESCO will provide the City and the project team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

Task 3 - Environmental Opportunities and Constraints Technical Memorandum

Task 3.1 - Site Survey

ESCO biologists will conduct a reconnaissance-level survey of potential locations for the new WWTF and outfall to evaluate site conditions and presence of habitat for terrestrial and aquatic biological species of concern, with the purpose of identifying potential environmental impacts to biological resources from construction and operation of the project.

Task 3.2 - Special-Status Species Research

ESCO will conduct a literature review and database search to determine the potential for presence of special-status plant and wildlife species or their habitat in the project area, including the following sources.

- CDFW's California Natural Diversity Database

- USFWS Information for Planning and Consultation Species List
- California Native Plant Society Electronic Inventory of Rare and Endangered Plants of California

Task 3.3 - Outfall Permit Identification

ESCO will develop a list of resource agency approvals and regulatory permits that may be necessary for the construction and operation of a new WWTF outfall in Sutter Creek.

Task 3.4 - Technical Memorandum

ESCO will compile information developed in Tasks 3.1–3.3 into a technical memorandum. The technical memorandum also will address CEQA compliance for the project, provided by ESCO, and provide an estimated schedule and budget for securing the permits needs for outfall construction and operation, and for completing the CEQA compliance process.

Assumptions:

- The scope and budget for this task assumes one (1) site visit by two (2) ESCO biologists. However, if certain special-status plant species have the potential to be present at the site, additional blooming period surveys may be required.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

California Environmental Quality Act – CEQA Phase 1:

Task 1 - Biological Resources Investigation

ESCO will conduct a desktop survey to review information on potential biological resources at the project site. Data sources may include U.S. Geological Survey quadrangle maps, U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consulting (IPaC), the California Natural Diversity Database (CNDDDB), species data compiled by the California Native Plant Society (CNPS), and other technical literature related to the biotic resources in the project vicinity. ESCO will coordinate with the City to determine if existing documents, studies, and reports are available that provide relevant information related to biological resources in the project area. ESCO will also review aerial photographs of the area, if available, to identify potential habitat types, water resources, presence of special-status species, and other biological constraints.

Task 2 - Cultural Resources Investigation

The potential for presence of potential historic resources and buried archaeological sites will be evaluated at a preliminary level by conducting a desktop assessment using relevant maps and documents (e.g., archaeological studies, geologic reports, Quaternary geologic maps, soil surveys). ESCO will develop an Area of Potential Effects (APE) map for use in evaluating cultural resource impacts for the project area.

The APE will include the current WWTF as well as City-owned parcels (018-002-031 and 018-002-032) in an area bounded by Mahoney Mill Road, Highway 49 to the west, the residences behind Oro Madre Way to the east, and Sutter Lone Road to the north, which have been identified as optional sites to locate portions of the WWTF expansion within. The APE will be submitted for review and confirmation by the City.

Upon approval of the APE, ESCO will conduct a record search at the North Central Information Center (NCIC) of the California Historical Resources Information System at California State University, Sacramento, in Sacramento. This review will identify any previously recorded cultural resources within ¼ mile of the APE in order to (1) determine whether known cultural resources have been recorded within or adjacent to the project area; (2) determine whether any cultural resources studies have previously been conducted within or adjacent to the project area; (3) assess the likelihood of unrecorded cultural resources based on historical references and the distribution of environmental settings of nearby sites; and (4) develop a context for identification and preliminary evaluation of cultural resources. NCIC record search results are usually received within 4 weeks of the request for the search.

Task 3 - CEQA Review

ESCO will conduct a desktop review of the resource topics included in the CEQA Guidelines Appendix G Environmental Checklist to identify potential for significant environmental impacts. We will consult Federal Emergency Management Agency (FEMA) flood insurance rate maps to identify which portions of the project area are within the 100-year floodplain. To evaluate the potential for hazardous materials to be located within or near the project site, ESCO will conduct a search of the Department of Toxic Substances Control's (DTSC) EnviroStor database (<https://www.envirostor.dtsc.ca.gov/public/>) and consult DTSC's Cortese List to identify any known contamination sites within a 0.25-mile buffer of the potential project sites. Noise and air quality requirements will be reviewed to determine appropriate setback distances from sensitive receptors adjacent to the project area. We will also identify other constraints requiring additional analysis and will include recommendations for how to address these constraints. In addition, ESCO will identify responsible agencies and other federal, state, and local agencies that may have jurisdiction and/or approval authority over part or all of the project or project site.

We will also review the City's general plan, water and wastewater planning documents, and other relevant materials provided by the City.

Task 4 - Environmental Constraints Analysis Report

ESCO will prepare a draft environmental constraints analysis report that describes the findings with regard to biological resources, cultural resources, CEQA resource topics, and the appropriate level of CEQA evaluation. The report will include recommended next steps, such as a site visit and field surveys, that could help to identify project modifications that might avoid and/or minimize potential impacts to sensitive biological and cultural resources. ESCO will submit a draft report to the City for review.

If desired, ESCO will attend a virtual meeting with the City to present an overview of the environmental constraints analysis and our proposed approach for achieving CEQA compliance in an efficient manner based on previous experience.

Following review and comment by the City, ESCO will revise the report and provide a final version.

Assumptions:

- No site visit or field survey will be conducted under this Phase 1 portion of the scope of work.

Deliverables:

- Draft and revised environmental constraints analysis report (electronic)

Federal Emergency Management Agency – FEMA Phase 1:

The current floodplain and floodway limits include a FEMA Zone A, adjacent to the wastewater treatment facility (WWTF), and Zone AE (with a floodway overlay) at the upstream limits of the WWTF. The purpose of this study is to perform the hydrology and hydraulic modeling to determine the floodplain limits adjacent to the existing WWTF and determine if there is a tie in upstream at the Zone AE limits shown in the Figure below.



Task 1 - FEMA Model Request, Background Review, and Field Review

Task 1.1 - FEMA Model Request

The ESCO team will request the effective FEMA hydrology and hydraulic analyses from the FEMA library.

Task 1.2 - Review Background Information

ESCO will review all available background material, including the FEMA models requested in Task 1.1, for the project. This will include reviewing available as-built plans for the culverts and roadway design provided by others.

Task 1.3 (Optional) - Field Review

ESCO will field review the project location to determine Manning's roughness coefficients and any additional characteristics of the project site which would need to be included in the hydraulic model.

Assumptions:

- A quality FEMA model is available from the FEMA library.

Deliverables:

- A summary of the background and field reviews will be included in the Final Hydraulic Report.

Task 2 - Hydrology and Hydraulic Analyses

Task 2.1 – Hydrology

ESCO will create hydrographs with a peak flow equivalent to that of the FEMA published 100-year discharge for use in the 2D hydraulic model. ESCO will do this by creating a HEC-RAS 2D point precipitation model.

Task 2.2 - Existing Conditions Hydraulic Model Zone A

ESCO will create a 2D hydraulic model of the existing conditions at the project site based on existing topographic information (LiDAR), and as-built information for the existing bridge using HEC-RAS version 6.5 or newer.

Task 2.3 - Existing Conditions Hydraulic Model Zone AE

ESCO will determine if the Zone AE is within the WWTP right of way and if mapping updates are needed to remove it from the Zone AE. If mapping updates are needed, a separate task order will be required.

Assumptions:

- The discharges determined by FEMA are sufficient for this analysis. Determining the peak discharges is not included in this scope of work.
- Available LiDAR data will be used as the basis for terrain data within the HEC-RAS modeling.
- As-built plans provided by others.
- The proposed WWTF upgrades do not change any grading within the floodplain/floodway limits.
- No FEMA submittals, Conditional Letter of Map Revision (CLOMR), Letter of Map Revision (LOMR) or formal No-Rise analysis will be completed as part of this scope of work.
- No 500-year floodplain modeling
- Refinement of scope and fee for Phases 2A and 2B will occur at end of Phase 1, based on outcome and accuracy of assumptions above.

Deliverables:

- Details of the hydraulic analysis will be included in the Preliminary and Final Hydraulic Reports completed in Task 3.

Task 3 - Preliminary and Final Hydraulic Reports

Task 3.1 - Preliminary Hydraulic Report

ESCO will complete a Preliminary Hydraulic Report documenting the hydrology and hydraulic results for the existing conditions, and up to two proposed alternatives.

Task 3.2 - Final Hydraulic Report

ESCO will update the Preliminary Hydraulic Report to a Final Hydraulic Report, incorporating any comments on the Preliminary Report and documenting the results of the hydrology and hydraulics for the final proposed condition modeling.

Assumptions:

- The proposed project will not result in an increase in the water surface elevation and a “no rise certification”, Conditional Letter of Map Revision (CLOMR), or Letter of Map Revision (LOMR) will not be required. If a no rise, CLOMR or LOMR are required, this would require a separate task order.
- Preliminary hydraulic modeling results can only be prepared after receipt of FEMA library information for the existing hydrology and hydraulics.

Deliverables:

- Preliminary and Final Hydraulic Report will be provided via electronic mail. If FEMA's findings indicate that additional study is necessary, ESCO will address this requirement during Phase 2.

PHASE 2 – DETAILED DESIGN

During Phase 2, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 2 regulatory and permitting analyses will be incorporated into the Preliminary Design Report, 30% Design, and 60% Design, providing for cohesive technical deliverables.

Waste Water Treatment Facility Design - WWTF Design Phase 2:

Overview of Tasks:

- Perform detailed topographic survey
- Complete the Project Definition Report (assume 15% design)
- Develop the design to 30% and 60% completion (design progression from 60% to 100% is part of the construction in Phase 3)
- Prepare permitting applications and supporting reports
- Preparation of Guaranteed Maximum Price (GMP)

Task 3 – Topographic and Boundary Survey for Detailed Design

During Task 1 and phase 2 of the project, we will collect measurements to refine the retracement of the property boundary and measurements within the treatment plant at the direction of the engineer as needed for further informing their design and engineering. This includes pipe inverts, major structures, drainage structures, equipment pads, and other improvements. This does not include survey of the interior of equipment buildings. For budgeting purposes, we have included up to four (4) ten-hour days, including mobilization, to complete these measurements. These measurements will be compiled and incorporated into the existing Civil 3d survey base map.

Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 4 - Existing Utility Research – Utility ‘A’ Letters

We will use the Amador County’s Underground Service Alert web portal to obtain a list of utility providers and operators within and adjacent to the project site. We will contact and request utility information and atlas maps from each of the utility companies listed as part of this inquiry via certified return receipt mailers, or as indicated by their preferred contact method if provided through the Underground Service Alert inquiry. We will document the correspondence process and share with the client the information we obtain. The information returned from the utility companies showing the location of existing utilities will be digitized and shown with the existing utility base map. We are assuming that up to 5 utility companies will require contact and have utility infrastructure in the project area that should be shown on the existing utility base map. The digitized record utility information will be married and resolved with the survey measurements of existing utilities and utility markings.

Deliverables:

- Utility ‘A’ Letters, PDF format

Task 5 – Preliminary Design Report Development

Drafting the Preliminary Design Report (PDR) involves creating a comprehensive document that outlines the initial design concepts, requirements, and considerations for the project. This report serves as a crucial communication tool between stakeholders and team members. The report will include

purpose and scope, requirements, standards, design concept and alternatives, challenges, and risks. The report and schematic design, below, will be presented to the City for consideration for Approval to Proceed.

The PDR will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Target effluent quality for the selected treatment technology and configuration demonstrating ability to comply with the anticipated discharge requirements
- Evaluation of alternatives
- Up to two alternatives for treatment system locating, sizing, and configuration, including the footprint and connections required for expanding the WWTF in the future to the identified Buildout flow. The alternative analysis will be based on FEMA outcomes, geotechnical studies, and effluent requirements, with consideration given to the most feasible options to minimize additional costs.
- Up to two alternatives for WWTF technology, including cast-in-place and packaged membrane bioreactor systems, considering location, size, cost, and future expansion.
- Evaluation of opportunities to reuse/repurpose existing structures
- Up to two alternatives locating and hydraulically configuring the site influent lift station
- Schematic drawings (listed in Task 2.2 above)
- Recommendation of preferred alternative based on feasibility, affordability, and risk
- Preliminary construction sequencing and phasing plan demonstrating feasibility of the proposed approach
- Capital cost estimate, prepared by Project Team as an attachment and summarized in the report
- Preliminary project schedule, prepared by Project Team as an attachment and summarized in the report
- Life cycle cost estimate, prepared by Project Team, incorporating life cycle cost estimate for the MBR systems and preliminary O&M staffing estimates supported by the City's operations staff
- Identification of value engineering opportunities to be further examined collaboratively as the design progresses

Deliverables:

- Draft Preliminary Design Report, PDF format
- Final Preliminary Design Report, PDF format

Task 6 – 30% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the PDR, the Design Build Team will develop the Design Documents to 30% design completion. Preparation of a table of contents for technical specifications will be provided with the 30% submittal. All major drawing sheets will be included with this submittal to convey the overall project direction. The 30% design package will be presented in a design review meeting.

Deliverables:

- Draft 30% Design Package, PDF format
- Final 30% Design Package, PDF format

The following drawings will be submitted during this phase:

1. Title Sheet	13. Overall Yard Piping Plan	25. Placeholder Sheet X of X for Effluent Dispersal
2. General Notes	14. County Standard Details, Sheet X of X	26. Mechanical Details, Sheet X of X
3. Legend, Abbreviations, and Symbology	15. Civil Typical Details, Sheet X of X	27. Structural Notes
4. Process Design Criteria	16. Civil Details, Sheet X of X	28. Structural Abbreviations, Legends, Symbology
5. Process Flow Diagram	17. Equipment and Pipe Tables	29. Overall Structural Site Plan
6. Overall Site Plan	18. Overall Mechanical Plan	30. Electrical Notes
7. Demolition Plan - Overall	19. Influent Liftstation Plan & Sections, Sheet X of X	31. Electrical Abbreviations, Legends, Symbology
8. Demolition Plan - WWTP Area	20. Influent Equalization	32. Overall Electrical Plan
9. Demolition Plan - Equalization Pond	21. Membrane Bioreactor Plan & Sections, Sheet X of X	33. Overall Single Line Diagram
10. Demolition Plan - Temporary Facilities	22. Solids Handling Plan & Sections, Sheet X of X	34. Lighting Plan
11. Overall Grading Plan	23. Odor Control Plan & Sections, Sheet X of X	
12. Pipe, Structure Tables	24. Effluent Liftstation Plan & Sections, Sheet X of X	

Task 7 – 60% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the 30% design package, the Design Build Team will develop the Design Documents to 60% design completion. Preparation of draft technical specifications will be provided with the 60% submittal. All drawing sheets will be included with this submittal with the exception of some detail sheets. The 60% design package will be presented in a design review meeting for City Staff and City Representative review and comment, per procedure referenced above.

As part of the 60% design task, the Design Build Team will utilize the project team's construction and operations expertise to perform internal reviews of designs under development and provide input to maximize ease-of-construction, cost-effectiveness, and value while minimizing the cost of long-term operations and maintenance. ESCO will incorporate input into the design where appropriate.

Finally, the Design Build Team will prepare the GMP and construction schedule by information collection (such as vendor quotes) and interpreting the design intent. This coordination will include review of equipment cutsheets and quotations, procurement scope breakdowns, and other documentation as required.

Deliverables:

- Draft 60% Design Package, PDF format
- Final 30% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 2:

The following scope of work is provided with less detail as compared to the Phase 1 scope of work, to provide a non-binding, indicative budgetary estimate for Phase 2:

Task 4 - NPDES Permit Coverage for WWTF

ESCO will advance the NPDES permitting for the new WWTF by developing the Notice of Intent (NOI) for coverage under the Central Valley Water Board's Order No. R5-2023-0025, "Waste Discharge Requirements for Municipal Wastewater Dischargers that Meet Objectives/Criteria at the Point of Discharge to Surface Water (Municipal General Order)," and support reviewing and negotiating the terms of the Notice of Applicability (NOA) issued by the Central Valley Water Board for Municipal General Order coverage.

Task 5 - Antidegradation Analysis

ESCO will prepare the Antidegradation Analysis, which will need to be submitted with the Municipal General Order NOI. The Antidegradation Analysis will characterize how the new WWTF effluent discharge to Sutter Creek will affect water quality downstream of the discharge and will demonstrate that the anticipated degradation is consistent with the state's Antidegradation Policy embodied in State Water Resources Control Board Resolution No. 68-16. The Antidegradation Analysis also will support the CEQA document analyses of water quality impacts.

Task 6 - CEQA Support

ESCO will support preparation of the environmental impact report (EIR) for CEQA compliance by preparing the Hydrology and Water Quality, and Aquatic Biological Resources chapters, and other related resource sections, of the EIR (e.g., alternatives analysis and cumulative impacts analyses for these resource categories).

Task 7 - Outfall Permitting

Based on final design and siting of the WWTF outfall, ESCO will make final determinations for permits needed for outfall construction. Should a CWA Section 404 permit and Section 401 water quality certification be required, ESCO will prepare the applications to obtain these permits as well as the LSAA.

Task 8 - Design Engineer Coordination

Because the WWTF discharge to Sutter Creek would be new, the Central Valley Water Board cannot issue compliance schedules for NPDES permit limitations prior to the new discharge. Therefore, ESCO will coordinate with Project Team WWTF engineers regarding NPDES permit limitations to be met by the new WWTF, so that the facility can comply with the Municipal General Order NOA upon discharge to Sutter Creek. Furthermore, ESCO wastewater engineers will coordinate with Project Team WWTF engineers to advise on PLC and SCADA programming of alarms and meters to facilitate operational compliance and the collection of all necessary effluent quality and quantity information to facilitate preparation of routine (e.g., monthly, quarterly) electronic self-monitoring reports that will be required by the NOA.

California Environmental Quality Act – CEQA Phase 2:

Task 5 - Technical Studies

Task 5.1 - Biological Resources Surveys and Report

Based on the information gathered during the desktop review in Task 1, ESCO will conduct a single reconnaissance-level field survey of the proposed project area to document the existing biological conditions. ESCO will describe the dominant habitat and characterize both botanical resources and wildlife habitat values in the project area. The reconnaissance survey will also be used to determine the potential for occurrence of special-status plants and animals, although no species-specific or protocol-level surveys are proposed. Regulated habitats, such as wetlands and other waters of the U.S./state, will be mapped in Task 5.3.

ESCO will prepare a draft report that describes existing biological conditions, including existing habitats, potential for occurrence of special-status plants and animals, potentially jurisdictional or sensitive habitats, and any other biological resources that might be of concern. The report will also describe minimization measures that would reduce impacts to sensitive biological resources. ESCO will submit a draft report to the City for one round of review and comment. Following review, ESCO will revise the report. The revised report will be used to support preparation of the CEQA document (Task 7) and environmental permitting (Task 8).

Assumptions:

- The City will coordinate site access.
- Protocol-level surveys for special-status plant and wildlife species are not included but can be provided via a contract modification.

Deliverables:

- Draft and revised biological resources report (electronic)

Task 5.2 - Wetland Delineation Report

ESCO will prepare a preliminary jurisdictional delineation report for the proposed project area. The wetland delineation will be prepared in accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and the regional supplements for the Western Mountains, Valleys and Coast Region, and/or Arid West Region, whichever is most appropriate for the site location and conditions. ESCO will conduct a site visit to map wetlands and other waters of the U.S./state in the proposed project area. ESCO will prepare a draft report for review by the City. Following review, ESCO will revise and submit the wetland delineation to USACE with the CWA Section 404 application package as described in Task 8.

If requested by USACE, ESCO will organize and attend one field visit with USACE to review the wetland delineation findings. Based on feedback received from USACE, ESCO will revise the wetland delineation and submit the revised version to USACE. Under this scope of work, it is assumed that refinements to the wetland delineation would be minor and related to adjustments to report mapping or minor text edits.

Assumptions:

- Field visit with USACE to review wetland delineation, if requested

Deliverables:

- Draft and revised wetland delineation report (electronic)

Task 5.3 - Cultural Resources Survey and Report

The Native American Heritage Commission (NAHC) will be contacted to determine whether Native American sacred sites are known to be located in or near the project area and to request a list of Native American tribes that have a traditional and cultural affiliation with the project area. Note that the response from the NAHC can take 3-4 weeks. Upon receipt of the list from the NAHC, ESCO will send project notification letters to listed tribes and tribal contacts. ESCO will draft general outreach letters to solicit comments or concerns from NAHC-listed tribes, send them out on behalf of the City via email, and follow up by phone and/or email, as necessary. ESCO will participate in up to 2 hours of conference calls with the City and Native American tribes, if requested. As described in Public Resources Code Section 21080.3.1(b)(2), contacted tribes must respond

to the project notification letters within 30 days. ESCO will also send request letters to relevant historical societies or other institutions to determine if any areas of historical concern have previously been documented. Responses from historical societies are generally received within 1 month.

A cultural resources field inventory of the APE (approximately 21 acres) based on the results of the record search conducted in Task 2. Archaeologists will examine the ground surface within the direct APE by walking closely spaced transects. Trowels or hoes may be used to clear vegetation and increase ground surface visibility, if needed. If deemed warranted by the field reconnaissance, minor subsurface probing using a shovel and trowel will be performed to gain a better understanding of the subsurface conditions. A ¼-inch screen may be used to further separate potential cultural items within the soil. Any identified archaeological resources will be recorded on the standard page of the California Department of Parks and Recreation (DPR) Form 523. These will include photographs and a site map, and global positioning system data will be collected to accurately delineate the locations of all resources. DPR record updates will be prepared for any resources within the APE that had been recorded previously. Recorded archaeological resources will not be evaluated for National Register of Historic Places (NRHP) and California Register of Historical Resources (CRHR) eligibility under this scope of work. This scope assumes that, if potentially significant archaeological resources are identified on the project property, measures will be taken to avoid impacts so that there is no need to formally evaluate their significance.

The current WWTF was constructed in 1949; therefore, it is of sufficient age to require evaluation for NRHP and CRHR eligibility. An architectural historian will visit the project area to record the facility. DPR forms will be prepared, which will include NRHP and CRHR eligibility evaluations. If available, the architectural historian will review as-built drawings or any other useful materials relating to the

structures. The results of the evaluation will be incorporated into the draft Cultural Resources Assessment Report.

ESCO will prepare a draft Cultural Resources Assessment Report once the field inventory is completed. Due to the involvement of FEMA in this project, it is assumed that the project will also require review under Section 106 of the National Historic Preservation Act (Section 106), as well as CEQA. Therefore, the Cultural Resources Assessment Report will comply with the requirements of Section 106 and will be prepared according to the inventory requirements of the California Office of Historic Preservation. The report will include, at a minimum, a project description, project location, results of the records and literature searches, results of the field studies, a summary of findings (including a NRHP/CRHR eligibility recommendation for the current WWTF), and conclusions. The report will include mapping of archaeological site location data and survey coverage areas, as appropriate, and will identify built environment features.

A copy of the report will also be submitted to the NCIC.

Assumptions:

- Up to 20 Native American tribes and individuals will be contacted through tribal outreach.
- There will be no field visits with Native American tribes.
- The City will provide access to parcels 018-002-031 and 018-002-032 as well as the current WWTF facility for archaeological survey.
- The City will provide access to the project site so that the buildings may be photographed. Access to pertinent records regarding construction of the WWTF will also be provided.
- This scope assumes that no more than two archaeological resources will be recorded.
- This scope of work does not include evaluation of archaeological resources for the NRHP/CRHR, should resources be present in the direct APE that cannot be avoided by project construction. This evaluation can be provided as an additional scope item.

Deliverables:

- Draft and revised cultural resources assessment report (electronic)

Task 6 - Environmental Document

At the conclusion of Task 4, the City will determine the level of CEQA review for the project. This scope of work assumes that an IS/MND will be prepared. If a different determination is made, this scope of work and budget may require revision and augmentation.

Task 6.1 - Site Visit and Project Description

To initiate work on the project, ESCO's project management team will visit the project site along with the City's project leads. Based on the information collected during Phase I and the site visit, ESCO will develop a project description for the CEQA evaluation. In conformance with CEQA Guidelines Section 15124, the project description will include a site location map, description of the proposed project and its goals, project features, construction methods, and long-term operations and maintenance. The project description will also include a list of responsible and/or trustee agencies with jurisdiction over the project, including local, state, and federal regulatory agencies. ESCO will submit the draft project description for review, revise it based on the comments received, and incorporate the final draft into the environmental document.

Assumptions:

- Once the project description has been finalized, any substantive changes to the proposed project may require an amendment to the work plan and budget based on work already completed that requires revision to reflect those changes.

Deliverables:

- Draft and revised project description (electronic)

Task 6.2 - Administrative Draft Initial Study

Once the project description is finalized, ESCO will prepare an IS. The IS is a preliminary analysis to identify the potential for the proposed project to result in significant environmental effects. Assuming that all impacts can be mitigated to a less-than-significant level, the IS will be combined with an MND. However, if one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, preparation of an EIR may be necessary. In that case, an amendment to the scope of work and cost estimate would be required.

Consistent with the requirements of CEQA Guidelines Section 15063, the IS will include: (1) the project description developed in Task 1; (2) a description of the environmental setting; (3) an evaluation of environmental impacts using the CEQA Guidelines Appendix G environmental checklist; (4) feasible mitigation measures that will reduce any significant impacts to a less-than-significant level, if possible; and (5) the names of individuals who prepared the IS.

Assumptions:

- If one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, ESCO will notify the City immediately. If it is determined that preparation of an EIR is necessary, an amendment to the scope of work and cost estimate would be required.
- The City will provide one set of consolidated comments on the administrative draft IS with any discrepancies resolved.

Deliverables:

- Administrative draft IS (electronic)

Task 6.3 - Screen-check Draft IS/MND

Following receipt of the City's comments, ESCO will conduct a conference call with the City to discuss comments and agree on revisions to the draft IS. Based on the conference call and comments received, the City will determine whether to continue forward with an IS/MND or whether an EIR may be necessary.

Assuming that an IS/MND is appropriate, ESCO will prepare a screen-check draft IS/MND and draft mitigation monitoring and reporting plan (MMRP), which will be incorporated as an appendix to the IS/MND.

ESCO will prepare a Notice of Intent (NOI), alerting the public to the availability of the draft IS/MND for review. In compliance with CEQA requirements, the NOI will contain a description of the project and location; identification of significant environmental impacts; dates of the public review period; addresses of locations where the draft IS/MND and supporting documents are available for review; and a

statement of whether the project site is a listed toxic site. A draft and final NOI will be prepared for the City's review and approval. This work plan assumes that the NOI will be posted on the City's website and will not be distributed by mail. In addition, ESCO will prepare a newspaper notice based on the NOI for review by the City.

In accordance with CEQA Guidelines Section 15085, ESCO will prepare a Notice of Completion (NOC) for filing along with the IS/MND at the State Clearinghouse. The NOC will contain information describing the project (including location), physical and/or electronic locations where the draft IS/MND is available for public review, and the dates of the 30-day review period.

ESCO will submit an electronic copy of the screen-check draft IS/MND and notices to the City for review. ESCO will finalize the IS/MND and notices based on comments received from the City on the screen-check draft IS/MND. It is assumed that, at this stage, comments will be primarily related to minor editing and document layout and format.

As required by California law (Section 7405 of the California Government Code), the revised screen-check draft IS/MND will then be sent to Allyant, a nationally known accessibility contractor, to be remediated to meet California ADA requirements for file accessibility.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.

Deliverables:

- Screen-check draft IS/MND (electronic)
- Draft MMRP
- Draft NOI, NOC, and newspaper notices

Task 6.4 - Public Draft IS/MND and Public Notices

ESCO will coordinate with a newspaper of general circulation to post the legal notice. ESCO will work with the City to coordinate permission to submit the IS/MND, NOC, and NOI to the State Clearinghouse and County Clerk and will coordinate filing to begin the 30-day public review period.

This work plan assumes that no public meeting will be held to gather public comments on the proposed project.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.
- The State Clearinghouse requires up to 3 days to officially post a document for public review; therefore, scheduling of the public review period will be approximate.

- No public meeting will be held during the 30-day public review period.

Deliverables:

- Public draft IS/MND (electronic), NOI, and NOC posted to SCH
- NOI provided to County Clerk's office
- Newspaper notice published

Task 6.5 - Response to Comments Memorandum, MMRP, and Notice of Determination

This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary. The level of effort for this task is assumed to address no more than 20 individual comments.

Following the close of the public comment period on the IS/MND, ESCO and the City will review the comments received. ESCO will conduct a conference call with the City to discuss the key comments received and determine the approach to response preparation. ESCO will then prepare a draft and final memorandum that briefly considers the comments received and provides responses for the City's use in adopting the IS/MND.

In conformance with CEQA Guidelines Section 15132, ESCO will finalize the response-to-comments memo and MMRP for adoption. In addition, ESCO will be available to attend an approval hearing to present information about the CEQA process and the findings of the IS/MND and to answer questions from decision makers.

ESCO will prepare a Notice of Determination (NOD) conforming to CEQA Guidelines Section 15094. The NOD will identify the project description, location, date of project approval, statement that the IS/MND was adopted, summary of the project's significant effects, statement of whether mitigation measures were made, conditions of project approval, and the address where the IS/MND can be reviewed. Within 5 days of project approval, ESCO will file the NOD with the local county clerk/recorder and the State Clearinghouse. ESCO will pay county clerk processing fees (\$50) and California Department of Fish and Wildlife filing fees (currently \$2,968.75) to accompany delivery of the NOD to the State Clearinghouse.

Assumptions:

- This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary.
- The level of effort for this task is assumed to address no more than 20 individual comments.

Deliverables:

- Administrative draft response-to-comments memo (electronic)
- Final response-to-comments memo (electronic)
- Attendance at approval hearing

Task 7 - Environmental Permitting

Task 7.1 - Clean Water Act Section 404 – USACE

The project may require authorization from USACE under CWA Section 404 for fill and/or dredge within jurisdictional waters of the U.S. ESCO will evaluate whether the project may qualify under a Nationwide Permit (NWP). The application package will include:

- Cover letter to introduce the project;
- PCN form;
- Design Plans (provided by ESCO and the City); and
- Technical studies, including the biological conditions report (Task 5.1), wetland delineation report (Task 5.2), and cultural resources assessment (Task 5.3).

ESCO will prepare and submit a draft NWP application package to the City for review. ESCO will address one round of comments from the City and revise and submit the permit application package to USACE. This scope of work will include up to two conference calls with the City and USACE during the permit application process.

Task 7.2 - CWA Section 401 – RWQCB

The project will require authorization from the Central Valley RWQCB under CWA Section 401 for fill and/or dredge in waters of the state. ESCO will prepare the following permit application items:

- Cover letter to introduce the project;
- Application for Discharges of Dredged or Fill Material to Waters of the State (401 Certification), which is the standard permit application form for RWQCB permits;
- Design Plans (provided by the City and ESCO);
- Technical studies, including the biological conditions report (Task 5.1) and wetland delineation report (Task 5.2);
- Revegetation Monitoring Plan, if needed; and
- CEQA compliance documentation (Task 6).

Before submitting the 401 Certification package to RWQCB, it is now a standard requirement that a Prefiling Meeting be requested. ESCO will prepare a 401 Certification Pre-filing Meeting request for submittal to RWQCB, which will determine whether the meeting will be held. If a meeting is held, ESCO will accompany the City.

The draft 401 Certification package will be submitted to the City for one round of review. ESCO will revise and submit the permit application package to RWQCB. This scope of work will include up to two conference calls with the City and RWQCB during the permit application process.

Supplemental information or data may be requested by RWQCB during the application review process. ESCO will support the information response process with RWQCB, to the extent that remaining budget is available in this task once the permit application is developed and submitted.

Task 7.3 - California Fish & Game Code Section 1602 – CDFW

ESCO will prepare a standard application for a Streambed Alteration Agreement (SAA) following the application format provided in the CDFW Environmental Permit Information Management System (EPIMS) External Permitting Portal. ESCO will also prepare supplemental information, as needed, to support the application. ESCO will prepare and submit a draft version of the application and supplemental information for review by the City. ESCO will revise the application materials based on one round of comments and upload the material to the EPIMS portal. This scope of work will include one conference call with the City and CDFW SAA reviewers during the permit application process.

Task 7.4 - Regulatory Agency Coordination

Under this task, ESCO will support the City with additional regulatory agency coordination to track the permit review and approval process. The tracking and coordination process may include activities such

as answering questions from regulatory staff on the application materials; providing project updates to the regulatory agencies; preparing memoranda to address regulatory requests for information; and participating in calls, meetings, and site tours with agency representatives.

The budget estimate for this task is based on our experience with similar projects. Actual costs will be dependent on the level of assistance requested by the City. ESCO will provide regulatory coordination services up to the level of effort shown in the cost estimate for this task.

Assumptions:

- If CDFW requests additional information for the application to be considered complete, ESCO will be available to revise and/or supplement the SAA application package within the available budget remaining in this task once the permit application has been developed and submitted.
- If USACE determines that the project does not meet NWP requirements and elects to authorize the project under an alternative permitting pathway, such as a standard permit, then ESCO will discuss the permitting process with the City and an amendment to this scope of work may be required.
- This scope assumes that permanent impacts to waters and wetlands of the U.S./state would be less than 0.1 acre. If the project impacts would exceed this area, then authorization by USACE would be required to qualify for a NWP.
- It is assumed the project can be designed and constructed in a manner that avoids take of federally listed and/or state-listed species. If take of a listed species is unavoidable, an amendment to this scope of work may be required.
- The City will be the primary contact with regulatory agency staff throughout the permitting process. ESCO will provide support as remaining budget for Task 7 allows.
- The cost estimate does not include permit submittal fees or annual permitting fees. Permit submittal fees will be paid by the City or can be added to the budget when known.
- Surveys will be reconnaissance level and daytime events only; no protocol-level surveys will be conducted.

Task 8 - Administrative Record

ESCO will maintain all aspects of the administrative record as it relates to the development of various environmental documents for the duration of the contract. Entries to the administrative record will be collected from technical staff and incorporated into the administrative record. Throughout the project contract, ESCO will make the administrative record readily available to the City upon request.

The complete administrative record will be delivered to the City within 6 weeks following filing of the NOD.

NON-WASTEWATER TREATMENT FACILITY (WWTF) - IGA SCOPE OF WORK

1. **Scope of Work**

Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM) and is a preliminary look at different options that will be discussed with the Customer to identify priorities and finalize the Phase 1 scoping project.

- A. ESCO will utilize city's existing energy reports, such as "Distributed Energy Resource (DER) Recommendations Summary" dated March 17, 2025 for solar PV, battery storage and EV charging recommendations at the Auditorium, Community and Admin Building, and Miner's Bend for purposes of potential project estimates and feasibility. ESCO will use report's data for solar, battery and EV charging for Phase 1 non-wastewater sites, however, will do own analysis for solar and battery storage sizing at wastewater treatment plant.
- B. Additional scope items to be evaluated include lighting and mechanical work at all (7) sites listed in the Facilities table in Section 3. ESCO will work with City to prioritize the oldest HVAC units and any remaining non-LED interior and exterior lighting.
- C. Any scope items outside of solar, battery storage, EV charging, lighting and mechanical will fall into Phase 2 after determination of Wastewater Treatment Plant Upgrades scope and financials, for evaluation by ESCO. Examples include: streetlighting, irrigation, building automation, and other energy and water savings measures. During Phase 2, ESCO will also perform due diligence regarding existing energy report data and assumptions as they advance to Phase 2.

2. **Phases of Design**

The Design Scope of Work shall consist of one phase: Conceptual Development (Up to 30% Design Scoping Meeting).

- A. Phase 1: Conceptual Development (Project Scoping)
 - a. At the Phase 1 final meeting, ESCO shall demonstrate for Customer whether recommended improvement measures are viable and whether financial benefits (including grants) can be derived by their implementation in an amount sufficient to cover costs associated with the Project.
 - b. Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM), a clear understanding of grant criteria and estimated probability of securing grants, calculation of energy and operational savings, and preliminary costs for the construction of the scope.
- B. Phase 2: Final Design Development
 - a. During Phase 2, ESCO will use final scope determination from Phase 1 to put together a firm fixed price for all non-waste water scope, including all due diligence to finalize design documents as well as costs and savings for each ECM.
 - b. Phase 2 will include: Final scope of work, final fixed firm pricing, financial pro-forma, guaranteed annual energy savings and M&V plan, commissioning plan, operations & maintenance plan, training plan and final drawings and equipment specifications.

3. Facilities Included

The Design Services will be performed in the following Customer facilities. Any additional facilities to be added in the future must be by mutual agreement between Customer and ESCO:

Facilities			
Building Name	Address	Square Footage	Year Built
Auditorium	18 Main St, Sutter Creek, CA 95642	5,040	1928
Community Building	33 Church St, Sutter Creek, CA 95642	3,370	2005
Administrative Building	35 Church St, Sutter Creek, CA 95642	1,155	1880
Historic Grammar School	111 Cole St, Sutter Creek, CA 95642	6,000	1856
Monteverde Store	11 Randolph St, Sutter Creek, CA 95642	1,600	1896
WWTP	340 Mahoney Mill Rd, Sutter Creek, Ca 95642	-	-
Miner's Bend Park	29 Old Rte 49, Sutter Creek, CA 95685	-	-

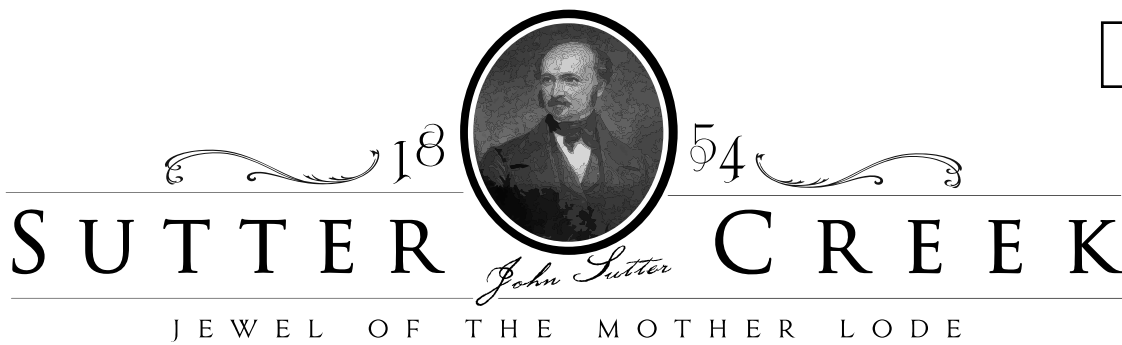
4. Responsibilities

Customer Will:

- A. Provide ESCO with all such access, knowledge and history as may be relevant to ESCO's analysis and/or design, including, without limitation:
 - (vi) access to Customer's Facilities, systems and equipment, including remote network access, as necessary or appropriate to facilitate ESCO's analysis and design (i.e. enabling ESCO to take equipment inventory, determine operating schedules, evaluate known operational deficiencies, perform an energy efficiency analysis, measure actual energy use, etc.);
 - (vi) access to key personnel to discuss operating requirements, maintenance practices, and other information relevant to ESCO's analysis;
 - (vi) information relating to any and all known or suspected deficiencies, defects and malfunctions of or affecting the Facilities, systems, equipment and components thereof;
 - (vi) information relating to any site conditions that should be considered in planning and executing the construction services;
 - (vi) twenty-six (26) months of electric, gas, and water data, including utility billings on meters for all premises owned by Customer; and
 - (vi) access to copies or loans of such documentation as may be relevant to ESCO's analysis, including, as applicable and without limitation, Facility plans, equipment lists, and/or other utility invoices.
- B. Meet with ESCO to establish Project criteria and make Project decisions in a timely manner.
- C. Promptly inform ESCO if at any point Customer becomes aware of any portions of scope that will not be included or funding that will not be available for final Project implementation.

ESCO Will:

- A. Compile information reasonably requested by Customer for purposes of any grant applications being submitted by the Customer in connection with the Project.
- B. Conduct a Project programming meeting, Facility walk-through(s) and personnel interview(s) to gain an understanding of Facility operations, concerns, needs, and desired performance criteria.
- C. Work with Customer to refine performance requirements, financial criteria, and Project scope.
- D. Provide Customer an energy, revenue, and cost savings analysis demonstrating the simple ROI effect of project finances and operations.
- E. Provide Customer with a Scoping Proposal setting forth the following:
 - (iv) Proposed Scope of Work for Phase 2
 - (iv) Proposed Preliminary Schedule for Phase 2 Development and Phase 3 Construction
 - (iv) Preliminary Project Estimate for Phase 3 Construction



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
MEETING DATE: SEPT 15 2025
FROM: TOM DUBOIS, CITY MANAGER
SUBJECT: DESIGN-BUILD CONTRACT UPDATE

DISCUSSION:

Some final contract details continued to get negotiated this week after the original packet was published. The Contract and Scope of Work have been updated.

In the contract, “Section 4 Funding Compliance” was added to enable the city to qualify for Federal grants. There will need to be a contract amendment and a bunch of new requirements to qualify for federal grants. We are basically agreeing to make those changes if we get Federal or State money only. An ROI will have to be done to ensure that the extra costs incurred in taking on the overhead and requirements for federal money are justified by the grant amount. The regulations carry real costs in procurement, reporting, sourcing and other impacts. There were minor formatting changes as well

In the Scope of Work document, clarifications were made on what was included and who was responsible for several items. Pages 8 and 9 have some updates on a backup generator and SCADA (computer control) systems. We asked the low cost, additional office space be considered and that the topology measurements include the length of the access road, which will likely need to be upgraded to support construction.

Some of the initial scope for working with the water board was adjusted because we have already been working with them and briefing them on our plans. Task 4 on page 23 had a lot of detailed updates. Additional language was added at the end about support for seeking grants and loans.

Bill Slenter, our engineering advisor on the project from HydroScience, will be at the meeting as well as representatives from Schneider Electric.

ATTACHMENT:

New Attachment C – Clean Version

New Attachment C – Redlines

New Attachment D – Clean Version

New Attachment D - redlines

City of Sutter Creek

Design/Build Contract for

ENERGY SERVICES - TREATMENT

PLANT PROJECT

City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

DESIGN-BUILD ENERGY SERVICES CONTRACT BETWEEN CITY OF SUTTER CREEK AND SCHNEIDER ELECTRIC BUILDINGS AMERICA, INC. FOR THE WASTEWATER TREATMENT AND ENERGY RELATED CAPITAL IMPROVEMENTS PROJECT

This Design-Build Energy Services Contract (“Contract”) is made and entered into this ____ day of _____, 2025 by and between the **City of Sutter Creek**, a California municipal corporation (hereinafter referred to as “City”) and **Schneider Electric Buildings Americas, Inc.**, with its principal place of business at 1660 Scenic Avenue, Costa Mesa, CA 92626 (hereinafter referred to as “ESCO”) for the purpose of designing and constructing the Wastewater Treatment And Energy Related Capital Improvements Project (“Project”). City and ESCO are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

- A. The City’s mission is to collect, treat, and reuse wastewater in a safe and cost-effective manner as prescribed by state and federal law.
- B. In order to serve its customers, the City is dedicated to forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness.
- C. The City therefore desires to strategically invest and reinvest in operational cost reductions into a sustainable facility with technology enhancements that will lead to compliance with regulatory authorities, minimal operating costs and streamlined operations. To achieve these goals, the City intends to engage ESCO to perform a comprehensive audit of existing facilities for potential energy cost and operational cost savings, develop conceptual and final designs for improvements, and implement physical changes to effectuate energy cost and operational savings.
- D. Because of the unique nature of the Project, City desires to engage a single design-build entity to engineer and implement the Project as authorized by California Government Code section 4217.10 *et seq.*
- E. ESCO desires to perform and assume responsibility for the provision of design and construction services, and such other services as required by the City on the terms and conditions set forth in this Contract. ESCO represents that it is experienced in providing professional planning, design, and construction services to public entities, is appropriately licensed in the State of California to perform such services, and is familiar with the scope of work.

TERMS

1. Incorporation of Documents.

The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Design-Build Energy Services Contract
- (b) Attachment 1 to this Contract – Scope of Services
 - (A) Schedule A - Scope of Work
 - (B) Schedule B – Project Implementation
 - (C) Schedule C – Project Performance
- (c) Attachment 2 to this Contract - General Conditions
- (d) Attachment 3 to this Contract – Performance Bond
- (e) Attachment 4 to this Contract – Payment Bond
- (f) Attachment 5 to this Contract – Hourly Rate Schedule
- (g) Attachment 6 to this Contract - Workers Compensation Certification
- (h) Attachment 7 to this Contract – Asbestos & Other Hazardous Materials Certification
- (i) Attachment 8 to this Contract – Wastewater Treatment Performance Guarantee
- (j) Attachment 9 to this Contract – Grant/Loan Compliance Rider
- (k) City approved Amendments and Change Orders
- (l) Completed and approved Construction Documents in accordance with the General Conditions

2. The ESCO’s Basic Obligations and Compensation.

The ESCO promises and agrees, at its own cost and expense, to furnish to City all design and construction services, labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work” or “Work”). The Scope of Work shall consist of four phases: Phase 1 Preliminary Assessment (Project Scoping), Phase 2a Design - Investment Grade Development (Mid-Term Meeting), Phase 2b Design Development (Final Planning), and Phase 3 Construction. The Scope of Work, including all four phases, is more particularly described in Attachment 1. The City shall issue a Notice to Proceed for each Phase.

(a) Phase 1 – Preliminary Assessment

The ESCO shall commence Phase 1 after receipt of City’s Notice to Proceed and complete Phase 1 work within 240 Days of the Notice to Proceed date, unless mutually agreed by both parties to extend. After ESCO fulfills all its Preliminary Assessment responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Preliminary Assessment deliverables whether to terminate the Contract for convenience or move to Phase 2. City shall notify ESCO in writing of its decision. At a scoping meeting to be held as part of this phase, ESCO

shall confirm for City whether recommended improvement measures are viable and financial benefits can be derived by their implementation and guaranteed in an amount sufficient to cover all costs associated with the Project. This includes the ESCO providing a rough order of magnitude of the Price Proposal.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, City shall pay ESCO only for fees and expenses incurred in this Phase 1 at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, and data shall become the exclusive property of City. The total cost for Phase 1 shall not exceed \$543,107 without written approval of the City.

(b) Phase 2A – Mid-Term Investment Grade Audit (IGA)

The ESCO shall commence Phase 2A after receipt of City’s Notice to Proceed and complete Phase 2A work within a to be determined period based of Phase 1 deliverable and scope agreement. After ESCO fulfills all of its Mid-Term IGA phase responsibilities as noted in Attachment 1, including providing a reasonable estimate of the Price Proposal based on the most current developed Construction Documents, City must determine within sixty (60) days of receiving all Mid-Term IGA deliverables whether to terminate the Contract for convenience or move to Phase 2B. City shall notify ESCO in writing of its decision.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phase 1, City shall pay ESCO only for design fees and expenses incurred in this Phase 2A at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of City.

(c) Phase 2B – Final IGA

The ESCO shall commence Phase 2B after receipt of City’s Notice to Proceed and complete Phase 2B work within a to be determined period based of Phase 2A deliverable and scope agreement. After ESCO fulfills all of its Final IGA responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Final IGA deliverables whether to terminate the Contract for convenience or move to Phase 3.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phases 1 and 2A, City shall pay ESCO only for design fees and expenses incurred in this Phase 2B at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of City upon receipt of payment. The deliverables shall include the Construction Documents. The total cost for Phase 2 shall not exceed \$2.2M without written approval of the City

At or before the Final Planning Meeting, ESCO shall present a final scope and price (“Price Proposal”) to City in accordance with this Agreement which will include proposed terms for a contractually binding Performance Guarantee in accordance with framework in attachment #8. In addition to Phase 3 costs, the Price Proposal shall include all design fees and expenses from phases 1, 2A and 2B (subject to the not-to-exceed limits) and shall be a firm offer valid for ninety (90) days from submission. The Price Proposal shall include a schedule of values for the Work, including without limitation a complete breakdown of costs of labor, materials, tools and equipment (“Net Cost”) and a statement of their basis, Mark-Up fees for combined overhead and profit, which shall not exceed 25% of the Net Cost of the Work, and taxes which are applicable at the time the Price Proposal is established. Upon receipt of ESCO’s Price Proposal, the City may enter into negotiations with ESCO to achieve a mutually acceptable basis on which to proceed. In the event the City discovers any inconsistencies or inaccuracies in the Price Proposal, the City shall promptly give written notice to ESCO, who shall make appropriate adjustments to the Price Proposal, its basis, or both.

(d) Option to Procure Long-Lead Time Materials.

During the performance of Phases 1, 2A and/or 2B, but prior to completion of Phase 2B, ESCO may submit one or more proposals to the City for the procurement of certain materials and equipment that have long manufacturing and/or delivery lead times (“Long-Lead Time Material Procurement Proposal(s)”). The pricing in each Long-Lead Time Material Procurement Proposal shall remain valid for sixty (60) days. The City may accept a Long-Lead Time Material Procurement Proposal by issuing a Long Lead-Time Material Notice to Proceed (an “LLTM-NTP”) authorizing and directing ESCO to order those materials and equipment at the price specified in the particular Procurement Proposal.

Concurrently with the issuance of each LLTM-NTP, the City shall allocate, appropriate, and encumber additional funds sufficient to pay for the Long Lead-Time Materials to be procured pursuant to that LLTM-NTP.

Each LLTM-NTP will contain a schedule of values delineating the items to be completed pursuant to each Procurement Proposal. Notwithstanding anything to the contrary contained herein, beginning on the date that is one (1) month following the effective date of an LLTM-NTP, ESCO shall provide monthly invoices to the City seeking payment for the Long Lead-Time Materials procured in the prior month (based on the percentage completion of items delineated on the applicable schedule of values). All such payments shall be separate and apart from, and not included in, the Contract Price. Payment by the City is due within thirty (30) days of the date of each invoice. If any payment is over thirty (30) days late from the due date stated on the invoice, ESCO may charge interest of one percent (1%) of the amount(s) owed for each month overdue and/or may terminate the Agreement.

Upon payment for the solar and battery storage Long Lead-Time Materials, title to the equipment purchased as a result of an LLTM-NTP shall pass to the City and the City shall be responsible for the risk of loss of said equipment, including but not limited to damage, destruction or theft thereof, unless and until a Contract Amendment for the Construction Phase is entered into for installation of said equipment by ESCO. Other Long Lead-Time Materials Procurement

Proposals will specify terms of ownership, financing, and storage for that specific materials or equipment.

(e) Phase 3 – Construction Phase

If the City elects to proceed to Phase 3 and is satisfied with ESCO’s Price Proposal, then City shall issue a formal Contract Amendment (“Contract Amendment” or “Amendment”) establishing the Scope of Work for the Construction Phase, the Contract Price and the Project Completion Date. Approval of the Contract Amendment shall be contingent upon City Council holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

If a Contract Amendment is approved and executed, the City will issue a Notice to Proceed with Construction and ESCO shall begin construction work. ESCO shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 3.

3. **Guaranteed Maximum Contract Price for Construction; Project Completion Date**

(a) Contract Price.

If a Contract Amendment is approved and executed, the City shall pay ESCO a contract price (hereinafter the “Contract Price”, “Guaranteed Maximum Price” or “GMP”) equal to ESCO’s Price Proposal as full and complete compensation for Contractor’s obligations under the Contract Documents. Payment shall be made in installments in accordance with the progress payment milestones and as set forth in the Attachment 2.

In accordance with Section 22300 of the California Public Contract Code, ESCO may substitute securities for any monies withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of ESCO. Securities equivalent to the amount withheld may be deposited with City or with a state or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code, bank or saving and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.

Except as otherwise provided in this Contract, ESCO shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should the ESCO believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to Attachment 2.

(b) Material Storage.

As the ESCO is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from City, to assure that there will be no delays, payment by the City for stored material shall be made only in unusual circumstances where the City specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by City, the payments shall be conditioned upon submission by ESCO, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to City to establish City’s title to such materials or equipment free of all liens and encumbrances, and otherwise protect City’s interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to City by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

(c) Project Completion Date.

Time is of the essence. The ESCO guarantees that it shall perform and complete all work necessary for Completion which shall be set forth by Contract Amendment prior to the Notice to Proceed with Construction (the “Project Completion Date”). The ESCO agrees that it shall be liable to the City for liquidated damages in an amount of One-Thousand Dollars (\$1,000) per calendar day for each and every calendar day beyond the Project Completion Date that completion of the Project has not been achieved at the Project Site and said damages shall be the City’s sole remedy for ESCO’s delay and shall not exceed twenty percent (20%) of the Contract Price. If not completed by the Project Completion Date, it is understood that the City will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the ESCO’s failure to complete the work, and therefore the ESCO shall pay to the City the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the ESCO may be retained to cover liquidated damages.

The City is under no obligation to consider early completion of the Project and the Project Completion Date shall not be amended by the City’s receipt or acceptance of the ESCO’s proposed earlier completion date. Any difference in time between the ESCO’s early completion and the Project Completion Date shall be considered a part of the Project float. ESCO shall not be entitled to compensation, and the City will not compensate ESCO, for delays which impact early completion.

4. Funding Compliance

The City anticipates that the Project may be financed in whole or in part through loans, grants, or other funding assistance provided by state or federal agencies. Attachment 10 “Grant/Loan compliance Rider will be utilized as needed. ESCO acknowledges and agrees that:

(a) Additional Requirements.

If such funding is secured, the ESCO shall comply with all additional terms, conditions, and requirements imposed by the funding agency, including without limitation:

- Federal cross-cutting requirements under 2 CFR Part 200 (“Uniform Guidance”),
- Davis-Bacon and Related Acts and applicable state prevailing wage requirements,
- Domestic preference requirements under the Build America, Buy America Act (BABA),
- Equal Employment Opportunity (EEO) and nondiscrimination requirements under Title VI of the Civil Rights Act of 1964 and related authorities,
- Section 3 (24 CFR Part 75) labor-hour benchmarks & reporting
- Environmental compliance obligations (CEQA, NEPA, or agency equivalents),
- Recordkeeping, audit, and reporting obligations, and
- Procurement, subcontracting, and small/minority/disadvantaged business enterprise (S/MBE/DBE) requirements.

(b) Contract Amendments.

The City may incorporate such requirements by amendment, rider, or supplemental conditions. ESCO shall execute such instruments and cooperate in good faith to implement them.

c. Supersession.

In the event of a conflict between this Agreement and a funding agency requirement, the agency’s requirement shall control to the extent required as a condition of funding.

d. Cost Adjustments.

If compliance with a subsequently imposed funding requirement materially increases ESCO’s cost of performance, ESCO may request an equitable adjustment, subject to approval by the City and, where required, the funding agency.

1. Performance and Payment Bonds and Insurance

ESCO shall execute and provide to City both a Performance Bond and Payment Bond in the amount of the GMP on the forms provided in Attachments 3 and 4. ESCO shall timely submit bonds to the City in accordance with the General Conditions. ESCO shall furnish all insurance as required by the General Conditions. Notwithstanding any provision to the contrary herein, any Payment and Performance Bonds associated with this Contract guarantee only the performance of the construction/installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings performance guarantees, or (2) any support or maintenance service agreements or work or (3) any other warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract. The obligations of the Performance Bond Surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City’s rights or the ESCO’s or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure

section 337.15.

2. Standard of Performance.

The ESCO's performance shall be consistent with the standards set forth in the Contract and the General Conditions. ESCO shall perform all Work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. ESCO represents and maintains that it is skilled in each professional calling necessary to perform the Work. ESCO warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. ESCO represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Agreement. ESCO shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the ESCO's failure to comply with the standard of care provided for herein. Any employee of the ESCO or its sub-consultants or subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the Project by the ESCO and shall not be re-employed to perform any of the Work on the Project.

3. City's Representative.

The City hereby designates **Bill Slenter – Owner's Representative** or his or her designee, as the person to act as its representative for the performance of this Contract ("City's Representative"). The City's Representative shall be authorized to act as liaison between City and the ESCO in the administration of this Contract and all work on the Project. The City's Representative shall have the power to act on behalf of the City for all purposes under this Contract, including for the purpose of approving the design. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to the ESCO .

4. ESCO's Representative.

The ESCO hereby designates **Moses Bchara, Program Manager**, or his or her designee, to act as its representative for the performance of this Contract ("ESCO's Representative"). ESCO's Representative shall have full authority to represent and act on behalf of the ESCO for all purposes under this Contract. ESCO's Representative shall supervise and direct all work on the Project, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

5. ESCO's Contractor License and Registration.

The ESCO shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The ESCO (**License No. CA# 708952**) shall act as the licensed contractor for the Project. ESCO shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards

generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (**DIR Registration No.** To be provided at time of Phase 3 Construction Phase).

6. **ESCO’s Design Professional.**

The ESCO shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the City. The ESCO hereby designates **Bryan Childress** from **Wallace Group** to act as the Design Professional and Architect of Record for the Project. ESCO’s Design Professional shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to the City’s prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that City and ESCO cannot agree as to the substitution of a new Design Professional, the City shall be entitled to terminate this Contract as described in the General Conditions.

7. **ESCO’s Indemnification.**

The ESCO shall provide indemnification and defense as set forth in the General Conditions.

8. **Substitution of Key Personnel.**

ESCO has represented to City that certain key personnel will perform and coordinate the Work under this Contract. Should one or more of such personnel become unavailable, ESCO may substitute other personnel of at least equal competence upon written approval of City. In the event that City and ESCO cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Contract for cause. Any personnel who fail or refuse to perform the Work in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the ESCO at the request of the City. The key personnel for performance of this Contract are as follows: **Moses Bchara** and **Brian Pottinger**.

9. **Notices.**

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY
Attn: Tom DuBois, City Manager

City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

ESCO

Attn: Tammy Fulop, Vice President
Schneider Electric Buildings Americas, Inc.
1650 W. Crosby Road
Carrollton, TX 75006

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10. Authority of Signatories.

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES CONTINUED ON NEXT PAGE]

Entered into as of the Effective Date first above written, the Parties hereby execute this Design-Build Contract, as follows:

ON BEHALF OF THE ESCO

ON BEHALF OF THE CITY

Schneider Electric Buildings Americas, Inc.

City of Sutter Creek

By:

Name:

Title:

Federal Tax ID No.:
75-2066352

By:

Name:

Title:

Attest:

[NAME AND TITLE]

Approved as to Form:

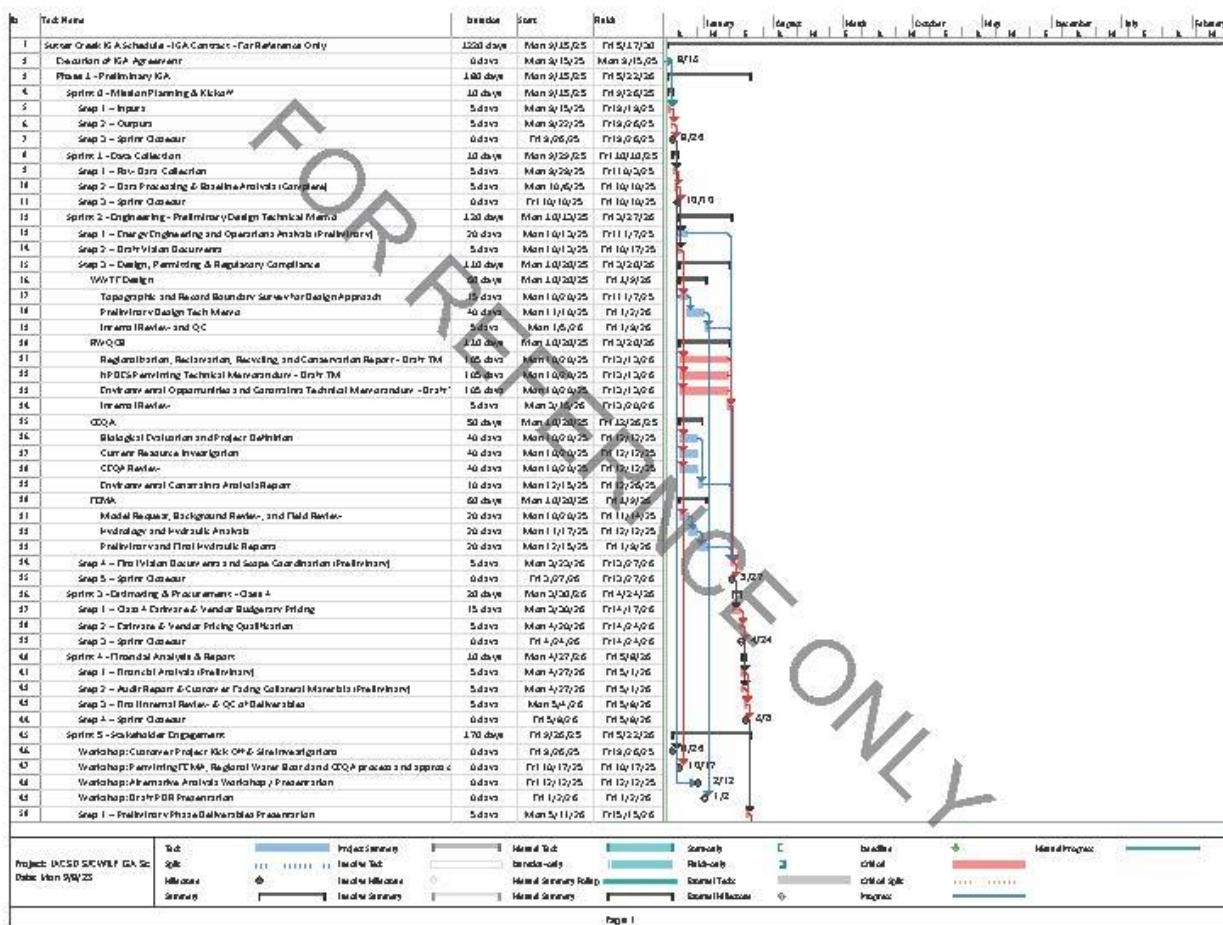
[NAME AND FIRM]
Legal Counsel

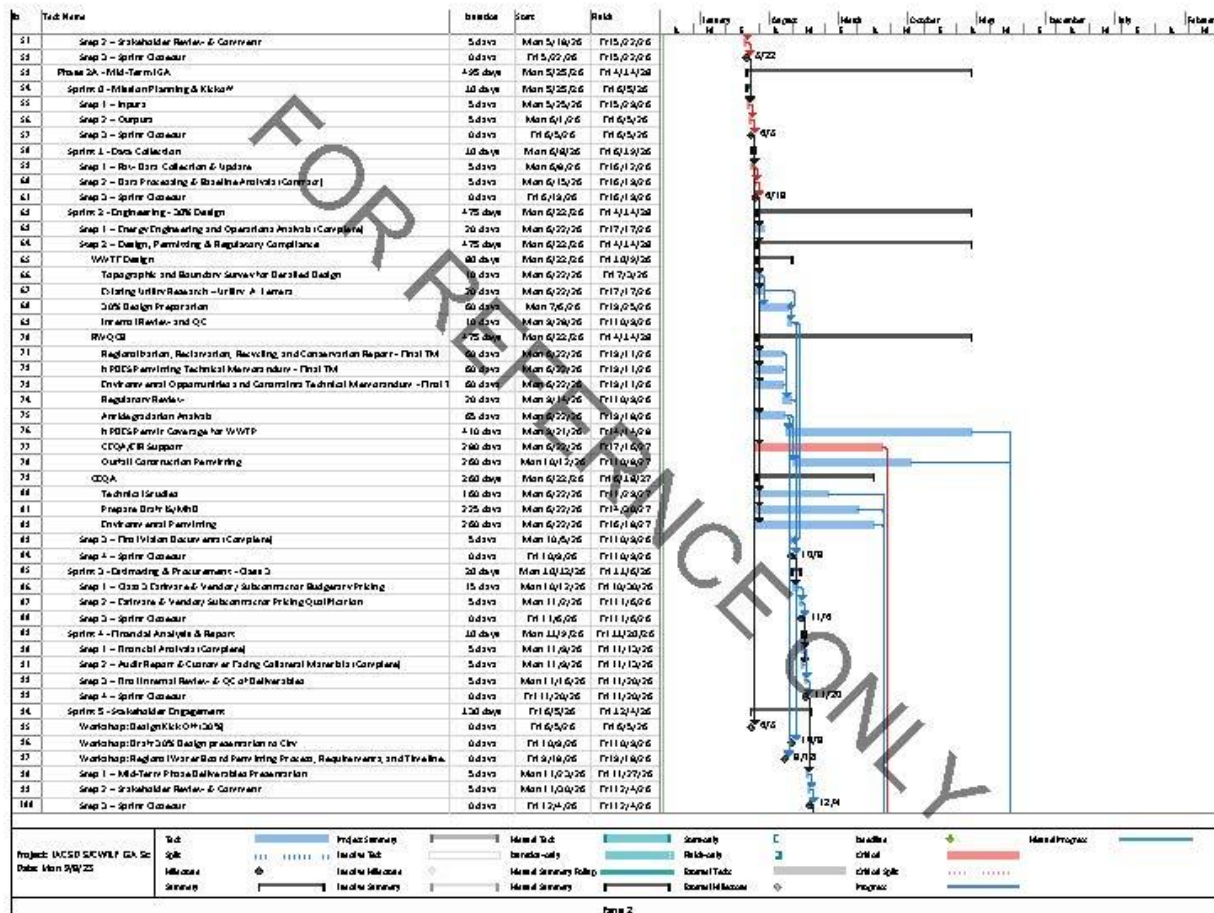
ATTACHMENT 1
SCOPE OF SERVICES
Schedule A
Scope of Work
[INSERT SCOPE]

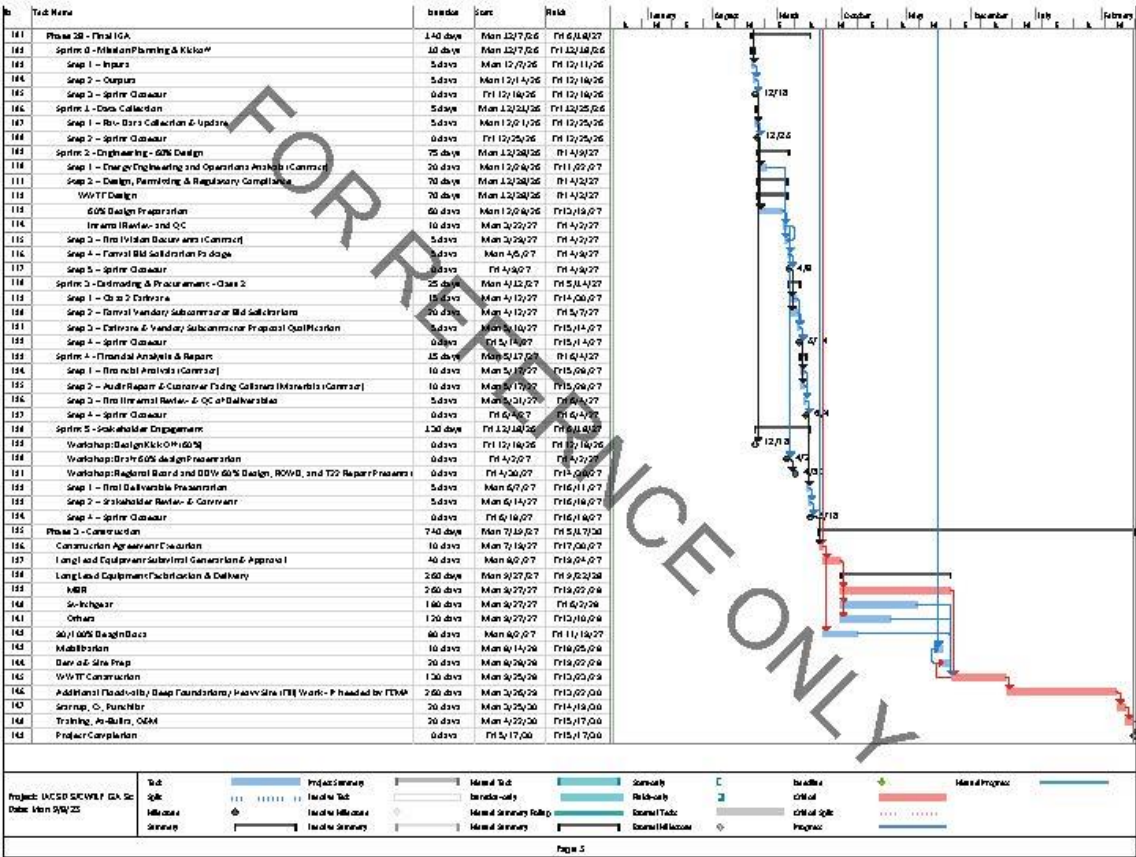
Schedule B

Project Implementation

Reference Schedule for Phase 1 attached. Phase 2 schedule will be developed in Phase 1, and Phase 3 will schedule will be part of the construction agreement.







Schedule C
Draft Project Performance Guarantee
[Reserved for Construction Amendment]

ATTACHMENT 2 GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 2. Additional Work -- New or unforeseen work will be classified as “Additional Work” when City’s Representative determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Application for Payment -- Standard AIA form which is to be used by the ESCO during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Architect of Record or Engineer of Record (“A/E”) -- The individual, partnership, corporation, joint venture, or other legal entity named as the Design Professional in the Contract or any succeeding entity designated by City.
 6. Certificate for Payment -- The form signed by City’s Representative attesting to the ESCO’s right to receive payment for certain completed portions of the Work on the Project in accordance with Article 13.
 7. Change Order (“CO”) -- A document that authorizes Additional Work or deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
 8. Change Order Request (“COR”) -- A request made by the ESCO for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a ESCO-claimed change to the Work.
 9. Claim -- A demand or assertion by City or ESCO seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 10. Construction Documents -- The plans and Technical Specifications prepared by the ESCO for the Project and approved by City. The Construction Documents shall set forth in detail

all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by City. All amendments and modifications to the Construction Documents must be approved by City in writing.

11. Construction Documents Phase – The third of four phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
12. Construction Phase -- The fourth phase of the Work and will commence upon final approval of the Construction Documents by City .
13. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
14. Contract -- The entire integrated written agreement between City and ESCO concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
15. Contract Documents -- The documents listed in Section 1 of the Contract. Some documents provided by City, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
16. Contract Times -- The number of days or the dates stated in the Contract Documents and Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
17. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
18. Defective Work -- Work that is faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
19. Demobilization – The complete dismantling and removal by the ESCO of all of the ESCO’s temporary facilities, equipment, and personnel at the Site.
20. ESCO -- The individual or entity with which City has contracted for performance of the Work.
21. ESCO Representative -- The person or firm identified as the primary contact person and representative of the ESCO as designated in the Contract and who shall not be changed without prior written consent of City .
22. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the ESCO:

- (1) to City under the Contract Documents or; (2) developed or prepared by or for the ESCO specifically to discharge its duties under the Contract Documents.
23. Design Professional -- The individuals or entities who will provide the ESCO with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
 24. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
 25. City's Representative -- The individual or entity as identified in the Contract to act as City's Representative.
 26. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
 27. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
 28. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of City's provided equipment which is installed in the Project by the ESCO.
 29. Excusable Delay -- A delay as described in Article 11 of these General Conditions.
 30. Governmental Approvals -- Those governmental actions required to be obtained by City and necessary for the completion of the Project.
 31. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price City will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in the Contract and further described in the cost proposal submitted by the ESCO.
 32. Hazardous Materials -- Any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by

the ESCO or the City; or as defined in the California Health and Safety Code. For the purposes of this Contract, "Hazardous Materials" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

33. Holidays -- Holidays occur on:

New Year's Day – January 1
 Martin Luther King Jr. Day – Third Monday of January
 President's Day – Third Monday of February
 Memorial Day – Last Monday in May
 Juneteenth - June 19
 Independence Day – July 4
 Labor Day – First Monday in September
 Columbus Day - Second Monday in October
 Veteran's Day – November 11
 Thanksgiving Day – Fourth Thursday in November
 Friday after Thanksgiving
 Christmas Day – December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

34. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
35. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
36. Notice of Award – The written notice by City to the ESCO stating that upon timely compliance by the ESCO with the conditions precedent listed therein, City will sign and deliver the Contract.
37. Notice of Completion – The form which may be executed by City and recorded by the county where the Project is located constituting final acceptance of the Project.
38. Notice to Proceed -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the applicable work and when Contract Time will commence to run.
39. Notice to Proceed with Construction -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the Construction Phase and when Contract Time will commence to run.

40. Partial Utilization – Use by City of a substantially completed part of the Work prior to Completion of all the Work.
41. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work.
42. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by City or by Separate Contractors for the Project.
43. Project Completion Date -- The date by which the ESCO and City agree that the Work is operational, ready for use by the City, and fully complete, except for minor items. The Project Completion Date is set forth in the Contract.
44. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times. The detailed requirements for the Project Schedule are stated in Article 7.
45. Proposal -- The construction proposal submitted by the ESCO in response to the Request for Proposal for this Project For Phase 3, based on results from Phases 1 and 2.
46. Request for Proposal (“RFP”) -- The request for proposal issued by City for the Project and includes all documents, exhibits, attachments, and addenda thereto.
47. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
48. Schematic Design Phase -- The second of four phases of the Work. The scope of the Schematic Design Phase is further defined in the Contract Documents.
49. Separate Contractor -- A person, or firm, under separate contract with City performing other work at the Project site which may affect the Work.
50. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for ESCO and submitted by ESCO to illustrate some portion of the Work.
51. Site -- Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of ESCO.
52. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
53. Subcontractor – An individual or entity that has a contract with the ESCO or with a Subcontractor of the ESCO to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
54. Submittal - Written or graphic information and physical samples prepared and supplied by the ESCO demonstrating various portions of the Work.

55. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with ESCO or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
56. Technical Specifications -- All documents developed by the ESCO and which are ready for final construction.
57. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the ESCO. For example, a first tier Subcontractor is under subcontract with the ESCO, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
58. Unexcusable Delay -- Any delay other than an Excusable Delay, as further described in Article 11 of these General Conditions, that does not entitle the ESCO to an adjustment of the Guaranteed Maximum Price and does not entitle the ESCO to an adjustment of the Project Completion Date.
59. Warranty -- A written guarantee provided to City by the ESCO that the Work will remain free of defects and perform in accordance with specifications in the Contract Documents for one (1) year from the Project Completion Date
60. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
- B. Furnish, Install, Perform, Provide.
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of ESCO is implied.

- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

- A. Before City will execute the Contract, the ESCO shall furnish and file with City a signed Contract in duplicate and the necessary, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

- A. ESCO shall submit the Performance and Payment bonds within 5 business days of the City's issuance of a Notice to Proceed with Construction and on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California conditioned upon the faithful performance by the ESCO of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

- A. ESCO shall obtain, at its sole cost and expense, all insurance required by Article 6. Certificates of such insurance and endorsements shall be delivered to City within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by City .

2.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed with Construction.

- A. Work shall commence within fifteen (15) Days of the date stated in City's Notice to Proceed with Construction. No Work shall be done at the Site prior to the date on which the Contract Time commence to run. Nothing herein shall affect the Project Completion Date.

2.6 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by City, ESCO, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures

for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

- B. At this conference City and ESCO each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.7 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by ESCO, City's Representative, and others as appropriate will be held to review for acceptability to City's Representative the schedules submitted, as required by the Contract Documents. ESCO shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to ESCO until acceptable schedules are submitted to City's Representative.
- B. Acceptance of the schedules by City's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve ESCO from ESCO's full responsibility therefor.

2.8 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor's site work, the ESCO, the involved Subcontractor, and City's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.9 Project Signage.

- A. City will permit a single project sign, which shall be subject to City's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3: CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City. Clarifications and interpretations of the Contract Documents shall be issued by City's Representative as provided in these General Conditions.

- B. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work.
- C. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the ESCO in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

- A. Standards, Specifications, Codes, Laws, and Regulations.
 - 1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of City, ESCO, or City's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or City's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

- A. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the ESCO. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the ESCO shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:

1. Permits from other agencies as may be required by law;
 2. Amendments, Change Orders or Pending Change Orders, most recent first;
 3. Design-Build Contract;
 4. General Conditions;
 5. RFP and all addenda, attachments and appendices;
 6. Construction Documents prepared by ESCO ; and
 7. Drawings prepared by ESCO ;
- C. With reference to the Drawings the order of precedence shall be as follows:
8. Figures govern over scaled dimensions;
 9. Detail drawings govern over general drawings;
 10. Amendment or Change Order drawings govern over Drawings;
 11. Drawings govern over standard drawings.
- D. Notwithstanding the orders of precedence established above, in the event of conflicts, the parties shall meet and confer and reach a mutually acceptable understanding of the applicable standard.

3.4 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a formal Contract Amendment or Change Order.

3.5 Interpretation and Use of Contract Documents.

- A. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by City, the Construction Documents become a part of the Contract Documents and define the entire scope of work. The ESCO shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.
- B. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the ESCO in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.
- C. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

- D. The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- E. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- F. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
- G. Before commencing any Work on the Project, the ESCO shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the ESCO observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the ESCO shall immediately notify City’s Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The ESCO shall be solely liable for any such violation, inconsistency or special requirement, if ESCO fails to conduct such review or notification to City.
- H. Before commencing any Work on the Project, the ESCO shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the ESCO as to Project requirements. The ESCO shall immediately notify City’s Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the ESCO nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to ESCO. If the ESCO or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the ESCO shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any

Subcontractor proceed with Work if uncertain without the ESCO's written direction and/or approval.

3.6 Reuse of Documents.

- A. ESCO and any Subcontractor shall not: have or acquire any title to or Ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and A/E and specific written verification or adaptation by the A/E.
- B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude ESCO from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

- A. The data furnished by City or City's Representative to ESCO, or by ESCO to City or City's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the ESCO are the property of City, provided the ESCO has been appropriately compensated in accordance with the terms of the Contract. City and the ESCO explicitly agree that all materials and documents developed in the performance of this Contract are the property of City pursuant to the requirements of City, provided the ESCO has been appropriately compensated under this Contract. The ESCO agrees to, and hereby does, grant to City a royalty free license to all such data developed in the performance of this Contract for the Project and that the ESCO may cover by copyright and to all designs as to which the ESCO may assert any right or establish any claim to under the patent or copyright laws. The ESCO, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of City. Any use or reuse by City of the Construction Documents on any project without employing the services of the

ESCO shall be at City's own risk. If City uses or re-uses the Construction Documents without employing the services of the Design Build Entity, it shall remove the A/E's seal from the Construction Documents and hold harmless ESCO, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. ESCO shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the ESCO, a party for which the ESCO is legally responsible or liable, or anyone approved by the ESCO .

3.9 Administration of the Contract by City's Representative.

- A. During the term of this Design-Build Contract, City's Representative shall have the right to review the ESCO's Work at such intervals as deemed appropriate by City's Representative. However, no actions taken during such review or site visit by City's Representative shall relieve the ESCO of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the ESCO's responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and the ESCO shall communicate through City's Representative. Communications by the ESCO with City's consultants and City's Representative's consultants shall be through City's Representative. Communications by City and City's Representative with Subcontractors will be through the ESCO. Communications by the ESCO and Subcontractors with Separate Contractors shall be through City's Representative. The ESCO shall not rely on oral or other non-written communications.
- D. Based on City's Representative's Project site visits, review of the Work, and evaluations of the ESCO's Applications for Payment, City's Representative will recommend amounts, if any, due the ESCO and will issue Certificates for Payment in such amounts.
- E. City's Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. City's Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever City's Representative considers it reasonably necessary, or advisable, for implementation of the intent of the Contract Documents, City's Representative will have the authority to require additional inspection or testing of the Work on the Project, at the City's expense and in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of City or City's Representative to the ESCO, or any person or entity claiming under, or through, the ESCO .
- F. City's Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Completion, such determination shall not be unreasonably delayed; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the ESCO; and

will issue a final Certificate for Payment upon the ESCO's compliance with the requirements of the Contract Documents.

- G. City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. Should the ESCO discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the ESCO shall notify City's Representative in writing and request interpretation, or clarification. City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the ESCO proceed with the Work affected before receipt of a response from City's Representative, any portion of the Work on the Project which is not done in accordance with City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the ESCO shall be responsible for all resultant losses.
- H. City may at any time and from time to time, without prior notice to or approval of the ESCO, replace City's Representative with a new City Representative. Upon receipt of notice from City informing the ESCO of such replacement and identifying the new City's Representative, the ESCO shall recognize such person or firm as City's Representative for all purposes under the Contract Documents.

ARTICLE 4: AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

- A. City shall furnish the Project site. City shall notify ESCO of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which ESCO must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. ESCO shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to City.

4.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of ESCO or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by City. Neither ESCO nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. ESCO will, as determined by City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided City shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Material at Site.

- A. The ESCO shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project

Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. In the event that the ESCO becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the ESCO shall stop work in the affected area and inform City by notice immediately. Notwithstanding anything to the contrary herein, the ESCO shall not be responsible for, and the City shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the ESCO on the Project Site resulting from the ESCO's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. The City shall not be responsible for, and the ESCO shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO.

- B. The ESCO hereby specifically agrees to indemnify, defend and hold the City, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the ESCO of, a Hazardous Material introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the ESCO except where the violation relates to Hazardous Materials not introduced onto the Project Site by ESCO.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. ESCO shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. ESCO shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. ESCO shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of City. ESCO shall report to City's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5: BONDS AND INSURANCE

- 5.1 Time for Compliance. ESCO shall not commence Work under this Contract until it has provided evidence to City that it has secured all insurance required under this Article. ESCO shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. ESCO shall not allow any subconsultant or subcontractor to

commence work on any subcontract until it has provided evidence to City that the subconsultant or subcontractor has secured all insurance required under this Article.

- 5.2 Insurance Requirements. ESCO shall, at its expense, procure and maintain for the duration of the Contract the following policies of insurance (each a “Policy”, and collectively the “Policies”):
- A. Commercial General Liability Insurance. A policy of commercial general liability insurance, written on an “occurrence” basis, with a liability limit of ten million dollars (\$10,000,000) per occurrence and fifteen million dollars (\$15,000,000) in the aggregate (“General Liability Policy”).
 - B. Automobile Liability Insurance. A policy of automobile liability insurance, written on an “occurrence” basis, with a combined single limit of ten million dollars (\$10,000,000) per accident for bodily injury and property damage (“Auto Liability Policy”). The Auto Liability Policy must include coverage for owned, hired and non-owned automobiles.
 - C. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance as required by State law, and employer's liability insurance, written on an “occurrence” basis, with a liability limit of five million dollars (\$5,000,000).
 - D. Professional Liability Insurance. Professional liability insurance, written on a claims-made (and reported) basis, with a liability limit of five million dollars (\$5,000,000) per claim and aggregate (“Professional Liability Policy”).
 - E. Contractor's Pollution Liability, written on an occurrence basis with liability limit of \$5,000,000 per loss and aggregate.
- 5.3 Duration of Insurance. The Policies shall be procured by ESCO prior to ESCO's commencement of the Project and, except for the Professional Liability Policy, shall be maintained in effect for at least one year following the earlier of the Project Completion Date or termination of this Contract. ESCO shall maintain the Professional Liability Policy in effect for at least three years following the earlier of the Project Completion Date or termination of this Contract.
- 5.4 Insurer Rating Standards. The insurance policies required pursuant to this Article must be issued by one or more insurers that are (i) licensed to do business in the State and (ii) have an A.M. Best Company rating of not less than “A-” and a financial size category of not less than “VII.”
- 5.5 Additional Insureds. ESCO shall include the City and the City's directors, officers, employees, and agents as additional insureds on ESCO's General Liability Policy, Auto Liability Policy and Contractor's Pollution Liability. The additional insured endorsements will be on ESCO's most current versions of ISO Form CG 2010 and ISO Form CG 2037 or their substantial equivalents.
- 5.6 Waiver of Subrogation. Each of the General Liability Policy, the Auto Liability Policy and the Contractor's Pollution Liability Policy shall provide a waiver of transfer of rights of recovery in favor of the City.
- 5.7 ESCO Insurance is Primary. The General Liability Policy, the Auto Liability Policy and Contractor's Pollution Liability Policy shall be endorsed to provide that they are primary and non-contributory.

- 5.8 Premiums, Deductibles and Self-Insured Retentions. ESCO shall be solely responsible for paying deductibles and self-insured retentions applicable to the Policies.
- 5.9 Evidence of Coverage. ESCO shall provide to the City a duly authorized and executed certificate of insurance evidencing that the required Policies and endorsements are in effect (each a “Certificate of Insurance”).
- 5.10 Notice of Change in Policies. ESCO shall notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a Policy will expire without renewal or will be canceled or terminated.
- 5.11 Review of Coverage. The City’s failure to identify any non-compliance with the requirements of this Article shall not be deemed as a waiver of such requirements.
- 5.12 Subcontractor and Subconsultant Insurance. ESCO shall require each Subcontractor and Subconsultant to maintain such levels and types of insurance coverage as are appropriate for the Work to be performed by such Subcontractor or Subconsultant
- 5.13 Builder’s Risk [“All Risk”]
- A. It is the ESCO’s responsibility to maintain or cause to be maintained Builder’s Risk [“All Risk”] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work, such acceptance not to be unreasonably withheld, is formally accepted by the City. The ESCO shall provide a certificate evidencing this coverage before commencing performance of the Work.
 - B. The named insured shall be ESCO. The City, its elected officials, officers, employees, agents and authorized volunteers shall be included as Additional Insureds. ESCO shall not be required to maintain Builder’s Risk insurance for any portion of the Work following acceptance by City.
 - C. Policy shall be provided for replacement value on an “all risk” basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, defective work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; and (4) coverage to insure the full replacement value of any property or equipment stored either on or off the Site.
 - D. In addition, the policy shall meet the following requirements:
 - 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - 2. Coverage shall include all materials stored on site and in transit.
 - 3. Coverage shall include ESCO’s tools and equipment.

4. Insurance shall include boiler, machinery and material hoist coverage.

5.14 Performance Bond and Payment Bond.

- A. The ESCO shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and reasonably acceptable to City conditioned upon the faithful performance by the ESCO of the Construction Phase of the Project and the requirements of the Contract Documents applicable to the Construction Phase of the Project. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The ESCO shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract. The obligations of the performance bond surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. Subject to the limitations in Article 4 of the Design Build Contract, the Payment Bond and Performance Bond shall be in effect on the date the ESCO commences performance of the Construction Phase of the Project. The premiums for the Payment Bond and Performance Bond shall be paid by the ESCO. The ESCO maintains and agrees that it will execute Payment and Performance Bonds in the amounts and manner required by the Contract Documents. No payment for performance of the Construction Phase of the Project will be made to the ESCO until the ESCO's Payment Bond and Performance Bond have been approved by City, such approval not to be unreasonably withheld.
- C. Should, in City's reasonable opinion, any bond become insufficient or surety found to no longer comply with requirements contained herein, the ESCO shall renew or replace the effected bond within 10 Days of receiving notice from City.
- D. In the event the surety or the ESCO intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to City, and the ESCO shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article are accepted by City.
- E. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the ESCO shall, upon request of City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to City. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the ESCO will release the surety. If the ESCO fails to furnish any required bond, City may terminate the Contract for cause.

ARTICLE 6 - INDEMNITY / DUTY TO DEFEND

- 6.1 Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, ESCO assumes liability for and agrees, at the ESCO's sole cost and expense, to promptly and fully indemnify, and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgements, liens, stop notices, penalties, damages, losses, anticipates losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in many manner connected with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment and claims of bodily injury or damage to tangible personal property made by third parties, to the extent any of the foregoing arise out of the negligent acts or omissions or willful misconduct, whether active or passive, of ESCO, its officials, officers, employees, consultants, contractors, Subcontractors or by anyone working under ESCO for services rendered to ESCO in the performance of this Agreement ("Indemnity Claims), notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by ESCO.
- 6.2 Duty to Defend. Design -ESCO agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of ESCO to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by ESCO of the tender of any Indemnity Claim from an Indemnitee. ESCO's obligation to defend the Indemnitees shall be at ESCO's sole expense, and not be excused because of ESCO's inability to evaluate liability or because ESCO evaluates liability and determines that ESCO is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. ESCO agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel reasonably acceptable to the City. ESCO will reimburse City for reasonable defense costs for claims arising out of ESCO's professional negligence based on the percentage of ESCO's liability.
- 6.3 Subcontractor Requirements. In addition to the requirements set forth hereinabove, ESCO shall ensure, by written subcontract agreement, that each of ESCO's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which ESCO is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event ESCO fails to obtain such defense and indemnity obligations from others as required herein, ESCO agrees to be fully responsible to the Indemnitees according to the terms of this Article.
- 6.4 No Limitation or Waiver of Rights. ESCO's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. ESCO's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any

way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by ESCO with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of ESCO, any Subcontractor, any supplier of ESCO or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ESCO or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

- 6.5 **Withholding to Secure Obligations.** In the event an Indemnity Claim arises prior to final payment to ESCO, the City may, in its sole discretion, reserve, retain or apply any monies due ESCO for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if ESCO provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole and reasonable discretion, determine whether such assurances are reasonable.
- 6.6 **Survival of Indemnity Obligations.** Design -ESCO's obligations under this Article are binding on ESCO's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of ESCO's performance of the Work.
- 6.7 **Independent Contractor.** ESCO shall at all times during its performance of the Work retain its status as an independent contractor. ESCO's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of ESCO or its employees and agents.
- 6.8 **If the ESCO's obligation to defend, indemnify, and/or hold harmless arises out of the ESCO's performance as a "design professional" (as that term is defined under Civil Code Section 2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, the ESCO's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ESCO, and, upon ESCO obtaining a final adjudication by a court of competent jurisdiction, ESCO's liability for such claim, including the cost to defend, shall not exceed the ESCO's proportionate percentage of fault.**
- 6.9 **Joint and Several Liability.** In the event the ESCO and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.

ARTICLE 7: ESCO'S RESPONSIBILITIES

7.1 Review of Contract Documents and Field Conditions by The ESCO; Single Point Responsibility of The ESCO.

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in the Contract, the ESCO shall carefully study and compare each of the Contract Documents provided by City with the others and with information furnished by City, and shall promptly report in writing to City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by City or inconsistencies with Applicable Law observed by the ESCO. The ESCO shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the ESCO fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to City in writing.
- B. The ESCO is responsible for the design and construction of the Project and shall use design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The ESCO shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The ESCO shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the ESCO before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to City's Representative.
- C. If the ESCO performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of City's Representative, the ESCO shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- D. City does not assume any obligation to employ the ESCO's services or pay the ESCO royalties of any type as to future programs that may result from Work performed under this Contract.
- E. The ESCO shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
- F. The ESCO agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize no less than the industry standard of design, engineering and construction practices. The ESCO has the duty to act in City's best interests at all times throughout the course and performance of this Contract.

7.2 Design, Supervision and Construction Procedures.

- A. The ESCO shall supervise, coordinate, and direct all Work on the Project using the ESCO's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The ESCO shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project.

- B. The ESCO shall be responsible to City for acts and omissions of the ESCO, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The ESCO shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO. Unless otherwise provided in the Contract Documents, the ESCO shall be entitled to any necessary adjustments in the Contract Time or Contract Price where ESCO is unable to perform all Work in accordance with the Contract Document because of the acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO.
- D. The ESCO shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. Unless otherwise provided in the Contract Documents, the ESCO shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The ESCO shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the City-approved Construction Documents, which are developed from the City-accepted Proposal, the ESCO shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.
- F. The ESCO is required to deliver to City, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- G. The ESCO is responsible for preparation of the Construction Documents for the entire Project. The ESCO is responsible for construction of the entire Project as required by the Contract Documents.
- H. The ESCO shall at all times maintain good discipline and order among its employees and Subcontractors. The ESCO shall provide competent, fully qualified personnel to perform all Work on the Project.

7.3 Labor; Working Hours.

- B. The ESCO shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The ESCO shall at all times maintain good discipline and order at the Site. The ESCO will provide all labor needed to complete the Work within the Contract Times.

- A. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 6:30 a.m. and 4:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The ESCO will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without City's written consent given after prior written notice to City's Representative. The ESCO shall be responsible for and shall reimburse City for, all inspection costs outside regular working hours, including overtime, unless requested by the City.

7.4 Progress Meetings.

- A. The ESCO shall schedule and hold regular progress meetings at least weekly and at other times as requested by the City or as required by progress of the Work. The ESCO, City's Representative, and all Subcontractors active on the Site shall attend each meeting. The ESCO may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.
- B. City's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the ESCO shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

7.5 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

- A. ESCO shall adhere to the Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:
 - 1. ESCO shall submit to City's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date.
 - 2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Contract Amendment or Change Order.
 - 3. Should any of the following conditions exist, City may require ESCO to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
 - a. The ESCO's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the ESCO's ability to complete the Work;
 - b. The Project Schedule shows the ESCO to be thirty (30) or more Days behind the critical path at any time during construction;

- c. The ESCO desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of City, are major in nature.
 - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how ESCO intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the ESCO to recover the schedule.
 - e. ESCO shall submit the recovery schedule within seven (7) Days of City's request:
 - (i) If ESCO asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request will be considered a concurrent delay event attributable to ESCO, and ESCO shall only be entitled to non-compensable adjustments to the Project Completion Date.
 - (ii) If ESCO is responsible for the delay, this provision will not limit or affect ESCO's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.
 - f. ESCO is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.
 - g. Regardless of whether City directs ESCO to prepare a recovery schedule pursuant to this Article 7.6, ESCO shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current Project Schedule shows that the ESCO will not achieve a milestone and/or complete the Work within the Project Completion Date.
- B. Unless otherwise specified in the Contract Documents, ESCO shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.
- C. Failure of City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the ESCO that the ESCO, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the ESCO from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.
- D. The ESCO shall perform all Work on the Project in accordance with the current accepted Project Schedule.

7.6 Materials.

- A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the ESCO shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.
- B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of City. If required by City's Representative, ESCO shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. ESCO shall be entirely responsible for damage or loss by weather or other causes to materials or Work until City has accepted the Work.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. ESCO warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to City free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of City or any independent contractor.
- G. Inspection of Materials.
 - 1. Materials furnished by the ESCO which will become a part of the Project shall be subject to inspection at the site of the Work. To allow sufficient time to provide for inspection, the ESCO shall submit to City's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made. ESCO shall provide written notice as to when Materials will be delivered at the Site of Work and City shall inspect upon arrival.
 - 2. The inspection of materials specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. ESCO will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.

7.7 Submittals.

- A. Industry Standard Submittals.

ESCO will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

ESCO will prepare and deliver a Schedule of Submittals to City's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which ESCO will deliver each Submittal to City's Representative. Each Submittal must be delivered to City's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. ESCO is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The ESCO will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Transmit one (1) electronic (PDF) copy of each with a Submittal Transmittal.
 - b. Transmittals will be sequentially numbered. The ESCO to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, the ESCO, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.
 - d. The ESCO must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When a Submittal is revised for resubmission, the ESCO shall promptly address City comments and resubmit. The ESCO shall identify changes made since previous submission.
 - g. City's review of Submittals shall not relieve the ESCO from responsibility for deviations from the Contract Documents unless the ESCO has, in writing, called City's attention to such deviations at time of submission and City's has taken no exception to the deviation. City's review of Submittals shall not relieve the ESCO from responsibility for errors in the Submittals.
 - h. Submittals not required by the Construction Documents or requested by City's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by City's Representative, unless approved in writing and required for timely ordering of equipment. Delays

resulting from incomplete submittals are not the responsibility of City's Representative.

- j. The ESCO shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process, unless the City is responsible for unreasonable delays in its review and approval.
- 2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to City's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the ESCO .
- 3. Schedule Milestones for Submittals. ESCO must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If ESCO fails to submit the submittals in accordance with the Schedule of Submittals, ESCO will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. ESCO will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

7.8 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, ESCO shall have:

- 1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- 3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- 4. determined and verified all information relative to the ESCO's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the ESCO shall give City's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to City's Representative for review and approval of each such variation.

C. Shop Drawings.

- 1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City's Representative the services, materials, and equipment ESCO proposes to provide and to

enable City's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
3. ESCO shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable City's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Representative's Review.

1. City's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals and within 10 days of receipt of submittals. City's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. City's Representative's review and acceptance shall not relieve the ESCO from responsibility for any variation from the requirements of the Contract Documents unless City's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.
- D. The ESCO shall make corrections required by City's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The ESCO shall direct specific attention in writing to revisions other than the corrections called for by City's Representative on previous Submittals.
- E. City will review the first resubmittal of Shop Drawings at its cost. City reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

7.9 Construction Documents.

A. Construction Documents.

1. The A/E shall prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. City's review of the Construction Documents shall be conducted in accordance with the approved Project Schedule with procedures set forth in this Article. Such review shall not relieve the ESCO from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by City of any deviation from, or of the ESCO's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the ESCO and approved by City.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The ESCO will submit the Construction Document packages to City for review in accordance with the agreed upon schedule, unless otherwise approved in writing by City. The Project Schedule shall indicate the times for City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
3. The ESCO shall submit completed packages of the Construction Documents for review by City at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the ESCO and City to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The ESCO will conduct these design meetings with City in accordance with the schedule approved by City. The ESCO will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.
4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to City for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the ESCO by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
2. The ESCO shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the ESCO's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The ESCO shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by City .

C. Field Engineering.

1. The ESCO shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The ESCO shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. City may provide a geotechnical report to ESCO that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by ESCO to form its basis of design. ESCO shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the ESCO's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by ESCO at its sole cost and expense.
2. The ESCO shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the ESCO.

7.10 Dust Control.

- A. ESCO, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

7.11 Air Pollution.

- A. To the extent applicable, ESCO must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Amador County Air Pollution Control District (APCD) and/or California Air Resources Board (CARB). Although the APCD and CARB limits and requirements are more broad, ESCO shall specifically be aware of their application to "portable equipment", which definition is considered by APCD and CARB to include any item of equipment with a fuel-powered engine. ESCO shall indemnify City against any fines or penalties imposed by APCD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by ESCO, its sub-consultants, or others for whom ESCO is responsible under its indemnity obligations provided for in this Agreement.
- B. The ESCO shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. ESCO shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

7.12 Patent Fees and Royalties.

- A. Except as otherwise indicated in the Contract Documents, ESCO shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. To the fullest extent permitted by Applicable Laws, ESCO shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.13 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by ESCO, unless otherwise specified in the Contract Documents.

- A. ESCO shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than City

- B. The ESCO shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as City's responsibility in the Contract Documents.
- C. Before acceptance of the Work, the ESCO shall submit all licenses, permits, certificates of inspection and required approvals to City.

7.14 ESCO Standard of Care.

- A. The ESCO warrants to City that all Design Work will be performed in accordance with the professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The ESCO warrants to City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by City's Representative, the ESCO shall furnish satisfactory evidence of compliance with this Article 7.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of City's Representative.
- B. The ESCO shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The ESCO shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

7.15 Applicable Laws.

- A. ESCO shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither City nor City's Representative shall be responsible for monitoring ESCO's compliance with any Applicable Laws.
- B. If ESCO performs any Work knowing or having reason to know that it is contrary to Applicable Laws, ESCO shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

7.16 Labor Laws and ESCO's Obligations.

A. Hours of Work.

- 1. The ESCO and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.

2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to City. Permissible working hours shall be between 7:00 a.m. to 8:00 p.m. and shall not be changed except with consent of City .
3. Eight (8) hours of work shall constitute a legal day's work. The ESCO and each Subcontractor shall forfeit, as penalty to City, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the ESCO or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
4. If the work done after hours is required by the Contract to be done outside the ESCO's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by City. If City allows the ESCO to do Work outside regular working hours for the ESCO's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment. If the ESCO elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment.
5. No Work on the Project or other activities by or on behalf of the ESCO which presents a hazard or unreasonable disruption to City staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to City staff shall be made by and pursuant to the sole discretion of a representative of City. All Work on the Project or other activities which could present a hazard or unreasonable disruption to City staff shall be performed before or after normal working hours, on weekends, or on a City recognized holiday. Neither the ESCO nor its Subcontractors or anyone working on behalf of the ESCO or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The ESCO, Subcontractors and persons working on behalf of the ESCO shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The ESCO is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the ESCO agrees to fully comply with such Prevailing Wage Laws. City has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at City's office and shall be made available to any interested party on request. the ESCO shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed

to perform the Project available to interested parties upon request, and shall post copies at the ESCO's principal place of business and at the Project site. The ESCO shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the ESCO is hereby advised that in the event that the ESCO fails to pay prevailing wages, the ESCO will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. the ESCO and each Subcontractor shall forfeit as a penalty to City not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the ESCO .
3. The ESCO shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the ESCO and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The ESCO shall certify under penalty of perjury that records maintained and submitted by the ESCO are true and accurate. The ESCO shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. In accordance with Labor Code section 1771.4, the ESCO and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. ESCO shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. Any stop orders issued by the DIR against ESCO or any Subcontractor that affect ESCO's performance of Work, including any delay, shall be ESCO's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered ESCO caused delay subject to any applicable liquidated damages and shall not be compensable by the City. ESCO shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against ESCO or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the ESCO at a time designated by the City. The ESCO shall also provide the following:

- a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the ESCO awarded the Contract or performing the contract shall not be marked or obliterated.
7. In the event of noncompliance with the requirements of this Article 6.17C, the ESCO shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the ESCO shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
8. In submitting the Proposal on this Project, it shall be the ESCO's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
9. The ESCO shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to City .

D. Apprentices.

1. The ESCO's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the ESCO or any Subcontractor. The ESCO shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

E. Nondiscrimination.

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the ESCO and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation,

marital status, or handicap on this Work. The ESCO will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

F. Workers' Compensation.

1. Pursuant to Labor Code section 1860, ESCO shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, ESCO shall sign and file with City the following certification:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

G. Public Works Registration.

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the ESCO and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, ESCO represents that it is aware of the registration requirement and is currently registered with the DIR. ESCO shall maintain a current registration for the duration of the Project. ESCO shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any Subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

7.17 Debarment

- A. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The ESCO shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

7.18 Taxes.

- A. The ESCO shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project. All such costs shall be included in the Contract Price. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the ESCO will be responsible.

7.19 Use of Site and Other Areas.

A. Limitation on Use of Site and Other Areas.

1. The ESCO shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. ESCO shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such City or occupant because of the performance of the Work, ESCO shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

B. Removal of Debris. During the progress of the Work ESCO shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.

C. Cleaning. Prior to Completion of the Work, ESCO shall clean the Site and the Work and make it ready for utilization by City. At the completion of the Work ESCO shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures. ESCO shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ESCO subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

7.20 Utility Usage.

A. Unless otherwise agreed to be provided by the City in writing and defined in the Scope of Work, all temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by ESCO. ESCO shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, ESCO shall remove all temporary distribution systems.

B. ESCO shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. As Work is to be performed in existing City's facilities, ESCO may, to the extent authorized by City in writing, use City's existing utilities.

C. All permanent meters installed shall be listed in the ESCO's name until the Work is accepted.

7.21 Record Drawings.

A. ESCO shall maintain in a safe place at the Site one record copy of the Contract Documents and written interpretations and clarifications in good order and annotated to show changes made during construction. On these, it shall mark all Project conditions, locations, configurations,

and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.

- B. Record drawings shall be accessible to City's Representative at all times during the construction period. Upon Completion of the Project and as a condition of final acceptance, the ESCO shall finalize and deliver a complete set of record drawings to City's Representative. The information submitted by the ESCO will be assumed to be correct, and the ESCO shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

7.22 Safety and Protection.

- A. ESCO shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. ESCO shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. ESCO shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. ESCO shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. ESCO shall comply with the applicable requirements of City's safety programs, if any. The Special Conditions identify any City's safety programs that are applicable to the Work.
- D. ESCO shall inform City and City's Representative of the specific requirements of ESCO's safety program with which City's and City's Representative's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by ESCO, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by ESCO.

- F. ESCO's duties and responsibilities for safety and for protection of the Work shall continue until City files the Notice of Completion in accordance with Contract Documents.

7.23 Safety Representative.

- A. ESCO shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. ESCO shall provide City's Representative the name and contract information of the safety representative in writing. ESCO shall provide City's Representative the name and contact information of the safety representative in writing.

7.24 Hazard Communication Programs.

- A. ESCO shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

7.25 Emergencies.

- A. In an emergency affecting safety of life or of Work or of adjoining property, ESCO, without special instruction or authorization from City, shall act to prevent such threatened loss or injury; and ESCO shall so act, without appeal, if directed or instructed by City. Any compensation claimed by ESCO on account of emergency work shall be determined in accordance with the Contract Documents.

7.26 Continuing The Work.

- A. ESCO shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless City and ESCO otherwise agree in writing.

7.27 Warranty.

- A. The ESCO warrants that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents and that all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date set forth on the certificates of Substantial Completion (the "Warranty Period"). Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and the respective Warranty Periods for such segments of Work will be set forth in the certificates of Substantial Completion. The ESCO shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to City; ordinary wear and tear and abuse excepted.
- B. The foregoing warranty excludes acts of god, improper operation, or normal wear and tear under normal usage under the control of City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set

forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of City to maintain an action for breach of contract against the ESCO. Nothing contained in these Contract Documents pertaining to warranty shall be construed as limiting any other rights City may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

- C. The ESCO further agrees, within thirty (30) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by City, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the ESCO shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If City finds that the ESCO fails to cure or diligently commence to cure the identified defects in the Work, City may elect to have the Work completed at the ESCO's expense and the ESCO will pay costs of the Work upon demand. City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the ESCO's refusal to pay the above costs.
- D. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- E. ESCO's obligations under this Article are in addition to any other obligation or warranty and do not limit City's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.
- F. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of City employees, property, or licensees, City may undertake, at the ESCO's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the ESCO not being in accordance with the requirements of the Contract Documents.

7.28 Superintendent.

- A. The ESCO shall employ a competent Superintendent satisfactory to City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the ESCO and communications given to, and received from, Superintendent shall be binding on the ESCO. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling City to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the ESCO fails to complete the Contract by the Project Completion Date, the ESCO will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the ESCO will provide all key personnel identified in the Contract for the time periods stipulated.

7.29 Project Staffing.

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

City shall have the right, but not the obligation, to require the removal from the Project of the ESCO's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by City, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

7.30 Compliance With State Storm Water Permit for Construction.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. ESCO hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. ESCO shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order No. R8-2009-0030 (NPDES Permit No. CAS 618030), Order No. R9-2009-0002, Order No. R8-2009-0045, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof.
- C. The ESCO shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The ESCO shall be responsible for filing the Notice of Intent and for obtaining the Permit. If applicable, the ESCO shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the ESCO's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address storm water impacts. The ESCO shall comply with all requirements of the State Water Resources Control Board. The ESCO shall include all costs of compliance with specified requirements in the Price. For those Sites where construction activity results in the disturbance of less than one

acre of total land area and/or do not need coverage under the Permit, the ESCO shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order No. R8-2009-0030, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100 and any amendment or renewal thereof.

- D. The ESCO shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The ESCO shall provide copies of all reports and monitoring information to the City's Representative. The ESCO shall comply with the lawful requirements of any applicable municipality, the County, drainage authority, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- E. Failure to comply with laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in this Contract, ESCO agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers. City reserves the right to defend any enforcement action or civil action brought against the City for ESCO's failure to comply with any applicable water quality law, regulation, or policy. ESCO hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.

The ESCO shall prepare and submit to City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the ESCO's projected progress for the forthcoming month.

The ESCO will cooperate with City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

- A. If the ESCO has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the ESCO shall immediately give written notice including all relevant information to City.
- B. The ESCO agrees to insert the substance of this Article 7.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the ESCO, as the case may be, of all relevant information concerning the dispute.

7.34 Documents and Samples At Project Site.

- A. The ESCO shall maintain the following at the Project site:
1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
 2. One copy of the prevailing wage rates applicable to the Project.
 3. The current accepted Project Schedule.
 4. Shop Drawings, Product Data, and Samples.
 5. All other required submittals.

7.35 Cutting, Fitting, and Patching.

- A. The ESCO shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. The ESCO shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The ESCO shall not cut or alter the work of any Separate Contractor without the prior written consent of City's Representative.

7.36 Access to Work.

- A. City, City's Representative, their consultants, and other persons authorized by City will at all times have access to the Work on the Project wherever it is in preparation or progress. The ESCO shall provide safe and proper facilities for such access and for inspection.

7.37 Concealed Or Unknown Conditions.

- A. If conditions are encountered at the Project Site which are (i) concealed physical conditions which differ materially from facts or information of which ESCO has actual knowledge or which are reasonably foreseen or inferable from such knowledge or (ii) unknown physical conditions, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, hereinafter ("Concealed Conditions"), then, ESCO shall give the City notice of such Concealed Conditions within three (3) Days in writing and City shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and if they do actually cause an increase or decrease in Contractor's cost or the time required for performing any part of the Work, the parties shall negotiate a Change Order modifying Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 10 and 11.

7.38 Liability for and Repair of Damaged Work.

- A. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work. ESCO shall be liable for any and all damages and losses to the Work (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to City's issuance of a

Certificate of Substantial Completion. Upon issuance of a Certificate of Substantial completion, Design-Builder shall be released from any damage and losses to that segment of Work identified in the Certificate of Substantial Completion.

7.39 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of City or the requirements with respect to which City is not subject, the ESCO shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The ESCO shall deliver to City all original licenses, permits, and approvals obtained by the ESCO in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

7.40 Environmental Quality Protection

A. Landscape and Vegetation Preservation

1. General. The ESCO shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

B. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the ESCO shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.
3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance

with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

4. False Siting. Any costs or delays incurred by City or the ESCO due to unreasonable or false notification of an endangered plant or animal will be borne by the ESCO.

C. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, ESCO should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the ESCO notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.
2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.
3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the ESCO will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The ESCO shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.
4. ESCO's Liability. Should ESCO, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The ESCO shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. ESCO shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

7.41 Cybersecurity

- A. For the avoidance of doubt, ESCO is not responsible for implementing or maintaining a security program to safeguard and protect the City's computer network, systems, machines, and/or data (collectively, "Systems"), including those Systems on which it runs the Deliverables provided by ESCO, against Cyber Threats ("Security Program"). "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt the City's or the end user's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of the City's Systems, including through malware, hacking, or similar attacks. Failure by the City to maintain an appropriate Security Program in accordance with industry standards may result in the Deliverables or Systems becoming vulnerable to certain Cyber Threats or result in

impaired functionality, and ESCO shall not be liable or responsible for any losses or damages that may result.

7.42 Technical Manuals; Spare Parts.

- A. The ESCO shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City's operation and maintenance staff. The ESCO shall furnish to City six (6) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.
- B. The ESCO shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The ESCO shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

ARTICLE 8: OTHER WORK AT THE PROJECT SITE

8.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to ESCO exclusive occupancy at the Project site. City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The ESCO shall cooperate with City's employees or through other direct contracts, or have other work performed by utility owners (collectively, "Other Contractors"). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the ESCO prior to starting any such other work. The ESCO shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The ESCO shall make necessary revisions to the Project Schedule after such joint review.
- B. ESCO shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. ESCO shall not be entitled to additional compensation from City for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, ESCO shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by City or Separate Contractors, the ESCO shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The ESCO shall promptly report to City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by City's Representative, the ESCO shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the ESCO to so report within a reasonable time after discovering

such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

- C. ESCO shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. ESCO shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. ESCO shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that ESCO may cut or alter others' work with the written consent of City's Representative and the others whose work will be affected.
- D. If the proper execution or results of any part of ESCO's Work depends upon work performed by Separate Contractors, ESCO shall inspect such other work and promptly report to City's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of ESCO's Work. ESCO's failure to so report will constitute an acceptance of such other work as fit and proper for integration with ESCO's Work except for latent defects and deficiencies in such other work.
- E. If any claims are made by Separate Contractors arising out of ESCO's performance of the Work, ESCO shall be responsible to immediately resolve the dispute and indemnify City pursuant to the Contract Documents.
- F. City's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between ESCO and any Separate Contractor shall be submitted to City's Representative for a decision in the matter. ESCO shall comply with direction from City's Representative whose decision on coordination matters will be final.

8.2 For Delays by Others.

- A. By entering into this Contract, ESCO acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of ESCO. ESCO expressly warrants and agrees that ESCO will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, City, or City's Representative. ESCO also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. ESCO will have no remedy, and hereby expressly waives any remedy, against City or City's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

8.3 ESCO's Delay Or Damage.

- A. ESCO shall be liable to City and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of ESCO's wrongful action or inactions.

ARTICLE 9: SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. The ESCO shall not, without the consent of City: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; or permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal, without written notification to City. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the ESCO or its Subcontractors from their obligations under the terms of the Contract. All requests by the ESCO for substitution will be handled through City's Representative.
- B. The ESCO shall submit to City's Representative after selecting Subcontractors, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the ESCO awards a contract for any portion of the Work to a Subcontractor not originally listed in the ESCO's Proposal.
- C. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article, shall be borne solely by the ESCO. The ESCO shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution, unless such a substitution is required by City. In that case, ESCO may be entitled to increases in the Contract Price and/or extension of time.
- D. Any part of the Work on the Project performed for the ESCO by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, to assume toward the ESCO all the obligations and responsibilities which the ESCO assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The ESCO is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

ARTICLE 10: CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

- A. City, without invalidating the Contract, may order changes in the work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and/or Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed under the applicable conditions of the Contract Documents. A

Change Order signed by the ESCO indicates the ESCO's agreement therewith, including any adjustment in the Guaranteed Maximum Price and/or Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the work authorized by the Change Order. No changes in the Work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order. No dispute, disagreement or failure of the Parties to reach agreement on the terms of a Change Order shall relieve the ESCO from the obligation to proceed with performance of the changed work promptly and expeditiously. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

- B. ESCO shall promptly execute changes in the Work as directed in writing by City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the ESCO shall be presented in writing. In the event the parties cannot reach agreement on the terms of a Change Order then the parties can submit the claim for dispute resolution. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by ESCO. ESCO shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.

10.2 Contract Change Order Procedures.

A. City Directive

1. The City may direct changes in the Work, including deletion of Work, by delivering a written work directive. To the extent the work directive results in a change to the Guaranteed Maximum Price and/or Contract Time, ESCO must timely submit a Change Order Request and comply with all Change Order procedures in accordance with this Article. ESCO's failure to timely submit a Change Order Request shall constitute a waiver by ESCO of any adjustment to the Guaranteed Maximum Price and/or Contract Time for work performed under the directive. The City shall not be liable to ESCO for work performed or omitted by ESCO in reliance on verbal orders.
2. The City shall have the right to order changes in the Work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time.

B. ESCO Change Order Requests

1. The ESCO agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum.
2. The ESCO may request changes to the Guaranteed Maximum Price and/or Contract Time for City directed changes in the Work or for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, or caused by

unforeseen or Concealed Conditions if, and only if, the ESCO follows the procedures specified in this Article . Any Work necessary to achieve the agreed upon energy savings and that the ESCO should have reasonably foreseen and included in the Construction Documents, and/or any Work resulting from ambiguities in the Design and Construction Documents shall not be considered Additional Work and the City will not issue a Change Order for said work.

3. If ESCO intends to initiate a Change Order Request, then ESCO shall provide the City with written notice of the underlying facts and circumstances that give rise to the proposed change. ESCO shall submit the notice of change/delay prior to performance of the work and no later than five (5) business Days after the City's work directive or ESCO discovers the circumstances causing the need for the Change Order. A Change Order Request will only be deemed timely submitted if it is submitted prior to incurring any expense and within fourteen (14) Days from ESCO's notice of change/delay.
4. A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Contract Time, if any. The Change Order Request shall include all of the following information (unless inapplicable to the change): A detailed description of the circumstances giving rise to the request; A complete itemized cost proposal, including itemized pricing for Reimbursable Costs; Supporting documentation for all costs; A time impact analysis showing the impact of the delay to the critical path to completion; If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and Certification to the accuracy of the Change Order Request under penalty of perjury. The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The City may demand, and ESCO shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. ESCO shall provide the requested additional information within five (5) Days of the request.
5. If the City denies the Change Order Request or disagrees with the proposal submitted by ESCO, it will notify the ESCO, and the City will provide its opinion of the appropriate change to the Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, the City shall have the right to order the work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time, if any. The City's determination shall become final and binding if the ESCO fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require. If the Change Order includes additions to the Work to be performed, the City shall continue to pay ESCO in accordance with the City's determination of the addition to the GMP, subject to resolution of the Dispute pursuant to Article 15.

C. Change Order Format

1. The City may designate the forms to be used for notices, Change Order Requests, and Change Orders. If so designated, ESCO may only use such forms. ESCO shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The ESCO may not change or modify the City's Change Order form in an attempt to reserve additional rights.

10.3 Determining Adjustments to Compensation.

- A. Limitation on Costs. ESCO shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall be mutually acceptable, negotiated in good faith between the City and ESCO, and shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
- B. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the ESCO and the Agency.
- C. Time and Materials Change Orders. The Agency may direct the ESCO to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the ESCO exceeds at its own risk.
- D. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows
 1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the ESCO establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
 2. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer's invoice.
 3. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies,

or distributors, at the time the work is performed. The ESCO shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the Agency for the total period of use. The Agency shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less.

- a. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - b. All equipment shall, in the opinion of the Agency, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 - c. Before construction equipment is used on any Additional Work, the ESCO shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency, in duplicate, a description of the equipment and its identifying number.
 - d. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.
4. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- a. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the ESCO and Subcontractors at cost only, without mark-up. ESCO shall provide the Agency with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Agency may reasonably request.
 - b. For Work performed by the ESCO's forces the allowed mark-up for overhead and profit combined shall not exceed twenty-five (25%) percent of labor costs, twenty-five percent (25%) of material costs, and twenty-five percent (25%) of the cost of tools and equipment use.
 - c. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed ten percent (10%) of the Subcontractor's Net Cost of the Work to which the ESCO may add up to fifteen percent (15%) of the Subcontractor's Net Cost.
 - d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed five percent (5%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor may add up to an additional five percent (5%) and ESCO

may add up to an additional fifteen percent (15%) of the Net Cost of the lower tier subcontractor.

- e. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Agency exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

5. Documentation of Time-and-Material Costs.

- a. T&M Daily Sheets. ESCO must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Agency's agreement to ESCO's entitlement to the cost.
- b. T&M Summary Sheet. ESCO shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. ESCO's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. ESCO's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in ESCO's waiver for any reimbursement of any costs associated with the Additional Work.
- c. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the ESCO's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
 - d. Overhead Cost. Payroll costs and other compensation of ESCO's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by ESCO whether at the Site or in ESCO's principal office or any branch office, material yard, or shop for general administration of the Work;
 - e. Office Expenses. Expenses of ESCO's principal and branch offices;
 - f. Capital Expenses. Any part of ESCO's capital expenses, including interest on ESCO's capital employed for the Additional Work and charges against ESCO for delinquent payments;
 - g. Negligence. Costs due to the negligence of ESCO or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - h. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of ESCO;

- i. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
- j. Anticipated Lost Profits. Expenses of ESCO associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
- k. Home Office Overhead. Costs derived from the computation of a “home office overhead” rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
- l. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of ESCO, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- m. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

10.4 ESCO’s Wavier of Further Relief.

- A. **ESCO’S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF A CHANGE ORDER REQUEST OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY ESCO OF THE RIGHT TO AN ADJUSTMENT OF THE GUARANTEED MAXIMUM PRICE AND/OR PROJECT COMPLETION DATE ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**
- B. ESCO recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

10.5 Materials and Equipment.

- A. Notwithstanding anything to the contrary contained herein, where the cost for materials or equipment from an Equipment Manufacturer or Supplier increases or decreases greater than five percent (5%) from the NTP Date by no fault of the ESCO, ESCO shall submit a Change Order request to City for an adjustment to the Contract Price for (i) costs that it incurs directly arising out of or relate to said increase in pricing by the Equipment Manufacturer or Supplier or (ii) a deduction in the Contract price to reflect said decrease in costs. In the case that the cost of materials or equipment increases greater than five percent (5%) from the NTP Date, ESCO agrees that overhead and profit will not be applied to that portion of the cost of materials or equipment that exceeds the original cost set forth at the time the NTP is issued. .. City, at its sole option, may reject the Change Order and terminate the Contract for convenience.
- B. In the event of a delay in acquiring said equipment or materials from an Equipment Manufacturer or Supplier and the ESCO can demonstrate conditions 1 through 9 of Section 11.3(A) in the General Conditions, it shall be considered as an Excusable Delay and the Project Completion Date will be extended. Design Build Entity shall not be held to contractual sanctions (including without limitation delay penalties, liquidated damages or other damages) or termination for default for such a Excusable Delay. In the case of the foregoing, the Parties shall negotiate in good faith to execute a Change Order. ESCO shall exercise all reasonable diligence, and the City shall cooperate with ESCO, to ensure said equipment and materials are ordered in a timely manner to prevent an increase to the Contract Price or extend the Project Completion Date.

10.6 City Reservation of Rights.

- A. By signing the Contract, the parties agree that City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - 1. To order changes in the Work, including without limitation: Changes to correct errors or omissions caused by City, if any, in the Contract Documents; Changes resulting from City's decision to change the Work subsequent to execution of the Contract; and Changes due to unforeseen conditions.
 - 2. To suspend Work on the Project or any part thereof.
 - 3. To delay Work on the Project, including without limitation, delays resulting from the failure of City or City's Representative to timely perform any Contract obligation and delays for City's convenience.
- B. If the City exercises any or all of the rights contained herein then ESCO shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time.
- C.. If the City suspends Work for a period of time in excess of 180 days then ESCO shall have the right to terminate the contract and City shall compensate ESCO for all work performed up to the time of termination plus reasonable termination and demobilization costs.

ARTICLE 11: PROJECT COMPLETION DATE

11.1 Progress and Completion.

A. By signing the Contract:

1. The ESCO represents to City that the Project Completion Date is reasonable for performing the Work and that the ESCO is able to perform and complete the Work within the Project Completion Date.
2. The ESCO agrees that City is purchasing the right to have the ESCO present on the Project for the full duration of the time period necessary to complete the Work.

B. The ESCO shall not, except by agreement or instruction of City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by to be furnished by the ESCO. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.

C. The ESCO shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If City's Representative determines and notifies the ESCO that the ESCO's progress is such that the ESCO will not achieve full completion of the Work by the Project Completion Date, the ESCO shall immediately and at no additional cost to City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from City's representative, the ESCO shall immediately notify City's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date.

11.2 Delay.

A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 10 and 11, by signing the Contract, the ESCO agrees: to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project and that the Proposal was made with full knowledge of this risk.

B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the ESCO understands that, except and only to the extent provided otherwise in Articles 10 and 11, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the ESCO from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the ESCO to an adjustment of the Guaranteed Maximum Price.

11.3 Adjustment of The Project Completion Date for Excusable Delay.

A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the ESCO demonstrates that all of the following conditions are met:

1. When the event causing the delay commences, the ESCO has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
2. The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
3. If the Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
4. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
5. The delay is supported by the Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 11.4A(2).
6. Within fourteen (14) Days of the date the ESCO discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the ESCO has not been delayed when the ESCO discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the ESCO submits a timely Change Order Request that meets the requirements of Article 10.
7. The delay is not caused by:
 - a. The financial inability, negligence or fault of the ESCO , a Subcontractor or supplier; or
 - b. An error or omission in the Contract Documents caused by the ESCO or the ESCO's design consultants.
8. The delay arises from causes beyond the control of ESCO. Examples of these causes are : Fire; Strikes, boycotts, or like obstructive actions by employees or labor organizations; Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, pandemic, quarantine restrictions, epidemic, or other severe natural disaster; A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; An error or omission in the Contract Documents caused by City; City's decision to change the Work, where such decision is not the result of any default or misconduct of the ESCO; City's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the ESCO; or The failure of City, City's representative or a Separate

Contractor to timely perform any Contract obligation unless such failure is due to the ESCO's default or misconduct.

- B. If and only if a delay meets all conditions prescribed in this Article, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.
- C. If for any reason one or more of the conditions prescribed in this Article held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date.

11.4 Compensation for Excusable Delay

- A. City's liability to ESCO for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the ESCO in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. The Contract Price shall be equitably adjusted to cover damages caused by unreasonable City delay that impacts the critical path, including delays caused by items that are the responsibility of City pursuant to Government Code section 4215,.
- B. ESCO shall be deemed to waive any right to delay damages unless: ESCO complies with all requirements of the Contract for providing timely notice to the City and timely requests for adjustments to the Price and/or Guaranteed Completion Date and ESCO meets all conditions of an Excusable Delay and is granted an extension of the Guaranteed Completion Date.

11.5 Waiver

- A. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article, including without limitation the requirements of an Excusable Delay, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City from enforcing, such requirements in connection with any present or future delays. The ESCO agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.
- B. City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to ESCO for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by ESCO on or in connection with any other project or anticipated project.

ARTICLE 12: TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

- A. Prompt notice of all Defective Work of which City or City's Representative has actual knowledge will be given to ESCO. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

- A. City, City's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. ESCO shall provide them proper and safe conditions for such access and advise them of ESCO's safety procedures and programs.

12.3 Tests and Inspections.

- A. ESCO shall give City's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Except as provided by the Contract Documents, City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, ESCO shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City's Representative the required certificates of inspection or approval.
- D. ESCO shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City and City's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to ESCO's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City .
- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval, the 8.5 hour working day may be changed to other limits subject to City ordinance.

12.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by ESCO without written concurrence of City's Representative, ESCO shall, if requested by City's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at ESCO's expense unless ESCO has given City's Representative timely notice of ESCO's intention to cover the same and City's Representative has not acted with reasonable promptness in response to such notice.
- C. If ESCO has given City's Representative timely notice of ESCO's intention to cover the work and City's Representative has not acted with reasonable promptness in response to such notice, and City's Representative later considers it necessary or advisable that covered Work be observed by City's Representative or inspected or tested by others, ESCO, at City's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, ESCO shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and City shall be entitled to an appropriate decrease in the GMP.
 - 2. If the uncovered Work is not found to be defective, ESCO shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 City May Stop The Work.

- A. If the Work is defective, City may in its sole discretion order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the ESCO.

12.6 Correction of Defective Work and Warranty Period.

- A. Promptly after receipt of written notice, ESCO shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City or City's Representative, remove it from the Project and replace it with Work that is not defective.
- B. When correcting Defective, ESCO shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.
- C. The ESCO shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Warranty Period and (2) replace, repair, or restore to City's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The ESCO shall promptly commence such correction, replacement, repair, or

- restoration upon notice from City's Representative or City, but in no case later than fourteen (14) Days after receipt of such notice; and the ESCO shall diligently and continuously prosecute such correction to completion. The ESCO shall correct, replace, repair, or restore, such Defective Work, and perform any necessary additional testing, and inspection. The ESCO shall perform corrective Work on the Project at such times and in such a manner as to avoid, to the extent practicable, disruption to City's activities.
- D. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by City or Separate Contractors, the ESCO shall pay to City all reasonable costs of correcting such Defective Work. The ESCO shall replace, repair, or restore to City's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
 - E. The ESCO shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the ESCO nor accepted by City.
 - F. The ESCO's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to City under Article 67 or any other obligation of the ESCO under the Contract Documents. Enforcement of the ESCO's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Establishment of the Warranty Period relates only to the specific obligation of the ESCO to correct the Work on the Project and in no way limits either the ESCO's liability for Defective Work or the time within which proceedings may be commenced to enforce the ESCO's obligations under the Contract Documents.
 - G. If the ESCO fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) business days after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have, correct such failure at the ESCO's sole expense. In such case, City will be entitled to deduct from payments then or thereafter due the ESCO the cost of correcting such failure, including compensation for the additional services and expenses of City's Representative and City's consultants made necessary thereby. If payments then or thereafter due the ESCO are not sufficient to cover such amounts, the ESCO shall pay the additional amount to City.

12.7 Acceptance of Defective Work.

- A. If, after ESCO attempts to repair and/or replace the Defective Work, the City prefers to accept it, City may do so. If the City chooses to accept the Defective Work, then City shall accept the Work as-is, and releases the ESCO from any and all guarantee or warranty obligations related to the Work and the parties shall agree upon a reduction in the Guaranteed Maximum Price to address costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

12.8 City May Correct Defective Work.

- A. If ESCO fails within a reasonable time after written notice from City's Representative to correct or diligently commence to correct Defective Work, or to remove and replace rejected Work as required by City, City may, after seven (7) business days written notice to ESCO, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude ESCO from all or part of the Site, take possession of all or part of the Work and suspend ESCO's services related thereto, and incorporate in the Work all materials and equipment stored at the Site for which City has paid ESCO but which are stored elsewhere. ESCO shall allow City and City's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the defective work.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the defective work will be charged against ESCO, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the GMP.
- D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
- E. If the Change Order is executed after all payments under the Contract have been paid by City, then an appropriate amount will be paid by ESCO to City.
- F. ESCO shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting defective work.

ARTICLE 13: PAYMENTS TO ESCO AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment agreed upon by the parties as a schedule of values, for purposes of payment and tracking progress of the Work only. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the ESCO's Design and Construction Fee shall be shown as a single separate item.

A. Applications for Payments.

- 1. Within ten (10) days of the Date of Commencement, Customer shall make payment to ESCO for project mobilization expenses, including but not limited to any design or engineering fees not already invoiced, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date ("Project Mobilization Payment") in the amount of not to exceed 15% of the implementation contract payment total of the Contract Price.

2. By the twenty-fifth (25th) day of each month ESCO shall submit to City's Representative for review an Application for Payment filled out and signed by ESCO covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
3. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the ESCO on account of that portion of the Work for which the ESCO has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.
4. To compute the amount of each progress payment, the amount of each progress payment shall first include: That portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of Work by the share of the GMP allocated to that portion of the Work in the most recent schedule of values; That portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the City, suitably stored off the site at a location agreed upon in writing; That portion of Change Orders reasonably justified; and The ESCO's Design and Construction Fee.
5. The amount of each progress payment shall then be reduced by: The aggregate of previous payments made by the City; The amount for failure of the ESCO to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the ESCO); The shortfall, if any, indicated by the ESCO in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's auditors in such documentation; and Retention.
6. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the ESCO stating that it has paid all amounts due on account of the Work paid by City in the prior Applications for Payment.

B. Review of Applications.

1. Within seven (7) days of receipt of a Payment Application, City's Representative will either indicate in writing a recommendation of payment to City or return the Application for Payment to ESCO indicating in writing City's Representative's reasons for refusing to recommend payment. In the latter case, ESCO may make the necessary corrections and resubmit the Application for Payment.

2. In taking action on the ESCO's Applications for Payment, the City shall be entitled to rely on the accuracy and completeness of the information furnished by the ESCO and shall not be deemed to represent that the City has made a detailed examination, audit or arithmetic verification of the documentation submitted in support of the Application for Payment or other supporting data; that the City has made exhaustive or continuous on-site inspections; or that the City has made examinations to ascertain how or for what purposes the ESCO has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's auditors acting in the sole interest of the City.
3. By recommending any such payment City's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to City's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle ESCO to be paid additionally by City or entitle City to withhold payment to ESCO.
4. Neither City's Representative's review of ESCO's Work for the purposes of recommending payments nor City's Representative's recommendation of any payment, including final payment, will impose responsibility on City's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for ESCO's failure to comply with Applicable Laws applicable to ESCO's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes ESCO has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to City free and clear of any Liens.
5. City's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. City retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in City's opinion to protect City from loss.

C. Payment Becomes Due.

1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to City's Representative, and subject to City's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by City to ESCO.

D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Contract Documents, City will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and ESCO shall be entitled to payment of the retainage amount corresponding to the value of any segment of Work that receives a certificate of Substantial Completion. Payment shall be released upon issuance of said certificate of Substantial Completion.
2. Pursuant to Public Contract Code section 22300, ESCO may substitute securities for any moneys withheld as a retention by City to ensure performance under the Contract. At the request and expense of ESCO, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to ESCO. Upon satisfactory completion of the Contract, the securities shall be returned to ESCO .
3. Alternatively, ESCO may request, and City shall make payment of retentions earned directly to the escrow agent selected by the ESCO. At the expense of ESCO, ESCO may direct the investment of the payments into securities and ESCO shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by ESCO. Upon satisfactory completion of the Contract, ESCO shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when City authorizes the escrow agent to release these funds to the ESCO, pursuant to the terms of Public Contract Code section 22300.
4. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.
5. ESCO shall be the beneficial City of any securities substituted for moneys withheld and shall receive any interest thereon.
6. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. City's Reduction in Recommended Payment.

1. In addition to reductions recommended by City's Representative, City may refuse to make payment of the full amount recommended by City's Representative because:
 - a. Claims have been made against City on account of ESCO's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.
 - d. Failure of ESCO to make proper payments to its subcontractors or suppliers.

- e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
- f. Damage to another contractor or third party.
- g. Amounts which may be due the City for claims against ESCO .
- h. Failure of ESCO to keep the record (“as-built”) drawings up to date.
- i. Failure to provide updates on the construction schedule.
- j. Site cleanup.
- k. Failure of the ESCO to comply with requirements of the Contract Documents.
- l. Liquidated Damages.

Upon completion of the Contract, City will reduce the final Contract Price to reflect costs charged to the ESCO, back charges or payments withheld pursuant to the Contract Documents.

13.2 ESCO’s Warranty of Title.

- A. ESCO warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

- A. City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the ESCO of its responsibilities under the Contract.

13.4 Final Inspection.

- A. Upon written notice from ESCO that the entire Work is complete, City’s Representative will promptly make a final inspection with City and ESCO and will notify ESCO in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. ESCO shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

- A. After ESCO has, in the opinion of City’s Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, City shall execute and

file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, ESCO may submit a final accounting for the cost of the Work and a final Application for Payment. Final payment, constituting the entire unpaid balance of the Contract Price.
2. Prior to Final Payment, the City may conduct an audit of the Work or notify the ESCO that it will not conduct an audit and issue a final Certificate for Payment. If the City conducts an audit of the Work, the City will either issue to the ESCO a final Certificate for Payment, or notify the ESCO in writing of the City's reasons for withholding a certificate. If the City's auditors report the cost of the Work as substantiated by the ESCO's final accounting to be less than claimed by the ESCO, the ESCO shall be entitled to make a claim. Pending a final resolution of the disputed amount, the City shall pay the ESCO the amount certified in the City's final Certificate for Payment.
3. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;
 - b. consent of the surety to final payment;
 - c. a fully completed Conditional Waiver and Release on Final Payment.

B. City's Representative's Review of Application and Acceptance.

1. If, on the basis of City's Representative's observation of the Work during construction and final inspection, and City's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, City's Representative is satisfied that the Work has been completed and ESCO has satisfied all other requirements for final payment, City's Representative will indicate in writing City's Representative's recommendation of payment and present the Application for Payment to City for payment. Otherwise, City's Representative will return the Application for Payment to ESCO, indicating in writing the reasons for refusing to recommend final payment, in which case ESCO shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to City's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by City's Representative, less any sum City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by City to ESCO.

13.7 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by ESCO against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

ARTICLE 14: SUSPENSION OF WORK AND COMPLETION

14.1 City May Suspend Work.

- A. City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to ESCO. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. ESCO shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, ESCO shall, unless the notice requires otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 - 3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 - 4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, ESCO shall be granted an adjustment in the GMP for ESCO's actual costs associated with the demobilized condition of the and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from ESCO's non-compliance with the requirements of the Contract. Further, in the event said suspension continues in excess of 180 days, then ESCO may elect to terminate for convenience.

14.2 City May Terminate for Cause.

- A. City may, without prejudice to any other right or remedy, serve written notice upon ESCO of its intention to terminate this Contract in whole or in part if the ESCO: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of City; or (ix) violates any of the provisions of the Contract Documents.

B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within thirty (30) Days after the service of such notice, ESCO resolves the circumstances giving rise to the Notice of Default to City's reasonable satisfaction, or makes arrangements reasonably acceptable to City for the required corrective action, City may terminate this Contract. In such case, ESCO shall not be entitled to receive any further payment until the Work has been finished. City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. ESCO and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Work. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the ESCO as may be on the Site.

14.3 Design Builder May Suspend or Terminate for Cause.

- A. ESCO may terminate the Contract or suspend the performance of the Work by providing written Notice to the City if: (i) the City repeatedly or materially fails, refuses or neglects to fulfill its obligations under the Contract or fails to make any undisputed payment(s) to ESCO as and when due hereunder, (ii) ESCO has provided written Notice of default to the City detailing the alleged failure, refusal, neglect, or payment default, and (iii) within thirty (30) days of the City's receipt of such written Notice, the City has neither cured nor commenced and diligently continued efforts to cure such default.

14.4 City May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, City may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to ESCO. The Notice of Termination shall specify that the termination is for the convenience of City, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by City, the ESCO shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 1. Stop Work as specified in the Notice.
 2. Complete any Work specified in the Notice of Termination in accordance with the Contract Documents.
 3. Leave the Site and any other property upon which the ESCO was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety. ESCO shall be relieved of this requirement in the event that Work necessary to ensure safety is not specified and authorized in the Notice of Termination.
 4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
 5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.

6. Submit to City, within thirty (30) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the ESCO for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the ESCO solely as a result of City's exercise of its right to terminate this Contract pursuant to this clause, which costs the ESCO is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience."
7. City's total liability to ESCO by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The actual cost to the ESCO for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Deductions shall be made for cost of materials to be retained by the ESCO (provided the materials may be reused for other projects or returned to the supplier), cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
 - b. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
 - d. Reasonable costs to the ESCO of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
 - e. A reasonable allowance for the ESCO's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall City be liable for unreasonable costs incurred by the ESCO or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the ESCO's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
9. City shall have no obligation to pay the ESCO under this Article unless and until the ESCO provides City with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

10. In arriving at the amount due the ESCO under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

- a. All unliquidated advances or other payments on account previously made to the ESCO, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
- b. Any claim City may have against the ESCO in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the ESCO and not otherwise recovered by or credited to City.

ESCO shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order ESCO to cease Work until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.

12. If City terminates ESCO for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, ESCO shall be entitled to receive only the amounts payable under this section, and ESCO specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15: CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Procedure for Resolving Claims

- A. ESCO shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, including but not limited to all requirements of Article 10 and Article 15.1, as a prerequisite to filing any Claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely submit a Change Order Request, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

- C. Claims. For purposes of this Article, "Claim" means a separate demand by the ESCO for (1) a time extension, including without limitation relief from damages or penalties for delay assessed by City, (2) payment of money or damages arising from Work done by or on behalf of the ESCO and payment of which is not otherwise expressly provided for or the ESCO is not otherwise entitled, or (3) payment of an amount which is disputed by City. A "Claim" does not include any demand for payment for which the ESCO has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until the ESCO completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, and ESCO's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16-point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. The ESCO will submit the claim justification in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to the Claim
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested
 7. Cover letter and certification of validity of the Claim

- F. **City Response to Claim.** Upon receipt of a Claim pursuant to this Article, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after City issues its written response.
1. If City needs approval from its governing body to provide ESCO a written statement as set forth above, 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, City shall have up to three (3) days following the next publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide ESCO a written statement identifying the disputed portion and the undisputed portion of the Claim.
 2. City may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the Claim or relating to defenses or Claims City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the ESCO. City's written response shall be submitted 30 days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the ESCO to produce the additional information, whichever is greater.
- G. **Meet and Confer Conference.** If the ESCO disputes City's response, or if City fails to respond within the statutory time period(s), the ESCO may so notify City, in writing, within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, City shall schedule a meet and confer conference within 30 Days.
- H. **Mediation.** 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 City shall provide the ESCO 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 City issues its written statement. Any disputed portion of the Claim, as identified by the ESCO in writing, shall be submitted to nonbinding mediation, with the City and the ESCO sharing the associated costs equally. The public entity and ESCO shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. 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.
 2. For purposes of this Article, 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 Article.

3. Unless otherwise agreed to by the City and the ESCO 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.
 4. The mediation shall be held no earlier than the date the ESCO completes the Work or the date that the ESCO last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the ESCO must file a Claim pursuant to 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 prior to initiating litigation. 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 ESCO submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. 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.
 2. 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- K. Government Code Claim Procedures.
1. 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 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the ESCO must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.
3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by ESCO. If ESCO does not comply with the Government Code claim procedure or the prerequisite contractual requirements, ESCO may not file any action against the City .
4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the ESCO last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to ESCO or that should reasonably be known to ESCO excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

L. Non-Waiver. The City's failure to respond to a Claim from the ESCO within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

15.2 Litigation.

- A. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

15.3. Duty to Continue Performance.

- A. Unless provided to the contrary in the Contract Documents, ESCO shall continue to perform the Work and City shall continue to satisfy its payment obligations to ESCO, pending the final resolution of any dispute or disagreement between ESCO and City .

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 Limitations On City's Responsibilities.

- A. City shall not supervise, direct, or have control or authority over, nor be responsible for, the ESCO's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the ESCO to comply with Applicable Laws applicable to the performance of the Work. City will not be responsible for the ESCO's failure to perform the Project in accordance with the Contract Documents.

16.2 Successors

- A. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The ESCO may not either voluntarily or by action of law, assign any obligation assumed by the ESCO hereunder without the prior written consent of the City.

16.3 Cumulative Remedies.

- A. Except where explicitly stated otherwise, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

16.4 Survival of Obligations.

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the ESCO.

16.5 Controlling Law.

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

16.6 Jurisdiction; Venue.

- A. The ESCO and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Riverside County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

- 16.7 No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by ESCO or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

16.8 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

16.9 City's Right to Audit.

- A. The ESCO shall make available to City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to City. If the ESCO submits a Change Order Request or a Claim to City, City shall have the right to audit the ESCO's books, records, documents, and other evidence to the extent they are relevant.
- B. In accordance with Government Code Section 8546.7, records of both City and the ESCO shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

16.10 Assignment.

- A. ESCO shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of City, such prior written consent shall not be unreasonably withheld. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.
- B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body 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 Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

16.11 All Legal Provisions Included.

- A. ESCO shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If ESCO observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If ESCO performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

- B. ESCO shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. ESCO shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. ESCO acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in the Guaranteed Maximum Price or Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder. In the event an Applicable Law takes effect after execution of this Contract, and is inserted herein, and impacts the schedule or costs of the Project then either party may request changes to the GMP or Contract Time resulting from such new Applicable Law.
- F. Ethics. Each Party shall comply in all respects with all Applicable Laws governing the duties, obligations, and business practices of that Party. Neither Party shall take any action in violation of any Applicable Laws that could result in liability being imposed on the other Party. In the event the City has concerns related to ethics, compliance or ESCO’s Principles of Responsibility, and/or any potential violations of these policies, the City is welcome to make use of ESCO’s GreenLine. The GreenLine is ESCO’s global helpline for external stakeholders. It is a confidential channel through which public agencies can ask questions and raise concerns. Reports can be made using the following link:
<https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.
- G. Export Control. The products, software, services, information, other deliverables and/or the technologies embedded therein (hereinafter referred to as “Deliverables”) provided by ESCO under this Contract contain or may contain components and/or technologies from the United States of America (“US”), the European Union (“EU”) and/or other nations. The City acknowledges and agrees that the assignment and/or usage of Deliverables under this Contract shall fully comply with applicable US, EU and other national and international export control laws and/or regulations. Unless any applicable export licenses have been obtained from the relevant authority and the ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination or party (including without limitation to any individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. the City also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems, unmanned air vehicles, and/or nuclear weapons delivery systems, nor will they be used in any design, development, production or use for any weapons

(which may include, without limitation, chemical, biological or nuclear weapons). If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit ESCO from fulfilling any order, or would in ESCO's judgment otherwise expose ESCO to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, ESCO shall be excused from all obligations under such order and/or this Contract.

16.12 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the ESCO's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.13 Noise.

- A. The ESCO shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The ESCO shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the ESCO shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the ESCO.

16.14 Change In Name Or Nature of ESCO's Legal Entity.

- A. Should a change be contemplated in the name or nature of the ESCO's legal entity, the ESCO shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the ESCO's name or nature will affect City's rights under the Contract Documents, including but not limited to the bonds and insurance.

16.15 Complete Contract.

- A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the

subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

16.16 Notice of Third-Party Claims.

- A. Pursuant to Public Contract Code section 9201, City shall provide ESCO with timely notification of the receipt of any third-party claim relating to the Contract.

16.17 Signature Authority. The individuals executing this Contract and the instruments referenced herein on behalf of ESCO each represent and warrant that they have the legal power, right and actual authority to bind ESCO to the terms and conditions hereof and thereof.

16.18 Severability of Provisions.

- A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

16.19 Correction of Errors and Omissions.

- A. The ESCO agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to City .

16.20 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

**ATTACHMENT 3
PERFORMANCE BOND**

WHEREAS the CITY OF SUTTER CREEK (also herein "City") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the ESCO is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned ESCO and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the ESCO, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if the Design Build Entity shall fail to make full, complete, and satisfactory repair and replacements, and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

Whenever ESCO shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City shall be entitled to approve any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the ESCO, such approval shall not be unreasonably withheld by City .

Where ESCO has been terminated for default by the City, the Surety shall not utilize ESCO in completing the Project nor shall Surety accept a bid from ESCO for completion of the Project unless the City, when declaring the ESCO in default, notifies Surety of the City's written agreement to have ESCO's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including, but not limited to, the provisions of sections 2819 and 2845 of the California Civil Code.

Notwithstanding any provision to the contrary herein, this Performance Bond shall guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, or (2) any support or maintenance service agreement.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

ESCO/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

ATTACHMENT 4
PAYMENT BOND (LABOR AND MATERIALS)

WHEREAS the **CITY OF SUTTER CREEK** (hereinafter "Obligee") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in that certain contract for the said Public Work dated _____, (hereinafter the "Public Work Contract"); and

WHEREAS, the ESCO is required to furnish a bond in connection with said Public Work Contract providing that if the ESCO or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we _____, the undersigned ESCO (s), as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the ESCO, the sum of _____ Dollars, \$_____, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all

other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, and necessary disbursements. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day
on _____, 20____.

ESCO

By:_____
President

Surety

By:_____

Attorney-in-Fact

STATE OF CALIFORNIA)
)
 COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

 Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

 Signature

 Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

STATE OF CALIFORNIA)
)
 COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to

the within instrument as the Attorney-in-Fact of the _____
(surety) and acknowledged to me that he subscribed the name of the
_____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal was
then _____ of said corporation; that I know his signature,
and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for
and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company
may be attached hereto.**

ATTACHMENT 5 HOURLY RATE SCHEDULE

Attachment 5 to this Contract – Hourly Rate Schedule	
Schneider Electric Billing Classification	Hourly Rate
Vice President	\$ 350.00
Program Manager	\$ 250.00
Senior Project Manager	\$ 250.00
Senior Principal	\$ 270.00
Wastewater Technical Project Manager	\$ 250.00
Mechanical Engineer	\$ 215.00
Senior Electrical Engineer	\$ 225.00
Senior Energy Engineer	\$ 225.00
SCADA Integration Manager	\$ 215.00
Structural Engineer	\$ 225.00
Pre-Construction Manager	\$ 250.00
Senior Cost Estimator	\$ 195.00
Solar & Microgrid Technical Project Manager	\$ 250.00
Solar Solutions Manager	\$ 220.00
Senior Microgrid Solutions Architect	\$ 215.00
National Solar Developer	\$ 175.00
Regional Energy Engineering Manager	\$ 205.00
MEP Design Engineering Manager	\$ 195.00
Construction Project Manager	\$ 225.00
Project Superintendent	\$ 180.00
Commissioning & Quality Control Manager	\$ 250.00
Scheduler	\$ 165.00
Client Services/ M&V Manager	\$ 150.00
Finance Director	\$ 145.00
Rebates and Grant Writing/ Manager	\$ 140.00
Marketing Specialist	\$ 120.00

ATTACHMENT 6
WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of ESCO:_____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 6 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

ATTACHMENT 7

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

ESCO hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of ESCO's work on the Project for City.

ESCO further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the City’s determination. The costs of any such tests shall be paid by ESCO if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at ESCO's expense at no additional cost to the City.

ESCO has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of ESCO Design-Build Entity: _____

Signature: _____

Print Name: _____

Title: _____

Attachment 8

Wastewater Treatment Performance Guarantee

1. General

ESCO warrants that the Project, once completed and placed into operation, will be capable of treating wastewater and producing effluent meeting the applicable effluent limitations established under the Facility's NPDES and recycled water discharge permits, as such limits may be confirmed during the Design Phase and incorporated into the final design basis.

2. Basis of Guarantee

The performance guarantee is based on the influent flow and loading design criteria used in ESCO's final design (to be documented in the approved Basis of Design Report). The guarantee applies under Average and Peak Flow conditions and corresponding design loadings under both dry and wet weather conditions. The guarantee applies to the entire wastewater treatment process including pretreatment/screening, biological treatment, membrane filtration, effluent disinfection, and sludge dewatering.

3. Demonstration of Compliance

3.1 Performance Test Plan.

At least thirty (30) days prior to testing, ESCO shall prepare and submit a Performance Test Plan for review and approval by the Owner. The Plan shall include:

- a. Test schedule and operating conditions
- b. Sampling and monitoring locations and frequency
- c. Analytical methods and QA/QC procedures
- d. Data reporting format
- e. Pass/fail criteria tied to effluent limits
- f. Staffing and monitoring plan

Owner/Engineer approval is a condition precedent to starting the Performance Test.

The following shall be deemed complete prior to initiating Performance Testing:

- a. Substantial completion of construction
- b. Successful completion of all facility acceptance testing
- c. All Operations and Maintenance manuals submitted and accepted
- d. Comprehensive training of City operations staff completed
- e. All spare parts and special tools required for routine operation and maintenance delivered
- f. All required temporary or final permits for operation, including NPDES coverage and Title 22 approval, are in place or conditionally authorized to allow testing under regulatory oversight
- g. Permanent power, water supply, chemical systems, and other supporting utilities are fully installed, tested, and available for use

- h. City operations staff are available and scheduled to operate alongside ESCO personnel during the Performance Test to gain hands-on training and experience

3.2 Performance Testing Protocol.

Within thirty (30) days after Substantial Completion, ESCO shall initiate a Performance Test of the completed wastewater treatment facilities. The Performance Test shall:

- a. Be conducted over a minimum continuous thirty (30) day operating period,
- b. Be performed under average dry weather flow conditions at or near design loadings, as documented in the approved Basis of Design Report,
- c. Include influent and effluent sampling and analysis sufficient to demonstrate compliance with all applicable permit effluent limits, including but not limited to BOD, TSS, turbidity, coliform, pH, and disinfection criteria,
- d. Be performed in accordance with industry-recognized quality assurance/quality control practices and permit requirements.

3.3 Sampling and Monitoring.

- a. Sampling frequency, analytical methods, and reporting protocols shall be consistent with the Facility's discharge permit monitoring and reporting requirements.
- b. At a minimum, daily monitoring of critical parameters (BOD, TSS, turbidity, and coliform) shall be performed during the Performance Test.
- c. All samples shall be analyzed by a California ELAP-certified laboratory, unless otherwise agreed in writing.

3.4 Reporting.

At the conclusion of the Performance Test, ESCO shall prepare and submit a Performance Test Report including:

- a. Summary of operating conditions during the test period,
- b. Tabulation of all influent and effluent monitoring data,
- c. Comparison of results to guaranteed effluent limits,
- d. Identification of any exceedances and corrective actions taken,
- e. Certification by ESCO's design engineer of record that the test demonstrates the facility's capability to reliably meet the guaranteed performance.

3.5 Failure and Retest.

- a. If the Performance Test demonstrates non-compliance with any guaranteed effluent limit, ESCO shall, at its sole cost, promptly implement such modifications, adjustments, or additions to the treatment process as necessary to achieve compliance.
- b. Following completion of such modifications, ESCO shall repeat the Performance Test for a full thirty (30) day period, under the same terms as above.
- c. This process shall be repeated as necessary until the facility demonstrates compliance.

3.6 Warranty Terms.

The Performance Guarantee Warranty Period shall commence upon successful completion and City acceptance of the Performance Test. The following warranty requirements shall be proposed

by the ESCO for consideration by the City, and negotiated in good faith, at the completion of Phase 2:

- a. Duration of the Warranty Period.
- b. Corrective actions required to achieve compliance, in the event of noncompliance.
- c. Criteria for extension of the Warranty Period if repeated failures are encountered.
- d. Exclusions.

ATTACHMENT 9

GRANT / LOAN COMPLIANCE RIDER

This Rider is attached to and made part of the Design-Build Energy Services Contract between the City of Sutter Creek (“City”) and Schneider Electric Buildings Americas, Inc. (“ESCO”).

1. **Purpose.** This Rider is intended to incorporate and flow down the terms of any state or federal grant, loan, or funding assistance secured by the City for the Project.
2. **Incorporated Provisions.** ESCO shall comply with the following, as applicable to the funding source:
 - **Federal Cross-Cutting Requirements** (2 CFR Part 200, Subpart D, Appendix II, and related guidance).
 - **Labor Standards** (Davis-Bacon Act, Copeland Act, Contract Work Hours and Safety Standards Act, or California Labor Code prevailing wage provisions).
 - **Domestic Preference** (Build America, Buy America Act, 49 U.S.C. § 5323(j), or equivalent).
 - **Civil Rights / Equal Opportunity** (Title VI, ADA, Section 504 of the Rehabilitation Act, Executive Order 11246, etc.).
 - **Environmental and Permitting Compliance** (CEQA, NEPA, EPA SRF cross-cutters, etc.).
 - **Debarment and Suspension Certification** (2 CFR Part 180).
 - **Audit and Record Retention** (2 CFR §§ 200.334–200.338, minimum three years after final payment).
 - **Other Agency-Specific Provisions** as may be required by the funding agreement (examples: USDA RD Guide 27, EPA SRF loan conditions, CDBG contract provisions).
3. **Supersession.** Where this Rider conflicts with the base Agreement, the provisions of this Rider shall govern, but only to the extent necessary to comply with funding agency requirements.
4. **Amendments.** The City may replace this Rider with the funding agency’s standard form at the time of award. ESCO shall execute such replacement Rider as a condition of proceeding with the Work.

City of Sutter Creek

Design/Build Contract for

**ENERGY SERVICES - TREATMENT
PLANT PROJECT**

**City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685**

DESIGN-BUILD ENERGY SERVICES CONTRACT BETWEEN CITY OF SUTTER CREEK AND SCHNEIDER ELECTRIC BUILDINGS AMERICA, INC. FOR THE WASTEWATER TREATMENT AND ENERGY RELATED CAPITAL IMPROVEMENTS PROJECT

This Design-Build Energy Services Contract (“Contract”) is made and entered into this ____ day of _____, 2025 by and between the **City of Sutter Creek**, a California municipal corporation (hereinafter referred to as “City”) and **Schneider Electric Buildings Americas, Inc.**, with its principal place of business at 1660 Scenic Avenue, Costa Mesa, CA 92626 (hereinafter referred to as “ESCO”) for the purpose of designing and constructing the Wastewater Treatment And Energy Related Capital Improvements Project (“Project”). City and ESCO are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

- A. The City’s mission is to collect, treat, and reuse wastewater in a safe and cost-effective manner as prescribed by state and federal law.
- B. In order to serve its customers, the City is dedicated to forward thinking in planning for facility and operational needs, and achieving maximum cost efficiency and effectiveness.
- C. The City therefore desires to strategically invest and reinvest in operational cost reductions into a sustainable facility with technology enhancements that will lead to compliance with regulatory authorities, minimal operating costs and streamlined operations. To achieve these goals, the City intends to engage ESCO to perform a comprehensive audit of existing facilities for potential energy cost and operational cost savings, develop conceptual and final designs for improvements, and implement physical changes to effectuate energy cost and operational savings.
- D. Because of the unique nature of the Project, City desires to engage a single design-build entity to engineer and implement the Project as authorized by California Government Code section 4217.10 *et seq.*
- E. ESCO desires to perform and assume responsibility for the provision of design and construction services, and such other services as required by the City on the terms and conditions set forth in this Contract. ESCO represents that it is experienced in providing professional planning, design, and construction services to public entities, is appropriately licensed in the State of California to perform such services, and is familiar with the scope of work.

TERMS

1. Incorporation of Documents.

The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Design-Build Energy Services Contract
- (b) Attachment 1 to this Contract – Scope of Services
 - (A) Schedule A - Scope of Work
 - (B) Schedule B – Project Implementation
 - ~~(C) Schedule C – Project Performance~~
- (d) Attachment 3 to this Contract – Performance Bond
- (e) Attachment 4 to this Contract – Payment Bond
- (f) Attachment 5 to this Contract – Hourly Rate Schedule
- (g) Attachment 6 to this Contract - Workers Compensation Certification
- (h) Attachment 7 to this Contract – Asbestos & Other Hazardous Materials Certification
- (i) Attachment 8 to this Contract – Wastewater Treatment Performance Guarantee
- ~~(j) Attachment 9 to this Contract – Grant/Loan Compliance Rider~~
- ~~(k)~~ (k) Completed and approved Construction Documents in accordance with the General Conditions

2. The ESCO’s Basic Obligations and Compensation.

The ESCO promises and agrees, at its own cost and expense, to furnish to City all design and construction services, labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work” or “Work”). The Scope of Work shall consist of four phases: Phase 1 Preliminary Assessment (Project Scoping), Phase 2a Design - Investment Grade Development (Mid-Term Meeting), Phase 2b Design Development (Final Planning), and Phase 3 Construction. The Scope of Work, including all four phases, is more particularly described in Attachment 1. The City shall issue a Notice to Proceed for each Phase.

(a) Phase 1 – Preliminary Assessment

The ESCO shall commence Phase 1 after receipt of City’s Notice to Proceed and complete Phase 1 work within 240 Days of the Notice to Proceed date, unless mutually agreed by both parties to extend. After ESCO fulfills all its Preliminary Assessment responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Preliminary Assessment deliverables whether to terminate the Contract for convenience or move to Phase 2. City shall notify ESCO in writing of its decision. At a scoping meeting to be held as part of this phase, ESCO shall confirm for City whether recommended improvement measures are viable and financial benefits can be derived by their implementation and guaranteed in an amount sufficient to cover

all costs associated with the Project. This includes the ESCO providing a rough order of magnitude of the Price Proposal.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, City shall pay ESCO only for fees and expenses incurred in this Phase 1 at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, and data shall become the exclusive property of City. The total cost for Phase 1 shall not exceed \$543,107 without written approval of the City.

(b) Phase 2A – Mid-Term Investment Grade Audit (IGA)

The ESCO shall commence Phase 2A after receipt of City's Notice to Proceed and complete Phase 2A work within a to be determined period based of Phase 1 deliverable and scope agreement. After ESCO fulfills all of its Mid-Term IGA phase responsibilities as noted in Attachment 1, including providing a reasonable estimate of the Price Proposal based on the most current developed Construction Documents, City must determine within sixty (60) days of receiving all Mid-Term IGA deliverables whether to terminate the Contract for convenience or move to Phase 2B. City shall notify ESCO in writing of its decision.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phase 1, City shall pay ESCO only for design fees and expenses incurred in this Phase 2A at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of City.

(c) Phase 2B – Final IGA

The ESCO shall commence Phase 2B after receipt of City's Notice to Proceed and complete Phase 2B work within a to be determined period based of Phase 2A deliverable and scope agreement. After ESCO fulfills all of its Final IGA responsibilities as noted in Attachment 1, City must determine within sixty (60) days of receiving all Final IGA deliverables whether to terminate the Contract for convenience or move to Phase 3.

If ESCO complies with all obligations under the Contract and City terminates the Contract for convenience, in addition to fees City paid for Phases 1 and 2A, City shall pay ESCO only for design fees and expenses incurred in this Phase 2B at the rates set forth in Attachment 5. The City will not compensate ESCO for any work required for future phases. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of City upon receipt of payment. The deliverables shall include the Construction Documents. The total cost for Phase 2 shall not exceed \$2.2M without written approval of the City

At or before the Final Planning Meeting, ESCO shall present a final scope and price ("Price Proposal") to City in accordance with this Agreement which will include proposed terms for a contractually binding Performance Guarantee in accordance with framework in attachment

#8. In addition to Phase 3 costs, the Price Proposal shall include all design fees and expenses from phases 1, 2A and 2B (subject to the not-to-exceed limits) and shall be a firm offer valid for ninety (90) days from submission. The Price Proposal shall include a schedule of values for the Work, including without limitation a complete breakdown of costs of labor, materials, tools and equipment (“Net Cost”) and a statement of their basis, Mark-Up fees for combined overhead and profit, which shall not exceed 25% of the Net Cost of the Work, and taxes which are applicable at the time the Price Proposal is established. Upon receipt of ESCO’s Price Proposal, the City may enter into negotiations with ESCO to achieve a mutually acceptable basis on which to proceed. In the event the City discovers any inconsistencies or inaccuracies in the Price Proposal, the City shall promptly give written notice to ESCO, who shall make appropriate adjustments to the Price Proposal, its basis, or both.

(d) Option to Procure Long-Lead Time Materials.

During the performance of Phases 1, 2A and/or 2B, but prior to completion of Phase 2B, ESCO may submit one or more proposals to the City for the procurement of certain materials and equipment that have long manufacturing and/or delivery lead times (“Long-Lead Time Material Procurement Proposal(s)”). The pricing in each Long-Lead Time Material Procurement Proposal shall remain valid for sixty (60) days. The City may accept a Long-Lead Time Material Procurement Proposal by issuing a Long Lead-Time Material Notice to Proceed (an “LLTM-NTP”) authorizing and directing ESCO to order those materials and equipment at the price specified in the particular Procurement Proposal.

Concurrently with the issuance of each LLTM-NTP, the City shall allocate, appropriate, and encumber additional funds sufficient to pay for the Long Lead-Time Materials to be procured pursuant to that LLTM-NTP.

Each LLTM-NTP will contain a schedule of values delineating the items to be completed pursuant to each Procurement Proposal. Notwithstanding anything to the contrary contained herein, beginning on the date that is one (1) month following the effective date of an LLTM-NTP, ESCO shall provide monthly invoices to the City seeking payment for the Long Lead-Time Materials procured in the prior month (based on the percentage completion of items delineated on the applicable schedule of values). All such payments shall be separate and apart from, and not included in, the Contract Price. Payment by the City is due within thirty (30) days of the date of each invoice. If any payment is over thirty (30) days late from the due date stated on the invoice, ESCO may charge interest of one percent (1%) of the amount(s) owed for each month overdue and/or may terminate the Agreement.

Upon payment for the solar and battery storage Long Lead-Time Materials, title to the equipment purchased as a result of an LLTM-NTP shall pass to the City and the City shall be responsible for the risk of loss of said equipment, including but not limited to damage, destruction or theft thereof, unless and until a Contract Amendment for the Construction Phase is entered into for installation of said equipment by ESCO. Other Long Lead-Time Materials Procurement Proposals will specify terms of ownership, financing, and storage for that specific materials or equipment.

(e) Phase 3 – Construction Phase

If the City elects to proceed to Phase 3 and is satisfied with ESCO's Price Proposal, then City shall issue a formal Contract Amendment ("Contract Amendment" or "Amendment") establishing the Scope of Work for the Construction Phase, the Contract Price and the Project Completion Date. Approval of the Contract Amendment shall be contingent upon City Council holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

If a Contract Amendment is approved and executed, the City will issue a Notice to Proceed with Construction and ESCO shall begin construction work. ESCO shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 3.

3. **Guaranteed Maximum Contract Price for Construction; Project Completion Date**

(a) Contract Price.

If a Contract Amendment is approved and executed, the City shall pay ESCO a contract price (hereinafter the "Contract Price", Guaranteed Maximum Price" or "GMP") equal to ESCO's Price Proposal as full and complete compensation for Contractor's obligations under the Contract Documents. Payment shall be made in installments in accordance with the progress payment milestones and as set forth in the Attachment 2.

In accordance with Section 22300 of the California Public Contract Code, ESCO may substitute securities for any monies withheld by City to ensure performance of the Contract. Such substitution shall be made at the request and expense of ESCO. Securities equivalent to the amount withheld may be deposited with City or with a state or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code, bank or saving and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.

Except as otherwise provided in this Contract, ESCO shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should the ESCO believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to Attachment 2.

(b) Material Storage.

As the ESCO is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from City, to assure that there will be no delays, payment by the City for stored material shall be made only in unusual circumstances where the City specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by City, the payments shall be conditioned upon submission by ESCO, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to City to establish City's title to such materials or equipment free of all liens and encumbrances, and otherwise protect City's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to City by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

(c) Project Completion Date.

Time is of the essence. The ESCO guarantees that it shall perform and complete all work necessary for Completion which shall be set forth by Contract Amendment prior to the Notice to Proceed with Construction (the "Project Completion Date"). The ESCO agrees that it shall be liable to the City for liquidated damages in an amount of One-Thousand Dollars (\$1,000) per calendar day for each and every calendar day beyond the Project Completion Date that completion of the Project has not been achieved at the Project Site and said damages shall be the City's sole remedy for ESCO's delay and shall not exceed twenty percent (20%) of the Contract Price. If not completed by the Project Completion Date, it is understood that the City will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the ESCO's failure to complete the work, and therefore the ESCO shall pay to the City the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the ESCO may be retained to cover liquidated damages.

The City is under no obligation to consider early completion of the Project and the Project Completion Date shall not be amended by the City's receipt or acceptance of the ESCO's proposed earlier completion date. Any difference in time between the ESCO's early completion and the Project Completion Date shall be considered a part of the Project float. ESCO shall not be entitled to compensation, and the City will not compensate ESCO, for delays which impact early completion.

4. Funding Compliance

The City anticipates that the Project may be financed in whole or in part through loans, grants, or other funding assistance provided by state or federal agencies. ~~Attachment 10 "Grant/Loan compliance Rider will be utilized as needed."~~ ESCO acknowledges and agrees that:

(a) Additional Requirements.

If such funding is secured, the ESCO shall comply with all additional terms, conditions, and requirements imposed by the funding agency, including specifically related to ESCO's performance of the Project. The parties will adjust cost and timeline as needed to support additional requirements. Terms, conditions and requirements which may include without limitation:

- Federal cross-cutting requirements under 2 CFR Part 200 ("Uniform Guidance"),
- Davis-Bacon and Related Acts and applicable state prevailing wage requirements,
- Domestic preference requirements under the Build America, Buy America Act (BABA),
- Equal Employment Opportunity (EEO) and nondiscrimination requirements under Title VI of the Civil Rights Act of 1964 and related authorities,
- Section 3 (24 CFR Part 75) labor-hour benchmarks & reporting
- Environmental compliance obligations (CEQA, NEPA, or agency equivalents),
- Debarment and Suspension Certification (2 CFR Part 180).
- Recordkeeping, audit, and reporting obligations, ~~and~~
- Procurement, subcontracting, and small/minority/disadvantaged business enterprise (S/MBE/DBE) requirements.

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- Change Order shall: (i) be preceded by the City's Independent Cost Estimate and include a cost/price analysis; (ii) use Time-and-Materials only with a written not-to-exceed and capped rates; and (iii) not use cost-plus-percentage-of-cost. Work performed without prior written authorization is at ESCO's risk and may be non-reimbursable under federal awards. If a change would exceed the approved environmental review or constitute a choice-limiting action under 24 CFR part 58, ESCO shall not proceed until clearance (and, if applicable, AUGF) is obtained
- Other Agency-Specific Provisions as may be required by the funding agreement (examples: USDA RD Guide 27, EPA SRF loan conditions, CDBG contract provisions).

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(b) Contract Amendments.

~~The City may incorporate such requirements by amendment, rider, or supplemental conditions. ESCO shall execute such instruments and cooperate in good faith to implement them.~~

c. Supersession.

In the event of a conflict between this Agreement and a funding agency requirement specifically related to ESCO's performance of the Project, the agency's requirement shall control to the extent required as a condition of funding.

d. Cost Adjustments.

~~Subject to the terms set forth in this Section 4, if~~ compliance with a subsequently imposed funding requirement ~~materially increases ESCO's cost of performance, ESCO may request a price adjustment, subject to approval. Parties will negotiate a Change Order adjusting cost and project schedule as needed to support ESCO's compliance with additional requirements imposed by the City and, where required,~~ the funding agency.

ESCO shall execute and provide to City both a Performance Bond and Payment Bond in the amount of the GMP on the forms provided in Attachments 3 and 4. ESCO shall timely submit bonds to the City in accordance with the General Conditions. ESCO shall furnish all insurance as required by the General Conditions. Notwithstanding any provision to the contrary herein, any Payment and Performance Bonds associated with this Contract guarantee only the performance of the construction/installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings performance guarantees, or (2) any support or maintenance service agreements or work or (3) any other warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract. The obligations of the Performance Bond Surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

2. **Standard of Performance.**

The ESCO's performance shall be consistent with the standards set forth in the Contract and the General Conditions. ESCO shall perform all Work under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. ESCO represents and maintains that it is skilled in each professional calling necessary to perform the Work. ESCO warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. ESCO represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Agreement. ESCO shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the ESCO's failure to comply with the standard of care provided for herein. Any employee of the ESCO or its sub-consultants or subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the Project by the ESCO and shall not be re-employed to perform any of the Work on the Project.

3. **City's Representative.**

The City hereby designates **Bill Slenter – Owner's Representative** or his or her designee, as the person to act as its representative for the performance of this Contract ("City's Representative"). The City's Representative shall be authorized to act as liaison between City and the ESCO in the administration of this Contract and all work on the Project. The City's

Representative shall have the power to act on behalf of the City for all purposes under this Contract, including for the purpose of approving the design. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to the ESCO .

4. ESCO's Representative.

The ESCO hereby designates **Moses Bchara, Program Manager**, or his or her designee, to act as its representative for the performance of this Contract ("ESCO's Representative"). ESCO's Representative shall have full authority to represent and act on behalf of the ESCO for all purposes under this Contract. ESCO's Representative shall supervise and direct all work on the Project, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

5. ESCO's Contractor License and Registration.

The ESCO shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The ESCO (**License No. CA# 708952**) shall act as the licensed contractor for the Project. ESCO shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the Contract. The licensed contractor shall be registered with the Department of Industrial Relations to perform public work (**DIR Registration No.** To be provided at time of Phase 3 Construction Phase).

6. ESCO's Design Professional.

The ESCO shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the City. The ESCO hereby designates **Bryan Childress** from **Wallace Group** to act as the Design Professional and Architect of Record for the Project. ESCO's Design Professional shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the ESCO shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that City and ESCO cannot agree as to the substitution of a new Design Professional, the City shall be entitled to terminate this Contract as described in the General Conditions.

7. ESCO's Indemnification.

The ESCO shall provide indemnification and defense as set forth in the General Conditions.

8. **Substitution of Key Personnel.**

ESCO has represented to City that certain key personnel will perform and coordinate the Work under this Contract. Should one or more of such personnel become unavailable, ESCO may substitute other personnel of at least equal competence upon written approval of City. In the event that City and ESCO cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Contract for cause. Any personnel who fail or refuse to perform the Work in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the ESCO at the request of the City. The key personnel for performance of this Contract are as follows: **Moses Bchara** and **Brian Pottinger**.

9. **Notices.**

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY
Attn: Tom DuBois, City Manager
City of Sutter Creek
18 Main Street
Sutter Creek, CA 95685

ESCO
Attn: Tammy Fulop, Vice President
Schneider Electric Buildings Americas, Inc.
1650 W. Crosby Road
Carrollton, TX 75006

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

10. **Authority of Signatories.**

The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES CONTINUED ON NEXT PAGE]

Entered into as of the Effective Date first above written, the Parties hereby execute this Design-Build Contract, as follows:

ON BEHALF OF THE ESCO

Schneider Electric Buildings Americas, Inc.

By:

Name:

Title:

Federal Tax ID No.:
75-2066352

ON BEHALF OF THE CITY

City of Sutter Creek

By:

Name:

Title:

Attest:

[NAME AND TITLE]

Approved as to Form:

[NAME AND FIRM]

Legal Counsel

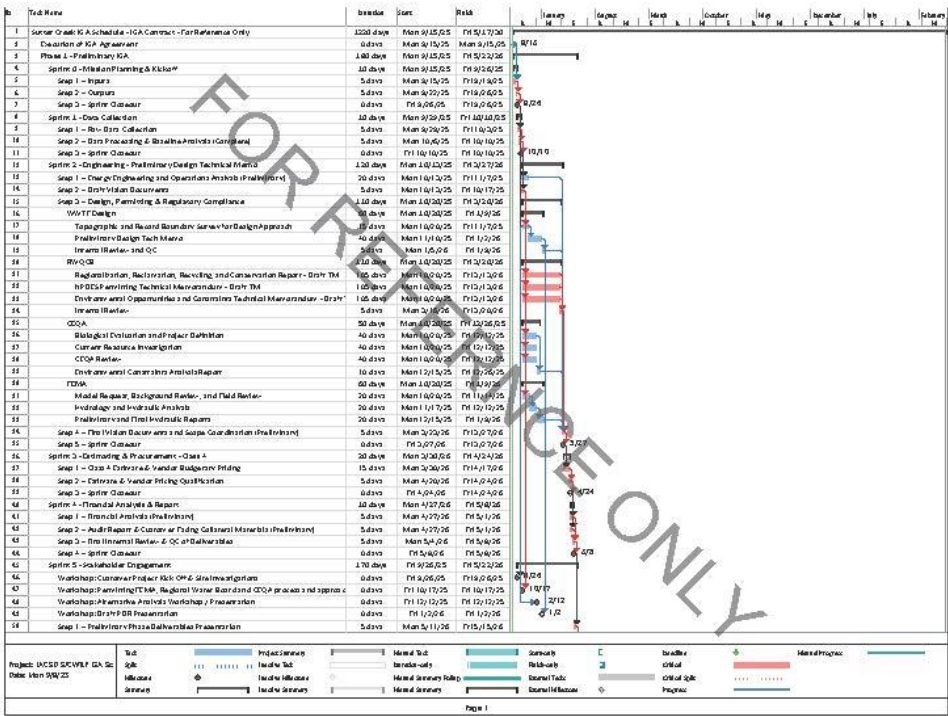
ATTACHMENT 1
SCOPE OF SERVICES
Schedule A
Scope of Work
[INSERT SCOPE]

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General

ATTACHMENT 1
Schedule B
Project Implementation

Reference Draft Schedule for Phase 1 attached- as a reference only. Phase 2 schedule will be developed upon approval of Phase 1, and Phase 3 will-schedule will be part of the construction agreement.



A1-2

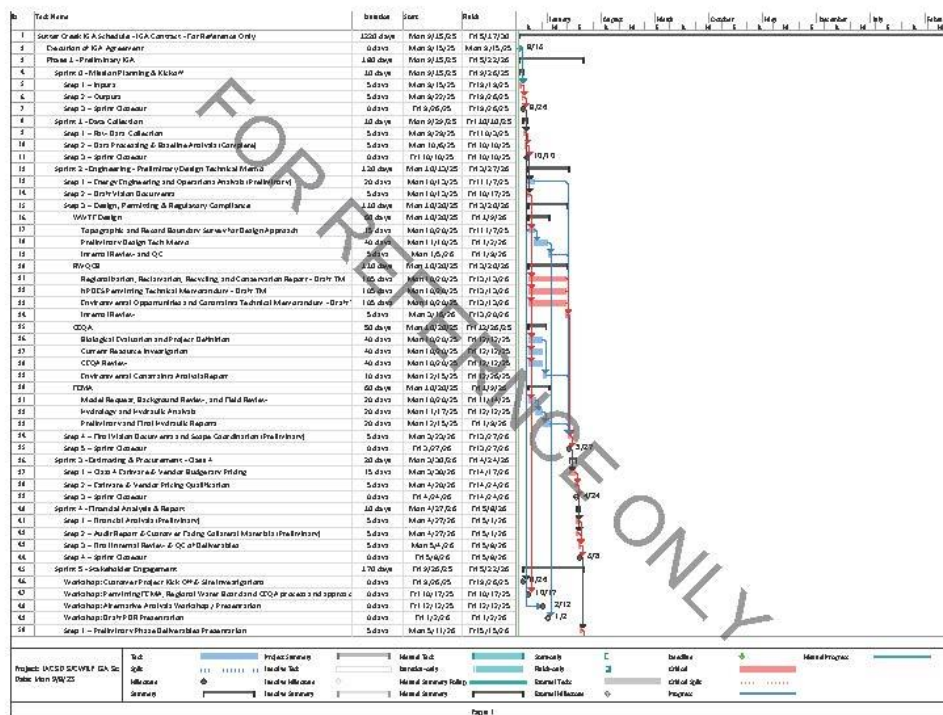
General

Schedule C

~~Draft Project Performance Guarantee~~

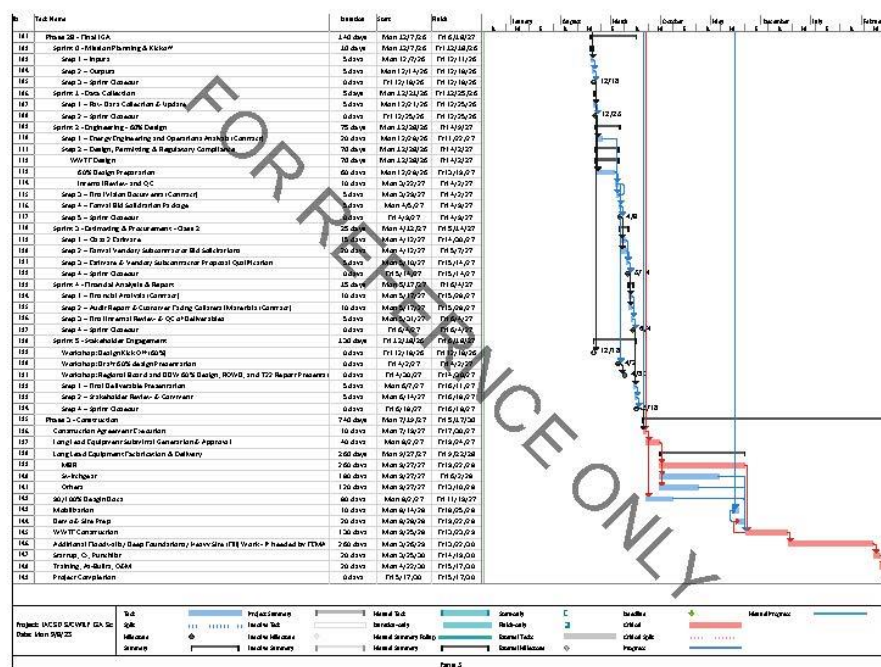
~~[Reserved for]~~ Construction Amendment

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General



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General

ATTACHMENT 2
GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.1 Defined Terms.

- A. Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God -- Act of God is an earthquake of magnitude 3.5 or higher on the Richter Scale or a tidal wave.
 2. Additional Work -- New or unforeseen work will be classified as “Additional Work” when City’s Representative determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Application for Payment -- Standard AIA form which is to be used by the ESCO during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. Architect of Record or Engineer of Record (“A/E”) -- The individual, partnership, corporation, joint venture, or other legal entity named as the Design Professional in the Contract or any succeeding entity designated by City.
 6. Certificate for Payment -- The form signed by City’s Representative attesting to the ESCO’s right to receive payment for certain completed portions of the Work on the Project in accordance with Article 13.
 7. Change Order (“CO”) -- A document that authorizes Additional Work or deletion, or revision in the Work or an adjustment in the Guaranteed Maximum Price or the Project Completion Date, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
 8. Change Order Request (“COR”) -- A request made by the ESCO for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date as the result of a ESCO-claimed change to the Work.
 9. Claim -- A demand or assertion by City or ESCO seeking an adjustment of the Guaranteed Maximum Price or Project Completion Date, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 10. Construction Documents -- The plans and Technical Specifications prepared by the ESCO for the Project and approved by City. The Construction Documents shall set forth in detail

all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. Following commencement of the Construction Phase, Construction Documents become part of the Contract Documents upon their completion and approval by City. All amendments and modifications to the Construction Documents must be approved by City in writing.

11. Construction Documents Phase -- The third of four phases of the Work and will commence with the issuance of the approval of the Schematic Design Phase.
12. Construction Phase -- The fourth phase of the Work and will commence upon final approval of the Construction Documents by City .
13. Construction Work -- That portion of the Work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.
14. Contract -- The entire integrated written agreement between City and ESCO concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
15. Contract Documents -- The documents listed in Section 1 of the Contract. Some documents provided by City, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
16. Contract Times -- The number of days or the dates stated in the Contract Documents and Project Schedule to: achieve defined Milestones, if any, and to complete the Work so that it is ready for final payment.
17. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
18. Defective Work -- Work that is faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
19. Demobilization -- The complete dismantling and removal by the ESCO of all of the ESCO's temporary facilities, equipment, and personnel at the Site.
20. ESCO -- The individual or entity with which City has contracted for performance of the Work.
21. ESCO Representative -- The person or firm identified as the primary contact person and representative of the ESCO as designated in the Contract and who shall not be changed without prior written consent of City .
22. Design Materials -- Any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the ESCO:

- (1) to City under the Contract Documents or; (2) developed or prepared by or for the ESCO specifically to discharge its duties under the Contract Documents.
23. Design Professional -- The individuals or entities who will provide the ESCO with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
24. Design Work -- The portion of the Work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.
25. City's Representative -- The individual or entity as identified in the Contract to act as City's Representative.
26. Drawings -- The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.
27. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
28. Equipment Manufacturer -- Any Separate Contractor that fabricates and/or supplies any of City's provided equipment which is installed in the Project by the ESCO.
29. Excusable Delay -- A delay as described in Article 11 of these General Conditions.
30. Governmental Approvals -- Those governmental actions required to be obtained by City and necessary for the completion of the Project.
31. Guaranteed Maximum Price ("GMP") -- The guaranteed maximum price City will pay for the completion of all Work described in the Contract Documents. The GMP is set forth in the Contract and further described in the cost proposal submitted by the ESCO.
32. Hazardous Materials -- Any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by

the ESCO or the City; or as defined in the California Health and Safety Code. For the purposes of this Contract, "Hazardous Materials" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

33. Holidays -- Holidays occur on:

New Year's Day – January 1
Martin Luther King Jr. Day – Third Monday of January
President's Day – Third Monday of February
Memorial Day – Last Monday in May
Juneteenth - June 19
Independence Day – July 4
Labor Day – First Monday in September
Columbus Day - Second Monday in October
Veteran's Day – November 11
Thanksgiving Day – Fourth Thursday in November
Friday after Thanksgiving
Christmas Day – December 25

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

34. Liens – Charges, security interests, or encumbrances upon Project funds, or personal property, including without limitation Stop Payment Notices.
35. Milestones – A principal event specified in the Contract Documents associated with a required completion date or time prior to Completion of all the Work. Failure to achieve Milestones may result in Liquidated Damages as described in the Contract Documents.
36. Notice of Award – The written notice by City to the ESCO stating that upon timely compliance by the ESCO with the conditions precedent listed therein, City will sign and deliver the Contract.
37. Notice of Completion – The form which may be executed by City and recorded by the county where the Project is located constituting final acceptance of the Project.
38. Notice to Proceed -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the applicable work and when Contract Time will commence to run.
39. Notice to Proceed with Construction -- A written notice given by City to the ESCO fixing the date on which the ESCO may proceed with the Construction Phase and when Contract Time will commence to run.

40. Partial Utilization – Use by City of a substantially completed part of the Work prior to Completion of all the Work.
41. Performance Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work.
42. Project -- The total design and construction of which the Work performed under the Contract Documents may be the whole, or a part, and which may include separate design or construction work performed by City or by Separate Contractors for the Project.
43. Project Completion Date -- The date by which the ESCO and City agree that the Work is operational, ready for use by the City, and fully complete, except for minor items. The Project Completion Date is set forth in the Contract.
44. Project Schedule -- The graphical representation of a practical plan to complete the Work on the Project within the Project Completion Date and other Contract Times. The detailed requirements for the Project Schedule are stated in Article 7.
45. Proposal -- The construction proposal submitted by the ESCO in response to the Request for Proposal for this Project For Phase 3, based on results from Phases 1 and 2.
46. Request for Proposal (“RFP”) -- The request for proposal issued by City for the Project and includes all documents, exhibits, attachments, and addenda thereto.
47. Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
48. Schematic Design Phase -- The second of four phases of the Work. The scope of the Schematic Design Phase is further defined in the Contract Documents.
49. Separate Contractor -- A person, or firm, under separate contract with City performing other work at the Project site which may affect the Work.
50. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for ESCO and submitted by ESCO to illustrate some portion of the Work.
51. Site -- Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for the use of ESCO.
52. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
53. Subcontractor -- An individual or entity that has a contract with the ESCO or with a Subcontractor of the ESCO to perform a portion of the Work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.
54. Submittal - Written or graphic information and physical samples prepared and supplied by the ESCO demonstrating various portions of the Work.

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55. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with ESCO or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
56. Technical Specifications -- All documents developed by the ESCO and which are ready for final construction.
57. Tier -- The contractual level of a Subcontractor or supplier or consultant with respect to the ESCO. For example, a first tier Subcontractor is under subcontract with the ESCO, a second tier Subcontractor is under subcontract with a first tier Subcontractor, and so forth.
58. Unexcusable Delay -- Any delay other than an Excusable Delay, as further described in Article 11 of these General Conditions, that does not entitle the ESCO to an adjustment of the Guaranteed Maximum Price and does not entitle the ESCO to an adjustment of the Project Completion Date.
59. Warranty -- A written guarantee provided to City by the ESCO that the Work will remain free of defects and perform in accordance with specifications in the Contract Documents for one (1) year from the Project Completion Date
60. Work -- The entire design and construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such design and construction, and furnishing, installing, and incorporating all materials and equipment into such design and construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
- B. Furnish, Install, Perform, Provide.
 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Project site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of ESCO is implied.

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- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Contract Documents.

- A. Before City will execute the Contract, the ESCO shall furnish and file with City a signed Contract in duplicate and the necessary, Certificates of Insurance and Endorsements, Escrow Agreement (if used) and Tax Identification Number, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

- A. ESCO shall submit the Performance and Payment bonds within 5 business days of the City's issuance of a Notice to Proceed with Construction and on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California conditioned upon the faithful performance by the ESCO of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price.

2.3 Evidence of Insurance.

- A. ESCO shall obtain, at its sole cost and expense, all insurance required by Article 6. Certificates of such insurance and endorsements shall be delivered to City within fifteen (15) Days after receipt of the Notice of Award and before execution of the agreement for construction by City

2.4 Execution of Contract.

- A. Upon receipt of the required Contract Documents, City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Commencement of Contract Times; Notice to Proceed with Construction.

- A. Work shall commence within fifteen (15) Days of the date stated in City's Notice to Proceed with Construction. No Work shall be done at the Site prior to the date on which the Contract Time commence to run. Nothing herein shall affect the Project Completion Date.

2.6 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Project site is started, a conference attended by City, ESCO, City's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures

for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

- B. At this conference City and ESCO each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.7 Initial Acceptance of Schedules.

- A. At least ten (10) Days before submission of the first Application for Payment, a conference attended by ESCO, City's Representative, and others as appropriate will be held to review for acceptability to City's Representative the schedules submitted, as required by the Contract Documents. ESCO shall have an additional ten (10) Days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to ESCO until acceptable schedules are submitted to City's Representative.
- B. Acceptance of the schedules by City's Representative will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve ESCO from ESCO's full responsibility therefor.

2.8 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor's site work, the ESCO, the involved Subcontractor, and City's Representative shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.9 Project Signage.

- A. City will permit a single project sign, which shall be subject to City's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

ARTICLE 3: CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent.

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City. Clarifications and interpretations of the Contract Documents shall be issued by City's Representative as provided in these General Conditions.

- B. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work.
- C. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the ESCO in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.2 Reference Standards.

- A. Standards, Specifications, Codes, Laws, and Regulations.
 - 1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of proposals (or on the Effective Date of the Contract if there were no proposals), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a supplier, shall be effective to change the duties or responsibilities of City, ESCO, or City's Representative, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or City's Representative, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 Order of Precedence.

- A. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work on the Project by the ESCO. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the ESCO shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Applicable Laws (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Applicable Law).
- B. In resolving conflicts among any of the Contract Documents, the order of precedence shall be as follows:

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1. Permits from other agencies as may be required by law;
2. Amendments, Change Orders or Pending Change Orders, most recent first;
3. Design-Build Contract;
4. General Conditions;
5. RFP and all addenda, attachments and appendices;
6. Construction Documents prepared by ESCO ; and
7. Drawings prepared by ESCO ;

C. With reference to the Drawings the order of precedence shall be as follows:

8. Figures govern over scaled dimensions;
9. Detail drawings govern over general drawings;
10. Amendment or Change Order drawings govern over Drawings;
11. Drawings govern over standard drawings.

D. Notwithstanding the orders of precedence established above, in the event of conflicts, the parties shall meet and confer and reach a mutually acceptable understanding of the applicable standard.

3.4 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by a formal Contract Amendment or Change Order.

3.5 Interpretation and Use of Contract Documents.

A. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized. Specifically, once approved by City, the Construction Documents become a part of the Contract Documents and define the entire scope of work. The ESCO shall certify that the Construction Documents are in full compliance with the Contract Documents, except as noted.

B. Organization of the Performance Specifications into various subdivisions and the arrangement of the Drawings shall not control the ESCO in dividing portions of the Work necessary for the Project among Subcontractors or in establishing the extent of Work to be performed by any trade.

C. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; nontechnical words and abbreviations are used in accordance with their commonly understood meanings.

- D. The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- E. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include a corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- F. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.
- G. Before commencing any Work on the Project, the ESCO shall check and review the Contract Documents, including the Construction Documents, for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract. In the event the ESCO observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the ESCO shall immediately notify City’s Representative in writing of the same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The ESCO shall be solely liable for any such violation, inconsistency or special requirement, if ESCO fails to conduct such review or notification to City.
- H. Before commencing any Work on the Project, the ESCO shall carefully examine all Performance Specifications, the Contract, the Contract Documents and other information given to the ESCO as to Project requirements. The ESCO shall immediately notify City’s Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the ESCO nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Performance Specifications, the Contract, the Contract Documents or other information given to ESCO. If the ESCO or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the ESCO shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Guaranteed Maximum Price or the Project Completion Date. In no case shall any

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Subcontractor proceed with Work if uncertain without the ESCO's written direction and/or approval.

3.6 Reuse of Documents.

- A. ESCO and any Subcontractor shall not: have or acquire any title to or Ownership rights in any of the Construction Documents or other documents (or copies of any thereof) prepared by or bearing the seal of the A/E or its consultants, including electronic media editions; or reuse of any such Construction Documents, other documents, or copies thereof on extensions of the Project or any other project without written consent of City and A/E and specific written verification or adaptation by the A/E.
- B. The prohibitions of this Article 3.6 will survive final payment, or termination of the Contract. Nothing herein shall preclude ESCO from retaining copies of the Contract Documents for record purposes.

3.7 Electronic Data.

- A. The data furnished by City or City's Representative to ESCO, or by ESCO to City or City's Representative, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) Days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-Day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

3.8 Ownership and Use of Construction Documents.

- A. The Construction Documents, and all copies thereof, furnished to, or provided by, the ESCO are the property of City, provided the ESCO has been appropriately compensated in accordance with the terms of the Contract. City and the ESCO explicitly agree that all materials and documents developed in the performance of this Contract are the property of City pursuant to the requirements of City, provided the ESCO has been appropriately compensated under this Contract. The ESCO agrees to, and hereby does, grant to City a royalty free license to all such data developed in the performance of this Contract for the Project and that the ESCO may cover by copyright and to all designs as to which the ESCO may assert any right or establish any claim to under the patent or copyright laws. The ESCO, for a period up to five (5) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of City. Any use or reuse by City of the Construction Documents on any project without employing the services of the

ESCO shall be at City’s own risk. If City uses or re-uses the Construction Documents without employing the services of the Design Build Entity, it shall remove the A/E’s seal from the Construction Documents and hold harmless ESCO, A/E, and their officers, directors, agents and employees from claims arising out of the use or re-use of the Construction Documents on such other project. ESCO shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the ESCO, a party for which the ESCO is legally responsible or liable, or anyone approved by the ESCO .

3.9 Administration of the Contract by City’s Representative.

- A. During the term of this Design-Build Contract, City’s Representative shall have the right to review the ESCO’s Work at such intervals as deemed appropriate by City’s Representative. However, no actions taken during such review or site visit by City’s Representative shall relieve the ESCO of any of its obligations of single point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend beyond the Project Completion Date.
- B. City’s Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work on the Project, since these are solely the ESCO’s responsibility.
- C. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and the ESCO shall communicate through City’s Representative. Communications by the ESCO with City’s consultants and City’s Representative’s consultants shall be through City’s Representative. Communications by City and City’s Representative with Subcontractors will be through the ESCO. Communications by the ESCO and Subcontractors with Separate Contractors shall be through City’s Representative. The ESCO shall not rely on oral or other non-written communications.
- D. Based on City’s Representative’s Project site visits, review of the Work, and evaluations of the ESCO’s Applications for Payment, City’s Representative will recommend amounts, if any, due the ESCO and will issue Certificates for Payment in such amounts.
- E. City’s Representative will have the authority to reject Work on the Project, or any portion thereof, which does not conform to the Contract Documents. City’s Representative will have the authority to stop Work on the Project, or any portion thereof. Whenever City’s Representative considers it reasonably necessary, or advisable, for implementation of the intent of the Contract Documents, City’s Representative will have the authority to require additional inspection or testing of the Work on the Project, at the City’s expense and in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of City’s Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of City or City’s Representative to the ESCO, or any person or entity claiming under, or through, the ESCO .
- F. City’s Representative will have the authority to conduct inspections in connection with beneficial occupancy and to determine the dates of Completion, such determination shall not be unreasonably delayed; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the ESCO; and

will issue a final Certificate for Payment upon the ESCO's compliance with the requirements of the Contract Documents.

- G. City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents. Should the ESCO discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the ESCO shall notify City's Representative in writing and request interpretation, or clarification. City's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the ESCO proceed with the Work affected before receipt of a response from City's Representative, any portion of the Work on the Project which is not done in accordance with City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the ESCO shall be responsible for all resultant losses.
- H. City may at any time and from time to time, without prior notice to or approval of the ESCO, replace City's Representative with a new City Representative. Upon receipt of notice from City informing the ESCO of such replacement and identifying the new City's Representative, the ESCO shall recognize such person or firm as City's Representative for all purposes under the Contract Documents.

ARTICLE 4: AVAILABILITY AND OWNERSHIP OF LANDS AND MATERIALS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands.

- A. City shall furnish the Project site. City shall notify ESCO of any encumbrances or restrictions not of general application but specifically related to use of the Project site with which ESCO must comply in performing the Work. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. ESCO shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment at no additional cost to City.

4.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of ESCO or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by City. Neither ESCO nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. ESCO will, as determined by City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided City shall have the right to use or consume these materials without payment to a third party.

4.3 Hazardous Material at Site.

- A. The ESCO shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project

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Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. In the event that the ESCO becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the ESCO shall stop work in the affected area and inform City by notice immediately. Notwithstanding anything to the contrary herein, the ESCO shall not be responsible for, and the City shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the ESCO on the Project Site resulting from the ESCO's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO. The City shall not be responsible for, and the ESCO shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO.

- B. The ESCO hereby specifically agrees to indemnify, defend and hold the City, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the ESCO of, a Hazardous Material introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the ESCO, its employees, subcontractors, agents, or other parties acting on behalf of the ESCO; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the ESCO except where the violation relates to Hazardous Materials not introduced onto the Project Site by ESCO.

4.4 Protection and Restoration of Existing Improvements and Reference Points.

- A. ESCO shall be responsible for confirming whether any historical stamps/impressions or survey monuments are located on existing sidewalks or curbs, which may be affected by the Work or construction activities. ESCO shall be solely responsible for ensuring that the design provides for the protection of existing improvements.
- B. ESCO shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of City. ESCO shall report to City's Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

ARTICLE 5: BONDS AND INSURANCE

- 5.1 Time for Compliance. ESCO shall not commence Work under this Contract until it has provided evidence to City that it has secured all insurance required under this Article. ESCO shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein. ESCO shall not allow any subconsultant or subcontractor to

commence work on any subcontract until it has provided evidence to City that the subconsultant or subcontractor has secured all insurance required under this Article.

- 5.2 Insurance Requirements. ESCO shall, at its expense, procure and maintain for the duration of the Contract the following policies of insurance (each a “Policy”, and collectively the “Policies”):
- A. Commercial General Liability Insurance. A policy of commercial general liability insurance, written on an “occurrence” basis, with a liability limit of ten million dollars (\$10,000,000) per occurrence and fifteen million dollars (\$15,000,000) in the aggregate (“General Liability Policy”).
 - B. Automobile Liability Insurance. A policy of automobile liability insurance, written on an “occurrence” basis, with a combined single limit of ten million dollars (\$10,000,000) per accident for bodily injury and property damage (“Auto Liability Policy”). The Auto Liability Policy must include coverage for owned, hired and non-owned automobiles.
 - C. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance as required by State law, and employer's liability insurance, written on an “occurrence” basis, with a liability limit of five million dollars (\$5,000,000).
 - D. Professional Liability Insurance. Professional liability insurance, written on a claims-made (and reported) basis, with a liability limit of five million dollars (\$5,000,000) per claim and aggregate (“Professional Liability Policy”).
 - E. Contractor's Pollution Liability, written on an occurrence basis with liability limit of \$5,000,000 per loss and aggregate.
- 5.3 Duration of Insurance. The Policies shall be procured by ESCO prior to ESCO's commencement of the Project and, except for the Professional Liability Policy, shall be maintained in effect for at least one year following the earlier of the Project Completion Date or termination of this Contract. ESCO shall maintain the Professional Liability Policy in effect for at least three years following the earlier of the Project Completion Date or termination of this Contract.
- 5.4 Insurer Rating Standards. The insurance policies required pursuant to this Article must be issued by one or more insurers that are (i) licensed to do business in the State and (ii) have an A.M. Best Company rating of not less than “A-” and a financial size category of not less than “VII.”
- 5.5 Additional Insureds. ESCO shall include the City and the City's directors, officers, employees, and agents as additional insureds on ESCO's General Liability Policy, Auto Liability Policy and Contractor's Pollution Liability. The additional insured endorsements will be on ESCO's most current versions of ISO Form CG 2010 and ISO Form CG 2037 or their substantial equivalents.
- 5.6 Waiver of Subrogation. Each of the General Liability Policy, the Auto Liability Policy and the Contractor's Pollution Liability Policy shall provide a waiver of transfer of rights of recovery in favor of the City.
- 5.7 ESCO Insurance is Primary. The General Liability Policy, the Auto Liability Policy and Contractor's Pollution Liability Policy shall be endorsed to provide that they are primary and non-contributory.

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- 5.8 Premiums, Deductibles and Self-Insured Retentions. ESCO shall be solely responsible for paying deductibles and self-insured retentions applicable to the Policies.
- 5.9 Evidence of Coverage. ESCO shall provide to the City a duly authorized and executed certificate of insurance evidencing that the required Policies and endorsements are in effect (each a “Certificate of Insurance”).
- 5.10 Notice of Change in Policies. ESCO shall notify the City within thirty (30) days of its receipt of written notice from an applicable insurer that a Policy will expire without renewal or will be canceled or terminated.
- 5.11 Review of Coverage. The City’s failure to identify any non-compliance with the requirements of this Article shall not be deemed as a waiver of such requirements.
- 5.12 Subcontractor and Subconsultant Insurance. ESCO shall require each Subcontractor and Subconsultant to maintain such levels and types of insurance coverage as are appropriate for the Work to be performed by such Subcontractor or Subconsultant
- 5.13 Builder’s Risk [“All Risk”]
- A. It is the ESCO’s responsibility to maintain or cause to be maintained Builder’s Risk [“All Risk”] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work, such acceptance not to be unreasonably withheld, is formally accepted by the City. The ESCO shall provide a certificate evidencing this coverage before commencing performance of the Work.
 - B. The named insured shall be ESCO. The City, its elected officials, officers, employees, agents and authorized volunteers shall be included as Additional Insureds. ESCO shall not be required to maintain Builder’s Risk insurance for any portion of the Work following acceptance by City.
 - C. Policy shall be provided for replacement value on an “all risk” basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, defective work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; and (4) coverage to insure the full replacement value of any property or equipment stored either on or off the Site.
 - D. In addition, the policy shall meet the following requirements:
 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 2. Coverage shall include all materials stored on site and in transit.
 3. Coverage shall include ESCO’s tools and equipment.

4. Insurance shall include boiler, machinery and material hoist coverage.

5.14 Performance Bond and Payment Bond.

- A. The ESCO shall submit performance and payment bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure Section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and reasonably acceptable to City conditioned upon the faithful performance by the ESCO of the Construction Phase of the Project and the requirements of the Contract Documents applicable to the Construction Phase of the Project. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Guaranteed Maximum Price. The ESCO shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the Contract. The obligations of the performance bond surety shall continue so long as any construction/installation obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO's or surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.
- B. Subject to the limitations in Article 4 of the Design Build Contract, the Payment Bond and Performance Bond shall be in effect on the date the ESCO commences performance of the Construction Phase of the Project. The premiums for the Payment Bond and Performance Bond shall be paid by the ESCO. The ESCO maintains and agrees that it will execute Payment and Performance Bonds in the amounts and manner required by the Contract Documents. No payment for performance of the Construction Phase of the Project will be made to the ESCO until the ESCO's Payment Bond and Performance Bond have been approved by City, such approval not to be unreasonably withheld.
- C. Should, in City's reasonable opinion, any bond become insufficient or surety found to no longer comply with requirements contained herein, the ESCO shall renew or replace the effected bond within 10 Days of receiving notice from City.
- D. In the event the surety or the ESCO intends to reduce or cancel any required bonds, at least thirty (30) Days prior written notice shall be given to City, and the ESCO shall post acceptable replacement bonds at least ten (10) Days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Article are accepted by City.
- E. To the extent, if any, that the Guaranteed Maximum Price is increased in accordance with the Contract, the ESCO shall, upon request of City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to City. The bonds shall further provide that no change or alteration of the Contract (including, without limitation, an increase in the Guaranteed Maximum Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the ESCO will release the surety. If the ESCO fails to furnish any required bond, City may terminate the Contract for cause.

ARTICLE 6 - INDEMNITY / DUTY TO DEFEND

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- 6.1 Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, ESCO assumes liability for and agrees, at the ESCO's sole cost and expense, to promptly and fully indemnify, and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgements, liens, stop notices, penalties, damages, losses, anticipates losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in many manner connected with the performance of the Work or this Contract, including claims made by Subcontractors for nonpayment and claims of bodily injury or damage to tangible personal property made by third parties, to the extent any of the foregoing arise out of the negligent acts or omissions or willful misconduct, whether active or passive, of ESCO, its officials, officers, employees, consultants, contractors, Subcontractors or by anyone working under ESCO for services rendered to ESCO in the performance of this Agreement ("Indemnity Claims), notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by ESCO.
- 6.2 Duty to Defend. Design -ESCO agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of ESCO to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by ESCO of the tender of any Indemnity Claim from an Indemnatee. ESCO's obligation to defend the Indemnitees shall be at ESCO's sole expense, and not be excused because of ESCO's inability to evaluate liability or because ESCO evaluates liability and determines that ESCO is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. ESCO agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel reasonably acceptable to the City. ESCO will reimburse City for reasonable defense costs for claims arising out of ESCO's professional negligence based on the percentage of ESCO's liability.
- 6.3 Subcontractor Requirements. In addition to the requirements set forth hereinabove, ESCO shall ensure, by written subcontract agreement, that each of ESCO's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which ESCO is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event ESCO fails to obtain such defense and indemnity obligations from others as required herein, ESCO agrees to be fully responsible to the Indemnitees according to the terms of this Article.
- 6.4 No Limitation or Waiver of Rights. ESCO's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. ESCO's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any

way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by ESCO with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. In any and all claims against the Indemnitees by any employee of ESCO, any Subcontractor, any supplier of ESCO or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ESCO or any Subcontractor or any supplier of either of them, under workers' or workmen' s compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

- 6.5 Withholding to Secure Obligations. In the event an Indemnity Claim arises prior to final payment to ESCO, the City may, in its sole discretion, reserve, retain or apply any monies due ESCO for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if ESCO provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole and reasonable discretion, determine whether such assurances are reasonable.
- 6.6 Survival of Indemnity Obligations. Design -ESCO's obligations under this Article are binding on ESCO's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of ESCO's performance of the Work.
- 6.7 Independent Contractor. ESCO shall at all times during its performance of the Work retain its status as an independent contractor. ESCO's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of ESCO or its employees and agents.
- 6.8 If the ESCO's obligation to defend, indemnify, and/or hold harmless arises out of the ESCO's performance as a "design professional" (as that term is defined under Civil Code Section 2782.8), then, and only to the extent required under Civil Code Section 2782.8, which is fully incorporated herein, the ESCO's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ESCO, and, upon ESCO obtaining a final adjudication by a court of competent jurisdiction, ESCO's liability for such claim, including the cost to defend, shall not exceed the ESCO's proportionate percentage of fault.
- 6.9 Joint and Several Liability. In the event the ESCO and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed in this Article 6.

ARTICLE 7: ESCO'S RESPONSIBILITIES

7.1 Review of Contract Documents and Field Conditions by The ESCO; Single Point Responsibility of The ESCO.

- A. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations set forth in the Contract, the ESCO shall carefully study and compare each of the Contract Documents provided by City with the others and with information furnished by City, and shall promptly report in writing to City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by City or inconsistencies with Applicable Law observed by the ESCO. The ESCO shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the ESCO fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to City in writing.
- B. The ESCO is responsible for the design and construction of the Project and shall use design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing Work on the Project. The ESCO shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The ESCO shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the ESCO before commencing Work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to City's Representative.
- C. If the ESCO performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in this Article, without notifying and obtaining the written consent of City's Representative, the ESCO shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- D. City does not assume any obligation to employ the ESCO's services or pay the ESCO royalties of any type as to future programs that may result from Work performed under this Contract.
- E. The ESCO shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with Work on the Project.
- F. The ESCO agrees that it has single point responsibility for the design and construction of this Project, and agrees to utilize no less than the industry standard of design, engineering and construction practices. The ESCO has the duty to act in City's best interests at all times throughout the course and performance of this Contract.

7.2 Design, Supervision and Construction Procedures.

- A. The ESCO shall supervise, coordinate, and direct all Work on the Project using the ESCO's best skill and attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The ESCO shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of Work on the Project.

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- B. The ESCO shall be responsible to City for acts and omissions of the ESCO, its agents, employees, and Subcontractors, and their respective agents and employees.
- C. The ESCO shall not be relieved of its obligation to perform all Work on the Project in accordance with the Contract Documents either by acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO. Unless otherwise provided in the Contract Documents, the ESCO shall be entitled to any necessary adjustments in the Contract Time or Contract Price where ESCO is unable to perform all Work in accordance with the Contract Document because of the acts or omissions of City or City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the ESCO.
- D. The ESCO shall be responsible for inspection of all portions of Work on the Project to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.
- E. Unless otherwise provided in the Contract Documents, the ESCO shall provide and pay for all professional design/engineering services, services, labor, materials, equipment, tools, construction equipment and machinery, necessary for proper execution and completion of the Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in Work on the Project. The ESCO shall furnish architectural and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. From the City-approved Construction Documents, which are developed from the City-accepted Proposal, the ESCO shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the Project, including site work, structures and utilities.
- F. The ESCO is required to deliver to City, if requested, any and all Design Materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.
- G. The ESCO is responsible for preparation of the Construction Documents for the entire Project. The ESCO is responsible for construction of the entire Project as required by the Contract Documents.
- H. The ESCO shall at all times maintain good discipline and order among its employees and Subcontractors. The ESCO shall provide competent, fully qualified personnel to perform all Work on the Project.

7.3 Labor; Working Hours.

- B. The ESCO shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The ESCO shall at all times maintain good discipline and order at the Site. The ESCO will provide all labor needed to complete the Work within the Contract Times.

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- A. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, which are defined as hours between 6:30 a.m. and 4:30 p.m. any day Monday through Friday of any week except on Holidays and/or during Schedule Constraints defined in the Contract Documents. The ESCO will not permit the performance of Work on a Saturday, Sunday, any Holiday or during identified Schedule Constraints without City's written consent given after prior written notice to City's Representative. The ESCO shall be responsible for and shall reimburse City for, all inspection costs outside regular working hours, including overtime, unless requested by the City.

7.4 Progress Meetings.

- A. The ESCO shall schedule and hold regular progress meetings at least weekly and at other times as requested by the City or as required by progress of the Work. The ESCO, City's Representative, and all Subcontractors active on the Site shall attend each meeting. The ESCO may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors.
- B. City's Representative will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the ESCO shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

7.5 Cost-Loaded CPM Progress Schedule and Recovery Schedule.

- A. ESCO shall adhere to the Project Schedule, which shall be a cost-loaded CPM progress schedule established in accordance with the Contract Documents as it may be adjusted from time to time as provided below:
 - 1. ESCO shall submit to City's Representative for acceptance proposed adjustments in the Project Schedule that will not result in changing the Project Completion Date.
 - 2. Proposed adjustments in the Project Schedule that will change the Project Completion Date shall be submitted in accordance with the requirements of the Contract Documents. Adjustments in the Project Completion Date may only be made by a Contract Amendment or Change Order.
 - 3. Should any of the following conditions exist, City may require ESCO to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the Project Completion Date:
 - a. The ESCO's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the ESCO's ability to complete the Work;
 - b. The Project Schedule shows the ESCO to be thirty (30) or more Days behind the critical path at any time during construction;

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- c. The ESCO desires to make changes in the logic or the planned duration of future activities of the Project Schedule which, in the opinion of City, are major in nature.
 - d. The recovery schedule shall include proposed revisions to the Project Schedule, demonstrating how ESCO intends to achieve all contractual milestones including contract completion within the Project Completion Date. The submittal shall include a narrative describing the actions planned by the ESCO to recover the schedule.
 - e. ESCO shall submit the recovery schedule within seven (7) Days of City's request:
 - (i) If ESCO asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request will be considered a concurrent delay event attributable to ESCO, and ESCO shall only be entitled to non-compensable adjustments to the Project Completion Date.
 - (ii) If ESCO is responsible for the delay, this provision will not limit or affect ESCO's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.
 - f. ESCO is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence.
 - g. Regardless of whether City directs ESCO to prepare a recovery schedule pursuant to this Article 7.6, ESCO shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current Project Schedule shows that the ESCO will not achieve a milestone and/or complete the Work within the Project Completion Date.
- B. Unless otherwise specified in the Contract Documents, ESCO shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work within the Project Completion Date.
- C. Failure of City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the ESCO that the ESCO, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve the ESCO from its sole responsibility to perform and complete all Work on the Project within the Project Completion Date and shall not be a cause for an adjustment of the Project Completion Date or the Guaranteed Maximum Price.
- D. The ESCO shall perform all Work on the Project in accordance with the current accepted Project Schedule.

7.6 Materials.

- A. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All materials furnished by the ESCO shall be of the most suitable grade for the purpose intended considering strength, ductility, durability, and best industry practice.
- B. All special warranties and guarantees required by the Contract Documents shall expressly run to the benefit of City. If required by City’s Representative, ESCO shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.
- D. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. ESCO shall be entirely responsible for damage or loss by weather or other causes to materials or Work until City has accepted the Work.
- E. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. ESCO warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion to deliver the Work to City free from any claims, liens, or encumbrances.
- F. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of City or any independent contractor.
- G. Inspection of Materials.
 - 1. Materials furnished by the ESCO which will become a part of the Project shall be subject to inspection at the site of the Work. To allow sufficient time to provide for inspection, the ESCO shall submit to City’s Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made. ESCO shall provide written notice as to when Materials will be delivered at the Site of Work and City shall inspect upon arrival.
 - 2. The inspection of materials specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. ESCO will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to City’s inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.

7.7 Submittals.

- A. Industry Standard Submittals.

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ESCO will identify in the Construction Documents all industry standard submittals for all materials, systems, and equipment incorporated into the Work.

B. Schedule of Submittals.

ESCO will prepare and deliver a Schedule of Submittals to City's Representative that has been fully integrated with the Cost-Loaded CPM Progress Schedule and identifies each Submittal required by the Construction Documents as well as the date on which ESCO will deliver each Submittal to City's Representative. Each Submittal must be delivered to City's Representative at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. ESCO is responsible for any schedule delays resulting from the Submittal process.

C. Submittal Procedures.

1. The ESCO will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Transmit one (1) electronic (PDF) copy of each with a Submittal Transmittal.
 - b. Transmittals will be sequentially numbered. The ESCO to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, the ESCO, Subcontractor and supplier, pertinent Construction Document and detail number, and specification section number appropriate to the Submittal.
 - d. The ESCO must sign each Submittal, certifying that it has reviewed and approved the Submittal, verified products required, field dimensions, adjacent construction work, and that coordination of information is according to requirements of the Project and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When a Submittal is revised for resubmission, the ESCO shall promptly address City comments and resubmit. The ESCO shall identify changes made since previous submission.
 - g. City's review of Submittals shall not relieve the ESCO from responsibility for deviations from the Contract Documents unless the ESCO has, in writing, called City's attention to such deviations at time of submission and City's has taken no exception to the deviation. City's review of Submittals shall not relieve the ESCO from responsibility for errors in the Submittals.
 - h. Submittals not required by the Construction Documents or requested by City's Representative will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by City's Representative, unless approved in writing and required for timely ordering of equipment. Delays

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resulting from incomplete submittals are not the responsibility of City's Representative.

- j. The ESCO shall not be entitled to any extension of the Project Completion Date as a result of the Submittal process, unless the City is responsible for unreasonable delays in its review and approval.
- 2. Where a Submittal, Shop Drawing or Sample is required by the Construction Documents, any related Work performed prior to City's Representative's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the ESCO.
- 3. Schedule Milestones for Submittals. ESCO must submit all submittals required by the Construction Documents in accordance with the Schedule of Submittals. If ESCO fails to submit the submittals in accordance with the Schedule of Submittals, ESCO will be solely liable for any delays or impacts caused by the delayed submittal, whether direct or indirect. ESCO will be liable for the time calculated from the date the submittal is due until the date a compliant submittal is made. A compliant submittal will be one that is complete and satisfies the requirements of the Contract Documents.

7.8 Shop Drawing and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, ESCO shall have:

- 1. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- 3. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- 4. determined and verified all information relative to the ESCO's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, the ESCO shall give City's Representative specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to City's Representative for review and approval of each such variation.

C. Shop Drawings.

- 1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show City's Representative the services, materials, and equipment ESCO proposes to provide and to

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enable City's Representative to review the information Representative for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
3. ESCO shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples.

1. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable City's Representative to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents.
2. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Representative's Review.

1. City's Representative will review Shop Drawings and Samples in accordance with the Schedule of Submittals and within 10 days of receipt of submittals. City's Representative's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. City's Representative's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of design or construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. City's Representative's review and acceptance shall not relieve the ESCO from responsibility for any variation from the requirements of the Contract Documents unless City's Representative has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

- D. The ESCO shall make corrections required by City's Representative and shall return three (3) corrected copies of Shop Drawings and Product Data, and submit, as required, new Samples for review and approval. The ESCO shall direct specific attention in writing to revisions other than the corrections called for by City's Representative on previous Submittals.

- E. City will review the first resubmittal of Shop Drawings at its cost. City reserves the right to reduce the Guaranteed Maximum Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

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7.9 Construction Documents.

A. Construction Documents.

1. The A/E shall prepare the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. City's review of the Construction Documents shall be conducted in accordance with the approved Project Schedule with procedures set forth in this Article. Such review shall not relieve the ESCO from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by City of any deviation from, or of the ESCO's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the ESCO and approved by City.
2. However, it is acknowledged by the parties hereto that inherent in a Design-Build concept, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The ESCO will submit the Construction Document packages to City for review in accordance with the agreed upon schedule, unless otherwise approved in writing by City. The Project Schedule shall indicate the times for City to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.
3. The ESCO shall submit completed packages of the Construction Documents for review by City at the times indicated on the Project Schedule and as defined in the Scheduling Specification. Meetings between the ESCO and City to review the Construction Document packages, shall be scheduled at least every two weeks, or as otherwise agreed to by the parties, and held so as not to delay Work on the Project. The ESCO will conduct these design meetings with City in accordance with the schedule approved by City. The ESCO will be responsible for preparing and circulating for the parties review, design meeting minutes from all such meetings.
4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to City for review.

B. Shop Drawings, Product Data, Samples, Materials, and Equipment.

1. Shop drawings means drawings, submitted to the ESCO by Subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.
2. The ESCO shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the ESCO's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

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3. Materials and equipment incorporated in the Work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
4. The ESCO shall submit shop drawings approved by the A/E and samples of submittals that relate to finish materials and products.
5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in Work on the Project as the standard. Any variation in quality must be approved by City .

C. Field Engineering.

1. The ESCO shall retain and pay expenses of a civil engineer or land surveyor to establish on the Project site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be properly licensed in the State of California.
2. The ESCO shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

D. Geotechnical and Survey.

1. City may provide a geotechnical report to ESCO that shall not be considered a part of the Contract Documents and shall be informational only and may not be relied upon by ESCO to form its basis of design. ESCO shall be responsible for obtaining its own geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey, as necessary, which shall become a part of the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the ESCO's geotechnical report and legal description and Project survey, or such other geotechnical recommendations obtained by ESCO at its sole cost and expense.
2. The ESCO shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.
3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the ESCO.

7.10 Dust Control.

- A. ESCO, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

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7.11 Air Pollution.

- A. To the extent applicable, ESCO must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Amador County Air Pollution Control District (APCD) and/or California Air Resources Board (CARB). Although the APCD and CARB limits and requirements are more broad, ESCO shall specifically be aware of their application to "portable equipment", which definition is considered by APCD and CARB to include any item of equipment with a fuel-powered engine. ESCO shall indemnify City against any fines or penalties imposed by APCD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by ESCO, its sub-consultants, or others for whom ESCO is responsible under its indemnity obligations provided for in this Agreement.
- B. The ESCO shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. ESCO shall not discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules, and regulations of the governmental entities having jurisdiction.

7.12 Patent Fees and Royalties.

- A. Except as otherwise indicated in the Contract Documents, ESCO shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. To the fullest extent permitted by Applicable Laws, ESCO shall indemnify, defend, and hold harmless City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents or specified in the Contract Documents and identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

7.13 Permits and Licenses.

Permits and licenses necessary for prosecution of the Work shall be secured and paid for by ESCO, unless otherwise specified in the Contract Documents.

- A. ESCO shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than City

- B. The ESCO shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Performance Specifications, drawings, or by governing authorities, except for such off-site inspections identified as City's responsibility in the Contract Documents.
- C. Before acceptance of the Work, the ESCO shall submit all licenses, permits, certificates of inspection and required approvals to City.

7.14 ESCO Standard of Care.

- A. The ESCO warrants to City that all Design Work will be performed in accordance with the professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting mode. The ESCO warrants to City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by City's Representative, the ESCO shall furnish satisfactory evidence of compliance with this Article 7.15. Further, the type, quality and quantity of such evidence shall be within the sole discretion of City's Representative.
- B. The ESCO shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. The ESCO shall be solely responsible for the means, methods, techniques, sequences, and procedures of design and construction of the Project.

7.15 Applicable Laws.

- A. ESCO shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither City nor City's Representative shall be responsible for monitoring ESCO's compliance with any Applicable Laws.
- B. If ESCO performs any Work knowing or having reason to know that it is contrary to Applicable Laws, ESCO shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

7.16 Labor Laws and ESCO's Obligations.

A. Hours of Work.

- 1. The ESCO and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Project Completion Date.

2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the Work on the Project in accordance with job progress, Work may be performed outside of regular working hours with advance written notice to City. Permissible working hours shall be between 7:00 a.m. to 8:00 p.m. and shall not be changed except with consent of City .
3. Eight (8) hours of work shall constitute a legal day's work. The ESCO and each Subcontractor shall forfeit, as penalty to City, twenty-five dollars (\$25) for each worker employed in the execution of Work on the Project by the ESCO or any Subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.
4. If the work done after hours is required by the Contract to be done outside the ESCO's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by City. If City allows the ESCO to do Work outside regular working hours for the ESCO's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment. If the ESCO elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the ESCO by City and deducted from the next progress payment.
5. No Work on the Project or other activities by or on behalf of the ESCO which presents a hazard or unreasonable disruption to City staff shall be allowed during normal working hours. The determination as to whether Work on the Project or some other activity presents a hazard or constitutes an unreasonable disruption to City staff shall be made by and pursuant to the sole discretion of a representative of City. All Work on the Project or other activities which could present a hazard or unreasonable disruption to City staff shall be performed before or after normal working hours, on weekends, or on a City recognized holiday. Neither the ESCO nor its Subcontractors or anyone working on behalf of the ESCO or Subcontractors shall be entitled to additional compensation or an extension of the Project Completion Date for having to arrange their Work schedule so as not to violate the provisions of this Article 6.17A. The ESCO, Subcontractors and persons working on behalf of the ESCO shall be expected to arrange such Work and other activities in advance so as to avoid creating monetary or time impacts.

B. Wage Rates, Travel, and Subsistence.

1. The ESCO is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since the Work on the Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the ESCO agrees to fully comply with such Prevailing Wage Laws. City has obtained the prevailing wage rates from the Director of the Department of Industrial Relations, State of California. Copies of the prevailing wage rates are on file at City's office and shall be made available to any interested party on request. the ESCO shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed

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to perform the Project available to interested parties upon request, and shall post copies at the ESCO's principal place of business and at the Project site. The ESCO shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. Pursuant to Labor Code Section 1775, the ESCO is hereby advised that in the event that the ESCO fails to pay prevailing wages, the ESCO will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments, the ESCO and each Subcontractor shall forfeit as a penalty to City not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the ESCO .
3. The ESCO shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

C. Labor Compliance/Payroll Records.

1. Pursuant to Labor Code Section 1776, the ESCO and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. The ESCO shall certify under penalty of perjury that records maintained and submitted by the ESCO are true and accurate. The ESCO shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.
2. In accordance with Labor Code section 1771.4, the ESCO and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. ESCO shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.
3. Any stop orders issued by the DIR against ESCO or any Subcontractor that affect ESCO's performance of Work, including any delay, shall be ESCO's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered ESCO caused delay subject to any applicable liquidated damages and shall not be compensable by the City. ESCO shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against ESCO or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the ESCO at a time designated by the City. The ESCO shall also provide the following:

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- a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- 5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- 6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the ESCO awarded the Contract or performing the contract shall not be marked or obliterated.
- 7. In the event of noncompliance with the requirements of this Article 6.17C, the ESCO shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Article 6.17C. Should noncompliance still be evident after such ten (10) day period, the ESCO shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.
- 8. In submitting the Proposal on this Project, it shall be the ESCO's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and Applicable Law in its Proposal.
- 9. The ESCO shall include provisions of this Article 6.17C in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to City .
- D. Apprentices.
 - 1. The ESCO's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the ESCO or any Subcontractor. The ESCO shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- E. Nondiscrimination.
 - 1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the ESCO and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation,

marital status, or handicap on this Work. The ESCO will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

F. Workers' Compensation.

1. Pursuant to Labor Code section 1860, ESCO shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. Prior to commencement of work, ESCO shall sign and file with City the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

G. Public Works Registration.

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the ESCO and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, ESCO represents that it is aware of the registration requirement and is currently registered with the DIR. ESCO shall maintain a current registration for the duration of the Project. ESCO shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any Subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

7.17 Debarment

- A. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The ESCO shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

7.18 Taxes.

- A. The ESCO shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Law of the place of the Project which are applicable during the performance of the Project. All such costs shall be included in the Contract Price. In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which the ESCO will be responsible.

7.19 Use of Site and Other Areas.

- A. Limitation on Use of Site and Other Areas.
1. The ESCO shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. ESCO shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 2. Should any claim be made by any such City or occupant because of the performance of the Work, ESCO shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- B. Removal of Debris. During the progress of the Work ESCO shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws.
- C. Cleaning. Prior to Completion of the Work, ESCO shall clean the Site and the Work and make it ready for utilization by City. At the completion of the Work ESCO shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading Structures. ESCO shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall ESCO subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

7.20 Utility Usage.

- A. Unless otherwise agreed to be provided by the City in writing and defined in the Scope of Work, all temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by ESCO. ESCO shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, ESCO shall remove all temporary distribution systems.
- B. ESCO shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. As Work is to be performed in existing City's facilities, ESCO may, to the extent authorized by City in writing, use City's existing utilities.
- C. All permanent meters installed shall be listed in the ESCO's name until the Work is accepted.

7.21 Record Drawings.

- A. ESCO shall maintain in a safe place at the Site one record copy of the Contract Documents and written interpretations and clarifications in good order and annotated to show changes made during construction. On these, it shall mark all Project conditions, locations, configurations,

and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.

- B. Record drawings shall be accessible to City's Representative at all times during the construction period. Upon Completion of the Project and as a condition of final acceptance, the ESCO shall finalize and deliver a complete set of record drawings to City's Representative. The information submitted by the ESCO will be assumed to be correct, and the ESCO shall be responsible for, and liable to City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the record drawings.

7.22 Safety and Protection.

- A. ESCO shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. ESCO shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. ESCO shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. ESCO shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. ESCO shall comply with the applicable requirements of City's safety programs, if any. The Special Conditions identify any City's safety programs that are applicable to the Work.
- D. ESCO shall inform City and City's Representative of the specific requirements of ESCO's safety program with which City's and City's Representative's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by ESCO, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by ESCO.

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F. ESCO's duties and responsibilities for safety and for protection of the Work shall continue until City files the Notice of Completion in accordance with Contract Documents.

7.23 Safety Representative.

A. ESCO shall designate an OSHA-certified and experienced safety representative at the Project site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. ESCO shall provide City's Representative the name and contract information of the safety representative in writing. ESCO shall provide City's Representative the name and contact information of the safety representative in writing.

7.24 Hazard Communication Programs.

A. ESCO shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Project site in accordance with Applicable Laws.

7.25 Emergencies.

A. In an emergency affecting safety of life or of Work or of adjoining property, ESCO, without special instruction or authorization from City, shall act to prevent such threatened loss or injury; and ESCO shall so act, without appeal, if directed or instructed by City. Any compensation claimed by ESCO on account of emergency work shall be determined in accordance with the Contract Documents.

7.26 Continuing The Work.

A. ESCO shall carry on the Work during negotiation of all Change Orders and all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any Change Orders, disputes or disagreements, unless City and ESCO otherwise agree in writing.

7.27 Warranty.

A. The ESCO warrants that any and all materials, equipment and furnishings incorporated in the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents and that all Work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date set forth on the certificates of Substantial Completion (the "Warranty Period"). Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and the respective Warranty Periods for such segments of Work will be set forth in the certificates of Substantial Completion. The ESCO shall repair or replace any and all Work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to City; ordinary wear and tear and abuse excepted.

B. The foregoing warranty excludes acts of god, improper operation, or normal wear and tear under normal usage under the control of City. Such warranty shall exclude warranties relating to design, warranty of fitness, and any other express or implied warranties other than as set

forth herein or in the Contract Documents; provided, however, that the foregoing shall not impair the rights of City to maintain an action for breach of contract against the ESCO. Nothing contained in these Contract Documents pertaining to warranty shall be construed as limiting any other rights City may have at law, including rights for latent defects under Code of Civil Procedure Section 337.15.

- C. The ESCO further agrees, within thirty (30) Days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by City, of any Work not in accordance with the requirements of the Contract Documents or any defects in the Work on the Project, that the ESCO shall commence and execute, with due diligence, all Work necessary to fulfill the terms of the guarantee. If City finds that the ESCO fails to cure or diligently commence to cure the identified defects in the Work, City may elect to have the Work completed at the ESCO's expense and the ESCO will pay costs of the Work upon demand. City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the ESCO's refusal to pay the above costs.
- D. Where Defective Work (or damage to other Work resulting therefrom) has been corrected or removed and replaced, the Warranty period hereunder with respect to such Work shall be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- E. ESCO's obligations under this Article are in addition to any other obligation or warranty and do not limit City's rights and remedies pursuant to California Code of Civil Procedure sections 337.10 and 337.15. or any other Applicable Law.
- F. Notwithstanding the foregoing provisions, in the event of an emergency constituting an immediate hazard to health or safety of City employees, property, or licensees, City may undertake, at the ESCO's expense and without prior notice, all Work necessary to correct such condition(s) when it is caused by Work of the ESCO not being in accordance with the requirements of the Contract Documents.

7.28 Superintendent.

- A. The ESCO shall employ a competent Superintendent satisfactory to City who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent the ESCO and communications given to, and received from, Superintendent shall be binding on the ESCO. Superintendent must be able to proficiently speak, read and write in English. Failure to maintain a Superintendent on the Project site at all times Work on the Project is in progress shall be considered a material breach of this Contract, entitling City to terminate the Contract or, alternatively, issue a Suspension Order until the Superintendent is on the Project site. If, by virtue of issuance of said Suspension Order, the ESCO fails to complete the Contract by the Project Completion Date, the ESCO will be assessed Liquidated Damages in accordance with the Contract.
- B. Any changes to the assignment of the Superintendent shall receive prior written approval from City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. In addition, the ESCO will provide all key personnel identified in the Contract for the time periods stipulated.

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7.29 Project Staffing.

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

City shall have the right, but not the obligation, to require the removal from the Project of the ESCO's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by City, including but not limited to, failure or refusal to perform Work on the Project in a manner acceptable to City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

7.30 Compliance With State Storm Water Permit for Construction.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. ESCO hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Proposal accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. ESCO shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order No. R8-2009-0030 (NPDES Permit No. CAS 618030), Order No. R9-2009-0002, Order No. R8-2009-0045, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100, and State Water Resources Control Board Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ, and any amendment or renewal thereof.
- C. The ESCO shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The ESCO shall be responsible for filing the Notice of Intent and for obtaining the Permit. If applicable, the ESCO shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the ESCO's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address storm water impacts. The ESCO shall comply with all requirements of the State Water Resources Control Board. The ESCO shall include all costs of compliance with specified requirements in the Price. For those Sites where construction activity results in the disturbance of less than one

acre of total land area and/or do not need coverage under the Permit, the ESCO shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order No. R8-2009-0030, Order No. R9-2013-0001 as amended by Order Nos. R9-2015-0001 and R9-2015-0100 and any amendment or renewal thereof.

- D. The ESCO shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The ESCO shall provide copies of all reports and monitoring information to the City's Representative. The ESCO shall comply with the lawful requirements of any applicable municipality, the County, drainage authority, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- E. Failure to comply with laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in this Contract, ESCO agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers. City reserves the right to defend any enforcement action or civil action brought against the City for ESCO's failure to comply with any applicable water quality law, regulation, or policy. ESCO hereby agrees to be bound by, and to reimburse the City for the costs associated with, any enforcement action and/or settlement reached between the City and any relevant enforcement entity.

The ESCO shall prepare and submit to City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the ESCO's projected progress for the forthcoming month.

The ESCO will cooperate with City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

- A. If the ESCO has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of Work on the Project, the ESCO shall immediately give written notice including all relevant information to City.
- B. The ESCO agrees to insert the substance of this Article 7.36 in any subcontract to which a labor dispute may delay the timely performance of Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the ESCO, as the case may be, of all relevant information concerning the dispute.

7.34 Documents and Samples At Project Site.

- A. The ESCO shall maintain the following at the Project site:
1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.
 2. One copy of the prevailing wage rates applicable to the Project.
 3. The current accepted Project Schedule.
 4. Shop Drawings, Product Data, and Samples.
 5. All other required submittals.

7.35 Cutting, Fitting, and Patching.

- A. The ESCO shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. The ESCO shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The ESCO shall not cut or alter the work of any Separate Contractor without the prior written consent of City's Representative.

7.36 Access to Work.

- A. City, City's Representative, their consultants, and other persons authorized by City will at all times have access to the Work on the Project wherever it is in preparation or progress. The ESCO shall provide safe and proper facilities for such access and for inspection.

7.37 Concealed Or Unknown Conditions.

- A. If conditions are encountered at the Project Site which are (i) concealed physical conditions which differ materially from facts or information of which ESCO has actual knowledge or which are reasonably foreseen or inferable from such knowledge or (ii) unknown physical conditions, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, hereinafter ("Concealed Conditions"), then, ESCO shall give the City notice of such Concealed Conditions within three (3) Days in writing and City shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and if they do actually cause an increase or decrease in Contractor's cost or the time required for performing any part of the Work, the parties shall negotiate a Change Order modifying Contract Terms to provide for the change in design details and to provide for an adjustment in the Guaranteed Maximum Price and/or Project Completion Date pursuant to Articles 10 and 11.

7.38 Liability for and Repair of Damaged Work.

- A. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work. ESCO shall be liable for any and all damages and losses to the Work (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to City's issuance of a

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Certificate of Substantial Completion. Upon issuance of a Certificate of Substantial completion, Design-Builder shall be released from any damage and losses to that segment of Work identified in the Certificate of Substantial Completion.

7.39 Permits, Fees, and Notices.

- A. Except for the permits and approvals which are to be obtained on behalf of City or the requirements with respect to which City is not subject, the ESCO shall secure, and pay for, all other permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of Work on the Project. The ESCO shall deliver to City all original licenses, permits, and approvals obtained by the ESCO in connection with Work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier.

7.40 Environmental Quality Protection

A. Landscape and Vegetation Preservation

- 1. General. The ESCO shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
- 2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
- 3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

B. Protected Species

- 1. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the ESCO shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within 2 Days.
- 2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.
- 3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance

with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

4. False Siting. Any costs or delays incurred by City or the ESCO due to unreasonable or false notification of an endangered plant or animal will be borne by the ESCO.

C. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, ESCO should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the ESCO notify the Construction/Archeological Monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or City within 2 Days.
2. Procedures. The ESCO shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.
3. If directed by the City Representative, ESCO will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the ESCO will assist the City Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The ESCO shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.
4. ESCO's Liability. Should ESCO, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The ESCO shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. ESCO shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

7.41 Cybersecurity

- A. For the avoidance of doubt, ESCO is not responsible for implementing or maintaining a security program to safeguard and protect the City's computer network, systems, machines, and/or data (collectively, "Systems"), including those Systems on which it runs the Deliverables provided by ESCO, against Cyber Threats ("Security Program"). "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt the City's or the end user's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of the City's Systems, including through malware, hacking, or similar attacks. Failure by the City to maintain an appropriate Security Program in accordance with industry standards may result in the Deliverables or Systems becoming vulnerable to certain Cyber Threats or result in

impaired functionality, and ESCO shall not be liable or responsible for any losses or damages that may result.

7.42 Technical Manuals; Spare Parts.

- A. The ESCO shall submit technical operation and maintenance information for each item of mechanical, electrical and instrumentation equipment in an organized manner in the Technical Manual. It shall be written so that it can be used and understood by City’s operation and maintenance staff. The ESCO shall furnish to City six (6) identical Technical Manuals. Each set shall consist of one or more volumes, each of which shall be bound in a standard binder.
- B. The ESCO shall furnish to City six (6) identical sets of spare parts information for all mechanical, electrical, and instrumentation equipment. The spare parts list shall include the current list price of each spare part. The spare parts list shall include those spare parts which each manufacturer recommends be maintained by City in inventory. Each manufacturer or supplier shall indicate the name, address, and telephone number of its nearest outlet of spare parts to assist City in ordering. The ESCO shall cross-reference all spare parts lists to the equipment numbers designated in the Contract Documents. The spare parts lists shall be bound in standard size, 3-ring binder.

ARTICLE 8: OTHER WORK AT THE PROJECT SITE

8.1 Related Work At Project Site.

- A. Nothing contained in the Contract Documents shall be interpreted as granting to ESCO exclusive occupancy at the Project site. City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of Work on the Project which have been deleted by Change Order. The ESCO shall cooperate with City’s employees or through other direct contracts, or have other work performed by utility owners (collectively, “Other Contractors”). If such other work is not noted in the Contract Documents, then written notice thereof will be given to the ESCO prior to starting any such other work. The ESCO shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The ESCO shall make necessary revisions to the Project Schedule after such joint review.
- B. ESCO shall be solely responsible for all costs associated with coordinating its Work with Separate Contractors. ESCO shall not be entitled to additional compensation from City for damages resulting from such simultaneous, collateral, and essential Work. If necessary to avoid or minimize such damage or delay, ESCO shall redeploy its work forces to other parts of the Work, or adjust its Work schedule including reasonable acceleration of the Work. If a portion of the Work on the Project is dependent upon the proper execution or results of other construction or operations by City or Separate Contractors, the ESCO shall inspect such other design or construction or operations before proceeding with that portion of the Work on the Project. The ESCO shall promptly report to City’s Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work on the Project. Unless otherwise directed by City’s Representative, the ESCO shall not proceed with the portion of the Work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the ESCO to so report within a reasonable time after discovering

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such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by City or Separate Contractors is suitable to receive the Work on the Project, except as to defects not then reasonably discoverable.

- C. ESCO shall afford each Separate Contractor proper and safe access to the Project site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. ESCO shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. ESCO shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that ESCO may cut or alter others' work with the written consent of City's Representative and the others whose work will be affected.
- D. If the proper execution or results of any part of ESCO's Work depends upon work performed by Separate Contractors, ESCO shall inspect such other work and promptly report to City's Representative in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of ESCO's Work. ESCO's failure to so report will constitute an acceptance of such other work as fit and proper for integration with ESCO's Work except for latent defects and deficiencies in such other work.
- E. If any claims are made by Separate Contractors arising out of ESCO's performance of the Work, ESCO shall be responsible to immediately resolve the dispute and indemnify City pursuant to the Contract Documents.
- F. City's Representative shall arrange meetings with Separate Contractors performing work to plan coordination of construction activities but will not be responsible to direct coordination efforts. Any difference or conflict arising between ESCO and any Separate Contractor shall be submitted to City's Representative for a decision in the matter. ESCO shall comply with direction from City's Representative whose decision on coordination matters will be final.

8.2 For Delays by Others.

- A. By entering into this Contract, ESCO acknowledges that there may be Separate Contractors on the Project site whose work will be coordinated with that of ESCO. ESCO expressly warrants and agrees that ESCO will cooperate with Separate Contractors and will do nothing to delay, hinder, or interfere with the work of Separate Contractors, City, or City's Representative. ESCO also expressly agrees that, in the event its Work is hindered, delayed, interfered with, or otherwise affected by a Separate Contractor, its sole remedy will be a direct action against the Separate Contractor. ESCO will have no remedy, and hereby expressly waives any remedy, against City or City's Representative on account of delay, hindrance, interference, or other event caused by Separate Contractor.

8.3 ESCO's Delay Or Damage.

- A. ESCO shall be liable to City and any Separate Contractor for the direct delay and disruption costs or damages incurred by such Separate Contractor as a result of ESCO's wrongful action or inactions.

ARTICLE 9: SUBCONTRACTORS

9.1 Award of Subcontracts and Other Contracts for Portions of The Work.

- A. The ESCO shall not, without the consent of City: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the Proposal; or permit any such Subcontractor to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the Proposal, without written notification to City. Any assignment or substitution made without the prior written consent of the awarding authority or not in compliance with the Subletting and Subcontracting Fair Practices Act shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve the ESCO or its Subcontractors from their obligations under the terms of the Contract. All requests by the ESCO for substitution will be handled through City's Representative.
- B. The ESCO shall submit to City's Representative after selecting Subcontractors, an updated expanded list of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The expanded list of Subcontractors shall be provided and/or updated no later than ten (10) Days after the date which the ESCO awards a contract for any portion of the Work to a Subcontractor not originally listed in the ESCO's Proposal.
- C. Any increase in the cost of the Work on the Project resulting from the replacement or substitution of a Subcontractor pursuant to this Article, shall be borne solely by the ESCO. The ESCO shall not be entitled to any increase in Guaranteed Maximum Price or an extension of Project Completion Date due to such replacement or substitution, unless such a substitution is required by City. In that case, ESCO may be entitled to increases in the Contract Price and/or extension of time.
- D. Any part of the Work on the Project performed for the ESCO by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, to assume toward the ESCO all the obligations and responsibilities which the ESCO assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. The ESCO is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

ARTICLE 10: CHANGE IN GUARANTEED MAXIMUM PRICE; CHANGE IN CONTRACT TIMES

10.1 Contract Change Orders.

- A. City, without invalidating the Contract, may order changes in the work consisting of additions, deletions or other revisions, and the Guaranteed Maximum Price and/or Contract Time shall be adjusted accordingly. All such changes in the Work shall be authorized by written Change Order and shall be performed under the applicable conditions of the Contract Documents. A

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Change Order signed by the ESCO indicates the ESCO's agreement therewith, including any adjustment in the Guaranteed Maximum Price and/or Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the work authorized by the Change Order. No changes in the Work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract. Both Parties agree to act in good faith and promptly when considering a Change Order requested by the other party but neither party is obligated to execute a Change Order. No dispute, disagreement or failure of the Parties to reach agreement on the terms of a Change Order shall relieve the ESCO from the obligation to proceed with performance of the changed work promptly and expeditiously. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract Documents, and shall be subject to all terms, conditions and provisions of the original Contract Documents.

- B. ESCO shall promptly execute changes in the Work as directed in writing by City even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Guaranteed Maximum Price or Contract Time, if any. All claims for additional compensation to the ESCO shall be presented in writing. In the event the parties cannot reach agreement on the terms of a Change Order then the parties can submit the claim for dispute resolution. No claim will be considered after the work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by ESCO. ESCO shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.

10.2 Contract Change Order Procedures.

A. City Directive

1. The City may direct changes in the Work, including deletion of Work, by delivering a written work directive. To the extent the work directive results in a change to the Guaranteed Maximum Price and/or Contract Time, ESCO must timely submit a Change Order Request and comply with all Change Order procedures in accordance with this Article. ESCO's failure to timely submit a Change Order Request shall constitute a waiver by ESCO of any adjustment to the Guaranteed Maximum Price and/or Contract Time for work performed under the directive. The City shall not be liable to ESCO for work performed or omitted by ESCO in reliance on verbal orders.
2. The City shall have the right to order changes in the Work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time.

B. ESCO Change Order Requests

1. The ESCO agrees that one of the purposes of the Contract is to minimize the risk for Change Orders and reduce the likelihood of Change Orders. Change Order Requests shall be kept to a minimum.
2. The ESCO may request changes to the Guaranteed Maximum Price and/or Contract Time for City directed changes in the Work or for Additional Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, or caused by

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unforeseen or Concealed Conditions if, and only if, the ESCO follows the procedures specified in this Article . Any Work necessary to achieve the agreed upon energy savings and that the ESCO should have reasonably foreseen and included in the Construction Documents, and/or any Work resulting from ambiguities in the Design and Construction Documents shall not be considered Additional Work and the City will not issue a Change Order for said work.

3. If ESCO intends to initiate a Change Order Request, then ESCO shall provide the City with written notice of the underlying facts and circumstances that give rise to the proposed change. ESCO shall submit the notice of change/delay prior to performance of the work and no later than five (5) business Days after the City's work directive or ESCO discovers the circumstances causing the need for the Change Order. A Change Order Request will only be deemed timely submitted if it is submitted prior to incurring any expense and within fourteen (14) Days from ESCO's notice of change/delay.
4. A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Guaranteed Maximum Price and/or Contract Time, if any. The Change Order Request shall include all of the following information (unless inapplicable to the change): A detailed description of the circumstances giving rise to the request; A complete itemized cost proposal, including itemized pricing for Reimbursable Costs; Supporting documentation for all costs; A time impact analysis showing the impact of the delay to the critical path to completion; If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and Certification to the accuracy of the Change Order Request under penalty of perjury. The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The City may demand, and ESCO shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. ESCO shall provide the requested additional information within five (5) Days of the request.
5. If the City denies the Change Order Request or disagrees with the proposal submitted by ESCO, it will notify the ESCO, and the City will provide its opinion of the appropriate change to the Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, the City shall have the right to order the work by a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in the Guaranteed Maximum Price and/or Contract Time, if any. The City's determination shall become final and binding if the ESCO fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require. If the Change Order includes additions to the Work to be performed, the City shall continue to pay ESCO in accordance with the City's determination of the addition to the GMP, subject to resolution of the Dispute pursuant to Article 15.

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C. Change Order Format

1. The City may designate the forms to be used for notices, Change Order Requests, and Change Orders. If so designated, ESCO may only use such forms. ESCO shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The ESCO may not change or modify the City's Change Order form in an attempt to reserve additional rights.

10.3 Determining Adjustments to Compensation.

- A. Limitation on Costs. ESCO shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall be mutually acceptable, negotiated in good faith between the City and ESCO, and shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
- B. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the ESCO and the Agency.
- C. Time and Materials Change Orders. The Agency may direct the ESCO to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the ESCO exceeds at its own risk.
- D. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows
 1. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the ESCO establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.
 2. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer's invoice.
 3. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies,

or distributors, at the time the work is performed. The ESCO shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the Agency for the total period of use. The Agency shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less.

- a. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.
 - b. All equipment shall, in the opinion of the Agency, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 - c. Before construction equipment is used on any Additional Work, the ESCO shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency, in duplicate, a description of the equipment and its identifying number.
 - d. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.
4. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- a. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the ESCO and Subcontractors at cost only, without mark-up. ESCO shall provide the Agency with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Agency may reasonably request.
 - b. For Work performed by the ESCO's forces the allowed mark-up for overhead and profit combined shall not exceed twenty-five (25%) percent of labor costs, twenty-five percent (25%) of material costs, and twenty-five percent (25%) of the cost of tools and equipment use.
 - c. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed ten percent (10%) of the Subcontractor's Net Cost of the Work to which the ESCO may add up to fifteen percent (15%) of the Subcontractor's Net Cost.
 - d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed five percent (5%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor may add up to an additional five percent (5%) and ESCO

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may add up to an additional fifteen percent (15%) of the Net Cost of the lower tier subcontractor.

- e. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Agency exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

5. Documentation of Time-and-Material Costs.

- a. T&M Daily Sheets. ESCO must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Agency's agreement to ESCO's entitlement to the cost.
- b. T&M Summary Sheet. ESCO shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. ESCO's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. ESCO's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in ESCO's waiver for any reimbursement of any costs associated with the Additional Work.
- c. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the ESCO's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
 - d. Overhead Cost. Payroll costs and other compensation of ESCO's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by ESCO whether at the Site or in ESCO's principal office or any branch office, material yard, or shop for general administration of the Work;
 - e. Office Expenses. Expenses of ESCO's principal and branch offices;
 - f. Capital Expenses. Any part of ESCO's capital expenses, including interest on ESCO's capital employed for the Additional Work and charges against ESCO for delinquent payments;
 - g. Negligence. Costs due to the negligence of ESCO or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - h. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of ESCO;

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- i. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
- j. Anticipated Lost Profits. Expenses of ESCO associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
- k. Home Office Overhead. Costs derived from the computation of a “home office overhead” rate by application of the Eichleay, Allegheny, burden fluctuation, or other similar methods;
- l. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of ESCO, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- m. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

10.4 ESCO’s Waiver of Further Relief.

- A. **ESCO’S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF A CHANGE ORDER REQUEST OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY ESCO OF THE RIGHT TO AN ADJUSTMENT OF THE GUARANTEED MAXIMUM PRICE AND/OR PROJECT COMPLETION DATE ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**
- B. ESCO recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

10.5 Materials and Equipment.

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- A. Notwithstanding anything to the contrary contained herein, where the cost for materials or equipment from an Equipment Manufacturer or Supplier increases or decreases greater than five percent (5%) from the NTP Date by no fault of the ESCO, ESCO shall submit a Change Order request to City for an adjustment to the Contract Price for (i) costs that it incurs directly arising out of or relate to said increase in pricing by the Equipment Manufacturer or Supplier or (ii) a deduction in the Contract price to reflect said decrease in costs. In the case that the cost of materials or equipment increases greater than five percent (5%) from the NTP Date, ESCO agrees that overhead and profit will not be applied to that portion of the cost of materials or equipment that exceeds the original cost set forth at the time the NTP is issued. .. City, at its sole option, may reject the Change Order and terminate the Contract for convenience.
- B. In the event of a delay in acquiring said equipment or materials from an Equipment Manufacturer or Supplier and the ESCO can demonstrate conditions 1 through 9 of Section 11.3(A) in the General Conditions, it shall be considered as an Excusable Delay and the Project Completion Date will be extended. Design Build Entity shall not be held to contractual sanctions (including without limitation delay penalties, liquidated damages or other damages) or termination for default for such a Excusable Delay. In the case of the foregoing, the Parties shall negotiate in good faith to execute a Change Order. ESCO shall exercise all reasonable diligence, and the City shall cooperate with ESCO, to ensure said equipment and materials are ordered in a timely manner to prevent an increase to the Contract Price or extend the Project Completion Date.

10.6 City Reservation of Rights.

- A. By signing the Contract, the parties agree that City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
1. To order changes in the Work, including without limitation: Changes to correct errors or omissions caused by City, if any, in the Contract Documents; Changes resulting from City's decision to change the Work subsequent to execution of the Contract; and Changes due to unforeseen conditions.
 2. To suspend Work on the Project or any part thereof.
 3. To delay Work on the Project, including without limitation, delays resulting from the failure of City or City's Representative to timely perform any Contract obligation and delays for City's convenience.
- B. If the City exercises any or all of the rights contained herein then ESCO shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time.
- C.. If the City suspends Work for a period of time in excess of 180 days then ESCO shall have the right to terminate the contract and City shall compensate ESCO for all work performed up to the time of termination plus reasonable termination and demobilization costs.

ARTICLE 11: PROJECT COMPLETION DATE

11.1 Progress and Completion.

A. By signing the Contract:

1. The ESCO represents to City that the Project Completion Date is reasonable for performing the Work and that the ESCO is able to perform and complete the Work within the Project Completion Date.
2. The ESCO agrees that City is purchasing the right to have the ESCO present on the Project for the full duration of the time period necessary to complete the Work.

B. The ESCO shall not, except by agreement or instruction of City in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by to be furnished by the ESCO. The date of commencement and the Project Completion Date shall not be changed by the effective date of such insurance.

C. The ESCO shall proceed expeditiously with adequate forces and shall achieve full completion of the Work by the Project Completion Date. If City's Representative determines and notifies the ESCO that the ESCO's progress is such that the ESCO will not achieve full completion of the Work by the Project Completion Date, the ESCO shall immediately and at no additional cost to City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Project Completion Date. Upon receipt of such notice from City's representative, the ESCO shall immediately notify City's Representative of all measures to be taken to ensure full completion of the Work within the Project Completion Date.

11.2 Delay.

A. There are two kinds of delay, Excusable Delay (which may be compensable or non-compensable) and Unexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the adjustment of the Project Completion Date, and/or the Guaranteed Maximum Price. All other delay(s) are Unexcusable, and except and only to the extent provided otherwise in Articles 10 and 11, by signing the Contract, the ESCO agrees: to bear the risk of non-compensable and Unexcusable Delays to completion of the Work on the Project and that the Proposal was made with full knowledge of this risk.

B. In agreeing to bear the risk of Unexcusable Delays to completion of the Work on the Project, the ESCO understands that, except and only to the extent provided otherwise in Articles 10 and 11, the occurrence of events that result in any delay in completion of the Work on the Project shall not excuse the ESCO from its obligation to achieve full completion of the Work on the Project within the Project Completion Date, and shall not entitle the ESCO to an adjustment of the Guaranteed Maximum Price.

11.3 Adjustment of The Project Completion Date for Excusable Delay.

A. The Project Completion Date will be extended for an Excusable Delay, if and only if, the ESCO demonstrates that all of the following conditions are met:

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1. When the event causing the delay commences, the ESCO has complied with all Contract requirements for maintaining, submitting, and updating Project Schedules.
2. The delay is critical. A delay is critical if and only to the extent it delays a Work activity that cannot be delayed without delaying completion of the entire Project beyond the Project Completion Date. Additionally:
3. If the Project Schedule shows completion of the Project before the Project Completion Date, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the Project Completion Date.
4. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Completion Date should be adjusted pursuant to Article 10.4B, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
5. The delay is supported by the Project Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Project Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the Project Completion Date because of its effect on the operation referred to in Article 11.4A(2).
6. Within fourteen (14) Days of the date the ESCO discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the ESCO has not been delayed when the ESCO discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the ESCO submits a timely Change Order Request that meets the requirements of Article 10.
7. The delay is not caused by:
 - a. The financial inability, negligence or fault of the ESCO , a Subcontractor or supplier; or
 - b. An error or omission in the Contract Documents caused by the ESCO or the ESCO's design consultants.
8. The delay arises from causes beyond the control of ESCO. Examples of these causes are: : Fire; Strikes, boycotts, or like obstructive actions by employees or labor organizations; Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, pandemic, quarantine restrictions, epidemic, or other severe natural disaster; A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; An error or omission in the Contract Documents caused by City; City's decision to change the Work, where such decision is not the result of any default or misconduct of the ESCO; City's decision to suspend the Work on the Project, where such decision is not the result of any default or misconduct of the ESCO; or The failure of City, City's representative or a Separate

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Contractor to timely perform any Contract obligation unless such failure is due to the ESCO's default or misconduct.

- B. If and only if a delay meets all conditions prescribed in this Article, then the Project Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Project Completion Date for full completion of the Work on the Project.
- C. If for any reason one or more of the conditions prescribed in this Article held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Project Completion Date.

11.4 Compensation for Excusable Delay

- A. City's liability to ESCO for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the ESCO in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. The Contract Price shall be equitably adjusted to cover damages caused by unreasonable City delay that impacts the critical path, including delays caused by items that are the responsibility of City pursuant to Government Code section 4215,.
- B. ESCO shall be deemed to waive any right to delay damages unless: ESCO complies with all requirements of the Contract for providing timely notice to the City and timely requests for adjustments to the Price and/or Guaranteed Completion Date and ESCO meets all conditions of an Excusable Delay and is granted an extension of the Guaranteed Completion Date.

11.5 Waiver

- A. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article, including without limitation the requirements of an Excusable Delay, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City from enforcing, such requirements in connection with any present or future delays. The ESCO agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.
- B. City and City's Representative, and the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to ESCO for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by ESCO on or in connection with any other project or anticipated project.

ARTICLE 12: TEST AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK; NOTICE OF DEFECTS

12.1 Notice of Defective Work.

- A. Prompt notice of all Defective Work of which City or City's Representative has actual knowledge will be given to ESCO. Defective Work may be rejected, corrected, or accepted as provided in the Contract Documents.

12.2 Access to Work.

- A. City, City's Representative, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Project site and the Work at reasonable times for their observation, inspection, and testing. ESCO shall provide them proper and safe conditions for such access and advise them of ESCO's safety procedures and programs.

12.3 Tests and Inspections.

- A. ESCO shall give City's Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Except as provided by the Contract Documents, City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents.
- C. If Applicable Laws of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, ESCO shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City's Representative the required certificates of inspection or approval.
- D. ESCO shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for City and City's Representative's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to ESCO's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to City .
- E. City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval, the 8.5 hour working day may be changed to other limits subject to City ordinance.

12.4 Uncovering Work.

- A. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by ESCO without written concurrence of City's Representative, ESCO shall, if requested by City's Representative, uncover such Work for observation.
- B. Uncovering Work shall be at ESCO's expense unless ESCO has given City's Representative timely notice of ESCO's intention to cover the same and City's Representative has not acted with reasonable promptness in response to such notice.
- C. If ESCO has given City's Representative timely notice of ESCO's intention to cover the work and City's Representative has not acted with reasonable promptness in response to such notice, and City's Representative later considers it necessary or advisable that covered Work be observed by City's Representative or inspected or tested by others, ESCO, at City's Representative's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City's Representative may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, ESCO shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and City shall be entitled to an appropriate decrease in the GMP.
 - 2. If the uncovered Work is not found to be defective, ESCO shall be allowed an increase in the GMP and/or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

12.5 City May Stop The Work.

- A. If the Work is defective, City may in its sole discretion order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. All delays associated with the stop Work order will be the responsibility of the ESCO.

12.6 Correction of Defective Work and Warranty Period.

- A. Promptly after receipt of written notice, ESCO shall correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City or City's Representative, remove it from the Project and replace it with Work that is not defective.
- B. When correcting Defective, ESCO shall take no action that would void or otherwise impair City's special warranty and guarantee, if any, on said Work.
- C. The ESCO shall (1) correct Defective Work that becomes apparent during the progress of the Work on the Project or during the Warranty Period and (2) replace, repair, or restore to City's satisfaction any other parts of the Work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The ESCO shall promptly commence such correction, replacement, repair, or

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restoration upon notice from City's Representative or City, but in no case later than fourteen (14) Days after receipt of such notice; and the ESCO shall diligently and continuously prosecute such correction to completion. The ESCO shall correct, replace, repair, or restore, such Defective Work, and perform any necessary additional testing, and inspection. The ESCO shall perform corrective Work on the Project at such times and in such a manner as to avoid, to the extent practicable, disruption to City's activities.

- D. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by City or Separate Contractors, the ESCO shall pay to City all reasonable costs of correcting such Defective Work. The ESCO shall replace, repair, or restore to City's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.
- E. The ESCO shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the ESCO nor accepted by City.
- F. The ESCO's obligations under this Article are in addition to and not in limitation of its standard of care owed on the Project to City under Article 67 or any other obligation of the ESCO under the Contract Documents. Enforcement of the ESCO's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Establishment of the Warranty Period relates only to the specific obligation of the ESCO to correct the Work on the Project and in no way limits either the ESCO's liability for Defective Work or the time within which proceedings may be commenced to enforce the ESCO's obligations under the Contract Documents.
- G. If the ESCO fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within ten (10) business days after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have, correct such failure at the ESCO's sole expense. In such case, City will be entitled to deduct from payments then or thereafter due the ESCO the cost of correcting such failure, including compensation for the additional services and expenses of City's Representative and City's consultants made necessary thereby. If payments then or thereafter due the ESCO are not sufficient to cover such amounts, the ESCO shall pay the additional amount to City.

12.7 Acceptance of Defective Work.

- A. If, after ESCO attempts to repair and/or replace the Defective Work, the City prefers to accept it, City may do so. If the City chooses to accept the Defective Work, then City shall accept the Work as-is, and releases the ESCO from any and all guarantee or warranty obligations related to the Work and the parties shall agree upon a reduction in the Guaranteed Maximum Price to address costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.

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12.8 City May Correct Defective Work.

- A. If ESCO fails within a reasonable time after written notice from City’s Representative to correct or diligently commence to correct Defective Work, or to remove and replace rejected Work as required by City, City may, after seven (7) business days written notice to ESCO, correct, or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude ESCO from all or part of the Site, take possession of all or part of the Work and suspend ESCO’s services related thereto, and incorporate in the Work all materials and equipment stored at the Site for which City has paid ESCO but which are stored elsewhere. ESCO shall allow City and City’s Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable City to exercise the rights and remedies to correct the defective work.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by City correcting the defective work will be charged against ESCO, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and City shall be entitled to an appropriate decrease in the GMP.
- D. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
- E. If the Change Order is executed after all payments under the Contract have been paid by City, then an appropriate amount will be paid by ESCO to City.
- F. ESCO shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to City correcting defective work.

ARTICLE 13: PAYMENTS TO ESCO AND COMPLETION

13.1 Progress Payments.

The Cost-Loaded CPM Progress Schedule will serve as the basis for progress payments and will be incorporated into a form of Application for Payment agreed upon by the parties as a schedule of values, for purposes of payment and tracking progress of the Work only. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the ESCO’s Design and Construction Fee shall be shown as a single separate item.

A. Applications for Payments.

- 1. Within ten (10) days of the Date of Commencement, Customer shall make payment to ESCO for project mobilization expenses, including but not limited to any design or engineering fees not already invoiced, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date (“Project Mobilization Payment”) in the amount of not to exceed 15% of the implementation contract payment total of the Contract Price.

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2. By the twenty-fifth (25th) day of each month ESCO shall submit to City's Representative for review an Application for Payment filled out and signed by ESCO covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
3. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the ESCO on account of that portion of the Work for which the ESCO has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the schedule of values.
4. To compute the amount of each progress payment, the amount of each progress payment shall first include: That portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of Work by the share of the GMP allocated to that portion of the Work in the most recent schedule of values; That portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the City, suitably stored off the site at a location agreed upon in writing; That portion of Change Orders reasonably justified; and The ESCO's Design and Construction Fee.
5. The amount of each progress payment shall then be reduced by: The aggregate of previous payments made by the City; The amount for failure of the ESCO to make payments properly to Subcontractors or for material or labor (unless a labor and material payment bond has been furnished by the ESCO); The shortfall, if any, indicated by the ESCO in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's auditors in such documentation; and Retention.
6. Beginning with the second Application for Payment, each Application shall include an affidavit executed by the ESCO stating that it has paid all amounts due on account of the Work paid by City in the prior Applications for Payment.

B. Review of Applications.

1. Within seven (7) days of receipt of a Payment Application, City's Representative will either indicate in writing a recommendation of payment to City or return the Application for Payment to ESCO indicating in writing City's Representative's reasons for refusing to recommend payment. In the latter case, ESCO may make the necessary corrections and resubmit the Application for Payment.

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2. In taking action on the ESCO's Applications for Payment, the City shall be entitled to rely on the accuracy and completeness of the information furnished by the ESCO and shall not be deemed to represent that the City has made a detailed examination, audit or arithmetic verification of the documentation submitted in support of the Application for Payment or other supporting data; that the City has made exhaustive or continuous on-site inspections; or that the City has made examinations to ascertain how or for what purposes the ESCO has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's auditors acting in the sole interest of the City.
 3. By recommending any such payment City's Representative will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to City's Representative in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle ESCO to be paid additionally by City or entitle City to withhold payment to ESCO.
 4. Neither City's Representative's review of ESCO's Work for the purposes of recommending payments nor City's Representative's recommendation of any payment, including final payment, will impose responsibility on City's Representative:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for ESCO's failure to comply with Applicable Laws applicable to ESCO's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes ESCO has used the moneys paid on account of the GMP; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to City free and clear of any Liens.
 5. City's Representative may refuse to recommend the whole or any part of any payment due to subsequently discovered evidence or the results of subsequent inspections or tests. City retains the right to revise or revoke any such payment recommendation previously made, to such extent as may be necessary in City's opinion to protect City from loss.
- C. Payment Becomes Due.
1. Thirty (30) Days after presentation of an undisputed and properly submitted Application for Payment to City's Representative, and subject to City's Representative's recommendation, subject to the modifications above, the amount recommended will become due, and when due will be paid by City to ESCO.

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D. Retention and Securities in Lieu of Retention.

1. Unless Project has been deemed substantially complex as noted in the Contract Documents, City will retain five percent (5%) of the amount invoiced in accordance with Applicable Laws. Multiple certificates of Substantial Completion will be issued for segments of Work as set forth in the Scope of Work and ESCO shall be entitled to payment of the retainage amount corresponding to the value of any segment of Work that receives a certificate of Substantial Completion. Payment shall be released upon issuance of said certificate of Substantial Completion.
2. Pursuant to Public Contract Code section 22300, ESCO may substitute securities for any moneys withheld as a retention by City to ensure performance under the Contract. At the request and expense of ESCO, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to ESCO. Upon satisfactory completion of the Contract, the securities shall be returned to ESCO .
3. Alternatively, ESCO may request, and City shall make payment of retentions earned directly to the escrow agent selected by the ESCO. At the expense of ESCO, ESCO may direct the investment of the payments into securities and ESCO shall receive the interest earned on the investments upon the same terms provided for in Public Contract Code section 22300 for securities deposited by ESCO. Upon satisfactory completion of the Contract, ESCO shall receive from the escrow agent all securities, interest, and payments received by the escrow agent when City authorizes the escrow agent to release these funds to the ESCO, pursuant to the terms of Public Contract Code section 22300.
4. Securities eligible for investment shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by ESCO and City.
5. ESCO shall be the beneficial City of any securities substituted for moneys withheld and shall receive any interest thereon.
6. The escrow agreement shall be in the form of the Escrow Agreement provided as part of the Contract Documents.

E. City's Reduction in Recommended Payment.

1. In addition to reductions recommended by City's Representative, City may refuse to make payment of the full amount recommended by City's Representative because:
 - a. Claims have been made against City on account of ESCO's performance or furnishing of the Work.
 - b. Stop Payment Notices or Liens have been filed in connection with the Work.
 - c. Defective Work not remedied.
 - d. Failure of ESCO to make proper payments to its subcontractors or suppliers.

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- e. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for the unpaid Contract balance.
- f. Damage to another contractor or third party.
- g. Amounts which may be due the City for claims against ESCO .
- h. Failure of ESCO to keep the record ("as-built") drawings up to date.
- i. Failure to provide updates on the construction schedule.
- j. Site cleanup.
- k. Failure of the ESCO to comply with requirements of the Contract Documents.
- l. Liquidated Damages.

Upon completion of the Contract, City will reduce the final Contract Price to reflect costs charged to the ESCO, back charges or payments withheld pursuant to the Contract Documents.

13.2 ESCO's Warranty of Title.

- A. ESCO warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

13.3 Partial Utilization.

- A. City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the ESCO of its responsibilities under the Contract.

13.4 Final Inspection.

- A. Upon written notice from ESCO that the entire Work is complete, City's Representative will promptly make a final inspection with City and ESCO and will notify ESCO in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. ESCO shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.5 Final Acceptance.

- A. After ESCO has, in the opinion of City's Representative, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents, and other documents required by the Contract Documents, City shall execute and

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file with the County in which the Project is located a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

13.6 Final Payment.

A. Application for Payment.

1. Upon execution of the Notice of Completion, ESCO may submit a final accounting for the cost of the Work and a final Application for Payment. Final payment, constituting the entire unpaid balance of the Contract Price.
2. Prior to Final Payment, the City may conduct an audit of the Work or notify the ESCO that it will not conduct an audit and issue a final Certificate for Payment. If the City conducts an audit of the Work, the City will either issue to the ESCO a final Certificate for Payment, or notify the ESCO in writing of the City's reasons for withholding a certificate. If the City's auditors report the cost of the Work as substantiated by the ESCO's final accounting to be less than claimed by the ESCO, the ESCO shall be entitled to make a claim. Pending a final resolution of the disputed amount, the City shall pay the ESCO the amount certified in the City's final Certificate for Payment.
3. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance;
 - b. consent of the surety to final payment;
 - c. a fully completed Conditional Waiver and Release on Final Payment.

B. City's Representative's Review of Application and Acceptance.

1. If, on the basis of City's Representative's observation of the Work during construction and final inspection, and City's Representative's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, City's Representative is satisfied that the Work has been completed and ESCO has satisfied all other requirements for final payment, City's Representative will indicate in writing City's Representative's recommendation of payment and present the Application for Payment to City for payment. Otherwise, City's Representative will return the Application for Payment to ESCO, indicating in writing the reasons for refusing to recommend final payment, in which case ESCO shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due.

1. Within sixty (60) Days after the presentation to City's Representative of the proper and complete final Application for Payment and accompanying documentation, the amount recommended by City's Representative, less any sum City is entitled to set off pursuant to the Contract Documents, will become due and will be paid by City to ESCO.

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13.7 Waiver of Claims.

- A. The making and acceptance of final payment will constitute a waiver of all Claims by ESCO against City other than those previously made in accordance with the requirements herein and expressly acknowledged by City in writing as still unsettled.

ARTICLE 14: SUSPENSION OF WORK AND COMPLETION

14.1 City May Suspend Work.

- A. City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to ESCO. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. ESCO shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.
- B. Upon receipt of any such notice, ESCO shall, unless the notice requires otherwise:
 - 1. Immediately discontinue Work on the date and to the extent specified in the notice;
 - 2. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;
 - 3. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and
 - 4. Continue to protect and maintain the Work including those portions on which Work has been suspended.
- C. Except as provided by this article, as full and complete compensation for such suspension, ESCO shall be granted an adjustment in the GMP for ESCO's actual costs associated with the demobilized condition of the and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of GMP or extension of Contract Times shall be granted if the suspension results from ESCO's non-compliance with the requirements of the Contract. Further, in the event said suspension continues in excess of 180 days, then ESCO may elect to terminate for convenience.

14.2 City May Terminate for Cause.

- A. City may, without prejudice to any other right or remedy, serve written notice upon ESCO of its intention to terminate this Contract in whole or in part if the ESCO: (i) refuses or fails to prosecute the Work or any part thereof with such diligence as will ensure its completion within the Project Completion Date; (ii) fails to complete the Work within the required time; (iii) files a bankruptcy petition or is adjudged a bankruptcy; (iv) makes a general assignment for the benefit of its creditors; (v) has a receiver appointed; (vi) refuses or fails to supply enough properly skilled workers or proper materials to complete the Work; (vii) fails to make prompt payment to subcontractors or for material or labor; (viii) disregards Applicable Laws, other requirements or instructions of City; or (ix) violates any of the provisions of the Contract Documents.

B. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within thirty (30) Days after the service of such notice, ESCO resolves the circumstances giving rise to the Notice of Default to City's reasonable satisfaction, or makes arrangements reasonably acceptable to City for the required corrective action, City may terminate this Contract. In such case, ESCO shall not be entitled to receive any further payment until the Work has been finished. City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. ESCO and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Work. If City takes over the Work, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the ESCO as may be on the Site.

14.3 Design Builder May Suspend or Terminate for Cause.

- A. ESCO may terminate the Contract or suspend the performance of the Work by providing written Notice to the City if: (i) the City repeatedly or materially fails, refuses or neglects to fulfill its obligations under the Contract or fails to make any undisputed payment(s) to ESCO as and when due hereunder, (ii) ESCO has provided written Notice of default to the City detailing the alleged failure, refusal, neglect, or payment default, and (iii) within thirty (30) days of the City's receipt of such written Notice, the City has neither cured nor commenced and diligently continued efforts to cure such default.

14.4 City May Terminate for Convenience.

- A. In addition to its right to terminate this Contract for default, City may terminate the Contract, in whole or in part, at any time upon seven (7) Days written notice to ESCO. The Notice of Termination shall specify that the termination is for the convenience of City, the extent of termination, and the effective date of such termination ("Effective Date of Termination").
- B. After receipt of Notice of Termination, and except as directed by City, the ESCO shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
1. Stop Work as specified in the Notice.
 2. Complete any Work specified in the Notice of Termination in accordance with the Contract Documents.
 3. Leave the Site and any other property upon which the ESCO was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety. ESCO shall be relieved of this requirement in the event that Work necessary to ensure safety is not specified and authorized in the Notice of Termination.
 4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
 5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.

6. Submit to City, within thirty (30) Days from the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the ESCO for labor, materials and equipment through the Notice of Termination. Any documentation substantiating costs incurred by the ESCO solely as a result of City's exercise of its right to terminate this Contract pursuant to this clause, which costs the ESCO is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience."
7. City's total liability to ESCO by reason of the termination shall be limited to the total (without duplication of any items) of:
 - a. The actual cost to the ESCO for all Work performed prior to the Effective Date of Termination, including the Work done to secure the Project for termination. Deductions shall be made for cost of materials to be retained by the ESCO (provided the materials may be reused for other projects or returned to the supplier), cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Contract Documents.
 - b. When, in City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - c. Any Work required by the Termination for Convenience that is not included in Contract Documents will be negotiated pursuant to the Contract Change Order provisions.
 - d. Reasonable costs to the ESCO of handling material returned to vendors, delivered to City or otherwise disposed of as directed by City.
 - e. A reasonable allowance for the ESCO's internal administrative costs in preparing termination claim.
 - f. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
8. In no event shall City be liable for unreasonable costs incurred by the ESCO or subcontractors after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the ESCO's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.
9. City shall have no obligation to pay the ESCO under this Article unless and until the ESCO provides City with updated and acceptable as-builts and Record Documents for Work completed prior to termination as required by the Contract Documents.

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10. In arriving at the amount due the ESCO under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

- a. All unliquidated advances or other payments on account previously made to the ESCO, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
- b. Any claim City may have against the ESCO in connection with the Work or any amounts that may be withheld in accordance with the Contract Documents, and
- c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the ESCO and not otherwise recovered by or credited to City.

ESCO shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

11. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order ESCO to cease Work until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.

12. If City terminates ESCO for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, ESCO shall be entitled to receive only the amounts payable under this section, and ESCO specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

ARTICLE 15: CLAIMS, DISPUTE AVOIDANCE AND RESOLUTION

15.1 Procedure for Resolving Claims

- A. ESCO shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, including but not limited to all requirements of Article 10 and Article 15.1, as a prerequisite to filing any Claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely submit a Change Order Request, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the Claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

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- C. Claims. For purposes of this Article, "Claim" means a separate demand by the ESCO for (1) a time extension, including without limitation relief from damages or penalties for delay assessed by City, (2) payment of money or damages arising from Work done by or on behalf of the ESCO and payment of which is not otherwise expressly provided for or the ESCO is not otherwise entitled, or (3) payment of an amount which is disputed by City. A "Claim" does not include any demand for payment for which the ESCO has failed to provide notice, submit a Change Order Request, or otherwise failed to follow any procedures contained in the Contract Documents.
- D. Filing Claims. Claims governed by this Article may not be filed unless and until the ESCO completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the GMP and/or the Project Completion Date, and ESCO's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16-point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. The ESCO will submit the claim justification in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to the Claim
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested
 7. Cover letter and certification of validity of the Claim

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- F. City Response to Claim. Upon receipt of a Claim pursuant to this Article, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after City issues its written response.
1. If City needs approval from its governing body to provide ESCO a written statement as set forth above, 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, City shall have up to three (3) days following the next publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide ESCO a written statement identifying the disputed portion and the undisputed portion of the Claim.
 2. City may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the Claim or relating to defenses or Claims City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the ESCO. City's written response shall be submitted 30 days (15 days if the Claim is less than \$50,000) after receiving the additional documentation, or within the same period of time taken by the ESCO to produce the additional information, whichever is greater.
- G. Meet and Confer Conference. If the ESCO disputes City's response, or if City fails to respond within the statutory time period(s), the ESCO may so notify City, in writing, within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement of those portions of the Claim that remain in dispute. Upon such demand, City shall schedule a meet and confer conference within 30 Days.
- H. Mediation. 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 City shall provide the ESCO 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 City issues its written statement. Any disputed portion of the Claim, as identified by the ESCO in writing, shall be submitted to nonbinding mediation, with the City and the ESCO sharing the associated costs equally. The public entity and ESCO shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. 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.
 2. For purposes of this Article, 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 Article.

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3. Unless otherwise agreed to by the City and the ESCO 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.
 4. The mediation shall be held no earlier than the date the ESCO completes the Work or the date that the ESCO last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the ESCO must file a Claim pursuant to 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 prior to initiating litigation. 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 ESCO submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. 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.
 2. 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- K. Government Code Claim Procedures.
1. 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 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the ESCO must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.
3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by ESCO. If ESCO does not comply with the Government Code claim procedure or the prerequisite contractual requirements, ESCO may not file any action against the City .
4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the ESCO last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to ESCO or that should reasonably be known to ESCO excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

L. Non-Waiver. The City's failure to respond to a Claim from the ESCO within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

15.2 Litigation.

A. Any claims, disputes, or controversies between the parties arising out of or related to the Contract, which have not been resolved in accordance with the procedures set forth herein shall be resolved in a court of competent jurisdiction.

15.3. Duty to Continue Performance.

A. Unless provided to the contrary in the Contract Documents, ESCO shall continue to perform the Work and City shall continue to satisfy its payment obligations to ESCO, pending the final resolution of any dispute or disagreement between ESCO and City .

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 Limitations On City's Responsibilities.

A. City shall not supervise, direct, or have control or authority over, nor be responsible for, the ESCO's means, methods, techniques, sequences, or procedures of design or construction, or the safety precautions and programs incident thereto, or for any failure of the ESCO to comply with Applicable Laws applicable to the performance of the Work. City will not be responsible for the ESCO's failure to perform the Project in accordance with the Contract Documents.

16.2 Successors

A. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The ESCO may not either voluntarily or by action of law, assign any obligation assumed by the ESCO hereunder without the prior written consent of the City.

16.3 Cumulative Remedies.

A. Except where explicitly stated otherwise, the duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

16.4 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Project or termination or completion of the Contract or termination of the services of the ESCO.

16.5 Controlling Law.

A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Project, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

16.6 Jurisdiction; Venue.

~~A.~~ A. The ESCO and any Subcontractor, supplier, or other person or organization performing any part of the Project agree that any action or suits at law or in equity arising out of or related to the proposal process, award, or performance of the Project shall be maintained in the Superior Court of Riverside County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

~~16.7~~ 16.7 No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by the City which may

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become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by ESCO or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

16.8 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

16.9 City's Right to Audit.

A. The ESCO shall make available to City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to City. If the ESCO submits a Change Order Request or a Claim to City, City shall have the right to audit the ESCO's books, records, documents, and other evidence to the extent they are relevant.

B. In accordance with Government Code Section 8546.7, records of both City and the ESCO shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

16.10 Assignment.

A. ESCO shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of City, such prior written consent shall not be unreasonably withheld. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

B. As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body 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 Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

16.11 All Legal Provisions Included.

A. ESCO shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If ESCO observes that drawings and specifications are at variance therewith, he shall promptly

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notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If ESCO performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

- B. ESCO shall be responsible for familiarity with the Americans with Disabilities Act (“ADA”) (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. ESCO shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. ESCO acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of “mined material” must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in the Guaranteed Maximum Price or Contract Time, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder. In the event an Applicable Law takes effect after execution of this Contract, and is inserted herein, and impacts the schedule or costs of the Project then either party may request changes to the GMP or Contract Time resulting from such new Applicable Law.
- F. Ethics. Each Party shall comply in all respects with all Applicable Laws governing the duties, obligations, and business practices of that Party. Neither Party shall take any action in violation of any Applicable Laws that could result in liability being imposed on the other Party. In the event the City has concerns related to ethics, compliance or ESCO’s Principles of Responsibility, and/or any potential violations of these policies, the City is welcome to make use of ESCO’s GreenLine. The GreenLine is ESCO’s global helpline for external stakeholders. It is a confidential channel through which public agencies can ask questions and raise concerns. Reports can be made using the following link: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.
- G. Export Control. The products, software, services, information, other deliverables and/or the technologies embedded therein (hereinafter referred to as “Deliverables”) provided by ESCO under this Contract contain or may contain components and/or technologies from the United States of America (“US”), the European Union (“EU”) and/or other nations. The City acknowledges and agrees that the assignment and/or usage of Deliverables under this Contract shall fully comply with applicable US, EU and other national and international export control laws and/or regulations. Unless any applicable export licenses have been obtained from the relevant authority and the ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination or party (including without limitation to any individual, group

and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. the City also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems, unmanned air vehicles, and/or nuclear weapons delivery systems, nor will they be used in any design, development, production or use for any weapons (which may include, without limitation, chemical, biological or nuclear weapons). If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit ESCO from fulfilling any order, or would in ESCO's judgment otherwise expose ESCO to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, ESCO shall be excused from all obligations under such order and/or this Contract.

16.12 State License Board Notice.

- A. Contractors are required by law to be licensed and regulated by the ESCO's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, the Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

16.13 Noise.

- A. The ESCO shall use only such equipment on the Project and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.
- B. The ESCO shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the ESCO shall promptly remove the equipment and shall not return that equipment to the Project site until the device is repaired or replaced. Noise and vibration level requirements shall apply to all equipment on the jobsite or related to the Project, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the ESCO.

16.14 Change In Name Or Nature of ESCO's Legal Entity.

- A. Should a change be contemplated in the name or nature of the ESCO's legal entity, the ESCO shall first notify City in order that proper steps may be taken to have the change reflected in the Contract Documents and all related documents. No change of the ESCO's name or nature

will affect City's rights under the Contract Documents, including but not limited to the bonds and insurance.

16.15 Complete Contract.

- A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as otherwise provided in the Contract Documents.

16.16 Notice of Third-Party Claims.

- A. Pursuant to Public Contract Code section 9201, City shall provide ESCO with timely notification of the receipt of any third-party claim relating to the Contract.

- 16.17 Signature Authority. The individuals executing this Contract and the instruments referenced herein on behalf of ESCO each represent and warrant that they have the legal power, right and actual authority to bind ESCO to the terms and conditions hereof and thereof.

16.18 Severability of Provisions.

- A. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

16.19 Correction of Errors and Omissions.

- A. The ESCO agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to City .

16.20 Interpretation.

- A. The Contract Documents shall not be construed in favor of or against any party, but shall be construed as if all parties prepared the Contract Documents.

END OF GENERAL CONDITIONS

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**ATTACHMENT 3
PERFORMANCE BOND**

WHEREAS the CITY OF SUTTER CREEK (also herein "City") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the ESCO is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned ESCO and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the ESCO, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if the Design Build Entity shall fail to make full, complete, and satisfactory repair and replacements, and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. The obligations of Surety hereunder shall continue so long as any obligation of ESCO remains. Nothing herein shall limit the City's rights or the ESCO or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

Whenever ESCO shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to ESCO by the City under the Contract and any modification thereto, less any amount previously paid by the City to the ESCO and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City shall be entitled to approve any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the ESCO, such approval shall not be unreasonably withheld by City .

Where ESCO has been terminated for default by the City, the Surety shall not utilize ESCO in completing the Project nor shall Surety accept a bid from ESCO for completion of the Project unless the City, when declaring the ESCO in default, notifies Surety of the City's written agreement to have ESCO's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including, but not limited to, the provisions of sections 2819 and 2845 of the California Civil Code.

Notwithstanding any provision to the contrary herein, this Performance Bond shall guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, or (2) any support or maintenance service agreement.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

ESCO/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

ATTACHMENT 4
PAYMENT BOND (LABOR AND MATERIALS)

WHEREAS the **CITY OF SUTTER CREEK** (hereinafter "Obligee") have awarded to _____ (hereinafter the "ESCO"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of the _____ Project and all other required structures and facilities within the rights-of-way, easements and permits;

WHEREAS, the Work to be performed by the ESCO is more particularly set forth in that certain contract for the said Public Work dated _____, (hereinafter the "Public Work Contract"); and

WHEREAS, the ESCO is required to furnish a bond in connection with said Public Work Contract providing that if the ESCO or any of his or its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we _____, the undersigned ESCO (s), as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Public Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Public Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the ESCO, the sum of _____ Dollars, \$_____, said sum being not less than 100% of the total amount payable by said Obligee under the terms of the said Public Work Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all

other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, and necessary disbursements. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Section 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20____.

ESCO

By:_____
President

Surety

By:_____

Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to

the within instrument as the Attorney-in-Fact of the _____
(surety) and acknowledged to me that he subscribed the name of the
_____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal was
then _____ of said corporation; that I know his signature,
and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for
and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

**NOTE: A copy of the power of attorney to local representatives of the bonding company
may be attached hereto.**

ATTACHMENT 5 HOURLY RATE SCHEDULE

Attachment 5 to this Contract – Hourly Rate Schedule	
Schneider Electric Billing Classification	Hourly Rate
Vice President	\$ 350.00
Program Manager	\$ 250.00
Senior Project Manager	\$ 250.00
Senior Principal	\$ 270.00
Wastewater Technical Project Manager	\$ 250.00
Mechanical Engineer	\$ 215.00
Senior Electrical Engineer	\$ 225.00
Senior Energy Engineer	\$ 225.00
SCADA Integration Manager	\$ 215.00
Structural Engineer	\$ 225.00
Pre-Construction Manager	\$ 250.00
Senior Cost Estimator	\$ 195.00
Solar & Microgrid Technical Project Manager	\$ 250.00
Solar Solutions Manager	\$ 220.00
Senior Microgrid Solutions Architect	\$ 215.00
National Solar Developer	\$ 175.00
Regional Energy Engineering Manager	\$ 205.00
MEP Design Engineering Manager	\$ 195.00
Construction Project Manager	\$ 225.00
Project Superintendent	\$ 180.00
Commissioning & Quality Control Manager	\$ 250.00
Scheduler	\$ 165.00
Client Services/ M&V Manager	\$ 150.00
Finance Director	\$ 145.00
Rebates and Grant Writing/ Manager	\$ 140.00
Marketing Specialist	\$ 120.00

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General

ATTACHMENT 6
WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of ESCO: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 6 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

ATTACHMENT 7

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

ESCO hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of ESCO's work on the Project for City.

ESCO further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the City's determination. The costs of any such tests shall be paid by ESCO if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at ESCO's expense at no additional cost to the City.

ESCO has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of ESCO Design-Build Entity: _____

Signature: _____

Print Name: _____

Title: _____

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Attachment 8 Wastewater Treatment Performance Guarantee

1. General

ESCO warrants that the Project, once completed and placed into operation, will be capable of treating wastewater and producing effluent meeting the applicable effluent limitations established under the Facility's NPDES and recycled water discharge permits, as such limits may be confirmed during the Design Phase and incorporated into the final design basis.

2. Basis of Guarantee

The performance guarantee is based on the influent flow and loading design criteria used in ESCO's final design (to be documented in the approved Basis of Design Report). The guarantee applies under Average and Peak Flow conditions and corresponding design loadings under both dry and wet weather conditions. The guarantee applies to the entire wastewater treatment process including pretreatment/screening, biological treatment, membrane filtration, effluent disinfection, and sludge dewatering.

3. Demonstration of Compliance

3.1 Performance Test Plan.

At least thirty (30) days prior to testing, ESCO shall prepare and submit a Performance Test Plan for review and approval by the Owner. The Plan shall include:

- a. Test schedule and operating conditions
- b. Sampling and monitoring locations and frequency
- c. Analytical methods and QA/QC procedures
- d. Data reporting format
- e. Pass/fail criteria tied to effluent limits
- f. Staffing and monitoring plan

Owner/Engineer approval is a condition precedent to starting the Performance Test.

The following shall be deemed complete prior to initiating Performance Testing:

- a. Substantial completion of construction
- b. Successful completion of all facility acceptance testing
- c. All Operations and Maintenance manuals submitted and accepted
- d. Comprehensive training of City operations staff completed
- e. All spare parts and special tools required for routine operation and maintenance delivered
- f. All required temporary or final permits for operation, including NPDES coverage and Title 22 approval, are in place or conditionally authorized to allow testing under regulatory oversight
- g. Permanent power, water supply, chemical systems, and other supporting utilities are fully installed, tested, and available for use

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General

- h. City operations staff are available and scheduled to operate alongside ESCO personnel during the Performance Test to gain hands-on training and experience

3.2 Performance Testing Protocol.

Within thirty (30) days after Substantial Completion, ESCO shall initiate a Performance Test of the completed wastewater treatment facilities. The Performance Test shall:

- a. Be conducted over a minimum continuous thirty (30) day operating period,
- b. Be performed under average dry weather flow conditions at or near design loadings, as documented in the approved Basis of Design Report,
- c. Include influent and effluent sampling and analysis sufficient to demonstrate compliance with all applicable permit effluent limits, including but not limited to BOD, TSS, turbidity, coliform, pH, and disinfection criteria,
- d. Be performed in accordance with industry-recognized quality assurance/quality control practices and permit requirements.

3.3 Sampling and Monitoring.

- a. Sampling frequency, analytical methods, and reporting protocols shall be consistent with the Facility's discharge permit monitoring and reporting requirements.
- b. At a minimum, daily monitoring of critical parameters (BOD, TSS, turbidity, and coliform) shall be performed during the Performance Test.
- c. All samples shall be analyzed by a California ELAP-certified laboratory, unless otherwise agreed in writing.

3.4 Reporting.

At the conclusion of the Performance Test, ESCO shall prepare and submit a Performance Test Report including:

- a. Summary of operating conditions during the test period,
- b. Tabulation of all influent and effluent monitoring data,
- c. Comparison of results to guaranteed effluent limits,
- d. Identification of any exceedances and corrective actions taken,
- e. Certification by ESCO's design engineer of record that the test demonstrates the facility's capability to reliably meet the guaranteed performance.

3.5 Failure and Retest.

- a. If the Performance Test demonstrates non-compliance with any guaranteed effluent limit, ESCO shall, at its sole cost, promptly implement such modifications, adjustments, or additions to the treatment process as necessary to achieve compliance.
- b. Following completion of such modifications, ESCO shall repeat the Performance Test for a full thirty (30) day period, under the same terms as above.
- c. This process shall be repeated as necessary until the facility demonstrates compliance.

3.6 Warranty Terms.

The Performance Guarantee Warranty Period shall commence upon successful completion and City acceptance of the Performance Test. The following warranty requirements shall be proposed

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General

by the ESCO for consideration by the City, and negotiated in good faith, at the completion of Phase 2:

- a. Duration of the Warranty Period.
- b. Corrective actions required to achieve compliance, in the event of noncompliance.
- c. Criteria for extension of the Warranty Period if repeated failures are encountered.
- d. Exclusions.

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General

ATTACHMENT 9

GRANT/LOAN COMPLIANCE RIDER

This Rider is attached to and made part of the Design-Build Energy Services Contract between the City of Sutter Creek (“City”) and Schneider Electric Buildings Americas, Inc. (“ESCO”).

1. **Purpose.** This Rider is intended to incorporate and flow down the terms of any state or federal grant, loan, or funding assistance secured by the City for the Project.
2. **Incorporated Provisions.** ESCO shall comply with the following, as applicable to the funding source:

- **Federal Cross-Cutting Requirements** (2 CFR Part 200, Subpart D, Appendix II, and related guidance).
 - **Labor Standards** (Davis-Bacon Act, Copeland Act, Contract Work Hours and Safety Standards Act, or California Labor Code prevailing wage provisions).
 - **Domestic Preference** (Build America, Buy America Act, 49 U.S.C. § 5323(j), or equivalent).
 - **Civil Rights / Equal Opportunity** (Title VI, ADA, Section 504 of the Rehabilitation Act, Executive Order 11246, etc.).
 - **Environmental and Permitting Compliance** (CEQA, NEPA, EPA SRF cross-cutters, etc.).
- ~~○ **Debarment and Suspension Certification** (2 CFR Part 180).~~
- **Audit and Record Retention** (2 CFR §§ 200.334–200.338, minimum three years after final payment).
- ~~○ **Other Agency Specific Provisions** as may be required by the funding agreement (examples: USDA RD Guide 27, EPA SRF loan conditions, CDBG contract provisions).~~

3. **Supersession.** Where this Rider conflicts with the base Agreement, the provisions of this Rider shall govern, but only to the extent necessary to comply with funding agency requirements.

4. **Amendments.** The City may replace this Rider with the funding agency’s standard form at the time of award. ESCO shall execute such replacement Rider as a condition of proceeding with the Work.

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Appendix I - IGA Scope of Work

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WASTEWATER TREATMENT FACILITY (WWTF) - PROJECT SCOPE OF WORK

The WWTF is being designed for 0.5mgd average dry weather flow with buildout up to 0.8mgd. The system will be built to accommodate planned growth in the City and will treat effluent to disinfected tertiary standards for recycling as part of a future project. Major WWTF project scope elements include the following, subject to further definition and revision during Phases I and II:

- WWTF Wastewater Treatment System with Equalization
 - Influent equalization pond assumed to be a 1,100,000+ lined pond created by converting the existing effluent storage pond. Pond storage may be combined with additional membrane bioreactor (MBR) tankage to meet total equalization and emergency storage volume requirements. Reuse of the existing equalization pond is subject to FEMA review and any required approvals related to floodplain impacts or regulatory constraints. An alternate equalization strategy shall be developed as an optional scope item if reuse of the equalization pond is not feasible.
 - Skid-mounted and shop-assembled and tested MBR wastewater treatment system utilizing 304 SS tanks installed on concrete foundations. selected package shall be designed and supplied by Cloacina LLC, Arroyo Grande, CA.
 - Package to include influent fine screens, equalized flow delivery pumps, anoxic and aerobic treatment tanks, blowers, forward activated sludge pumps, membrane tanks, including additional membrane capacity for peak flow management, clearwell, outdoor inline UV disinfection system or chlorine disinfection system, auxiliary pumps, main control panel, stairs, platforms, and canopies
 - Flows pumped directly to WWTF influent fine screens from Lift Station (MBR tanks and equalization basin), with valving and controls system adjustments depending on the final site layout and theory of peak flow operation.
 - Chemical storage totes and metering pumps in an outdoor pad with sun/rain cover
 - Flow to Equalization Basins will pass through existing coarse screens, if suitable.
- Effluent Transfer Pump Station
 - Outdoor horizontal centrifugal variable speed pumps to deliver effluent from clearwell through UV system to Recycled Water Storage Tank or to surface water disposal
 - Pump station sizing to be similar to WWTF influent flow criteria, based on analysis of future recycled water demands
- WWTF Solids Handling
 - Shop-assembled packaged dewatering system consisting of sludge holding tank, feed pump, chemical addition, and volute or screw press dewatering unit installed outdoors under a canopy. Canopy designed by PTV and attached to shop-assembled system or the pad it is mounted on
 - Control panel integrated into SCADA
 - Discharge to a rolling bin for offsite disposal in a landfill
 - Evaluation of repurposing existing pond and trickling filter as equalization basin, in addition to an assessment of feasibility for utilizing other available basins as sludge holding basin(s)
Optional: provisions made for future Class A or B biosolids treatment. Provisions limited to allocating a space for additional equipment and stubbed out process connections
- Odor Control

- Provision site layout and connections for future odor scrubber utilizing dry absorptive media (GAC or similar) in a fiberglass scrubber vessel plumbed to scrub air spaces at influent screening, equalization tanks, and site drain pump station, if required by City. Site location and likely use of effluent storage pond for influent equalization may render odor control of influent screening and other areas less effective. To be analyzed during Phase 1 services
- Yard and Process Piping
 - All piping within the WWTF parcel interconnecting process units
- Site Features
 - Grading to create a flat site with sheet flow drainage offsite, except in process areas (drainage study of surrounding lands not included)
 - MOSes to add language on access road, topology survey should include roadway
 - A high-level assessment of the site drainage in phase 1 of the design, considering the final plant layout. Based on Phase 1 outcome, final scope and level of efforts will be determined in Phase 2.
 - Process areas drain to local drain pump station for return to treatment
 - Process drain pump station with submersible pumps discharging to headworks
 - LED site lighting with photocell and occupancy sensor
 - Fire hydrants connecting to existing nearby water supply. Design and Improvements to the existing water system near new plant site may be required to supply required flow and pressure to site for fire flow. Phase 1 should identify any deficiencies to be addressed in Phase 2. Hose bibs/yard hydrants for washdown water
 - Access for entry, exit, and staging of a crane to perform long-term heavy maintenance and plant expansion
 - Curbs and catch basins
 - Chain link fencing and gates
- Recycled Water Pumping Facility (future / by others)
 - The site layout will allocate space for future pump station, recycled water piping connections, and electrical/comms infrastructure for a future effluent pump station for the potential Gold Rush Ranch recycled water strategy. **provision for a future pump station and its associated electrical infrastructure is included in the current phase. The design and construction of future facilities related to pumping and conveyance of recycled water to GRR will be performed by others.** Anticipated to be a pressurized pipeline capable of disposing of 500 AF per year
- Power
 - 480-v 3-phase power distribution (power service and transformer designed by Utility and applied for by Owner, with technical support from ESCO for application and coordination with Utility)
 - Evaluation and design of an adjacent solar PV & battery storage system to supplement part of the new plant design power needs
 - Diesel standby generator(s) and automatic transfer switch, sized to allow plant to operate at full capacity. ESCO must obtain permit from Amador County Air Pollution District for generator operation.
 -
- Controls
 - Design a SCADA system and radio telemetry system or fiber optic connection as indicated in the Control System Block Diagram to provide for monitoring, trending, and

remote access. It is assumed this system will be linked to offsite utility monitoring systems

- Design the integration of the overall SCADA system with the included SCADA system as part of the packaged MBR system
- System integration and programming services will be by a qualified system integrator provided by the ESCO
- Influent Lift Station
 - Influent flows into the WWTF will collect in a new influent lift station. The lift station will convey influent to the packaged headworks system. Peak event flows will be screened if possible and buffered in the influent equalization pond.
 - Sized for peak hour wet weather flow and turndown for average dry weather flow
 - Concrete cast-in-place wet well with protective coating, concrete lid with spring assist H2O loaded access hatch and safety grating
 - Duplex or triplex submersible pumps with discharge elbows and rail systems, design to consider City phasing of influent flows
 - Davit crane for pump service and replacement
 - SCADA control panel
 - Odor scrubber

POTENTIAL OPTIONAL SCOPE ITEMS

The following is a list of potential optional scope items that we have identified during preparation of this RFP Response. We can provide detailed scopes and prices for these items upon request.

- Chemical storage building, base scope includes concrete equipment pad and sun/rain cover.
- Recycled Water System Model – base scope assumes future recycled water system curve is provided by others.
- Fire sprinkler design (if required) and Master Fire Protection Plan designed by Fire Protection Engineer.
- Operations and maintenance building for the WWTF
- Cast-in-place MBR
- Layout on the adjacent property (uphill) and new EQ strategy assuming project constraints are found to be such that constructing improvements on the existing site is determined to be infeasible
- CEQA+/NEPA documentation if Federal funding is pursued and requires this

GENERAL IGA SCOPE OF SERVICES

IGA PROCESS AND DELIVERABLES FOR WASTEWATER TREATMENT UPGRADES

In general, the IGA will be executed per the three following Phases of the ESCO Team's process:

1. Phase 1 – Preliminary Assessment: The goal of this phase is to Define Customer Problem(s) and a Create a Prioritized Scope List to Solve those Problem(s). This goal is achieved by completing the necessary due diligence to create Complete Utility, End Use Breakdown & Process Baseline, Preliminary Process Performance & Energy/ Operational Savings, Basis of Design Report, and Preliminary Construction Pricing based on AACE Class 4 Estimate. Goals of this Phase also include:
 - Advance, evaluate, and compare the cost, schedule, and feasibility of WWTF alternatives.
 - Advance permitting, cost estimating, scheduling, environmental review, and other critical project elements to a sufficient level that—at the conclusion of this phase—the City can make an informed decision about project feasibility, risks, costs, schedule, and regulatory concurrence.
 - Complete topographic survey and geotechnical investigations required to inform the evaluation and support a subsequent design phase.
 - Identify candidate Energy Conservation Measures (ECMs). Evaluate opportunities to reduce long-term operational costs, capital reinvestment needs, and regulatory exposure through replacement or major upgrade of the existing WWTF. The analysis shall quantify both energy savings and non-energy value streams, including cost avoidance, operational efficiency improvements, deferred capital costs, and other benefits.
 - Identify proposed project funding and potential impacts to City wastewater rates.
 - Develop a proposed detailed project schedule.
2. Phase 2A – Mid-Term IGA: The goal of this phase is to Obtain Customer Commitments for Technology, Scope and Contract Terms and Conditions. This goal is achieved by completing the necessary due diligence to create Contract Utility, End Use Breakdown & Process Baseline, Complete Process Performance & Energy/ Operational Savings, 30% Engineering and Design Docs, Complete Construction Pricing based on AACE Class 3 Estimate, and Complete Construction Terms and Conditions.
3. Phase 2B – Final IGA: The goal of this phase is to Engage in Customer Contract for Construction with Risks (Technically, Financially or Contractually) Mitigated. This goal is achieved by completing the necessary due diligence to create Contract Process Performance & Energy/ Operational Savings, 60% Engineering & Design Docs, Contract Construction Pricing based on AACE Class 2 Estimate, and Contract Construction Terms and Conditions.

The definitions below are applicable to the level of completeness used in the descriptions above:

- PRELIMINARY: Early versions of design documents that outline the general concepts, ideas, and direction of a project. Typically used to communicate the design concept to stakeholders and to seek feedback on the direction of the project.
- COMPLETE: Final versions of design documents that include all of the necessary information and details to fully execute and implement a project. Once issued, these documents are

considered frozen and may not be revised or changed without proper approval via the project change management process. With the approval of ESCO, these documents may contain clearly identified holds for missing information such as vendor provided details.

- CONTRACT: Complete versions of documents with final edits for use in contract between Customer and ESCO.

The deliverables of each IGA phase will be formatted to match the Energy Savings Performance Contract attachments, with the level of completeness generally advancing with each successive IGA phase. Some Schedules may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables. Based on previous construction contracts with other Customers, those attachments could include some or all of the following:

- Schedule A – Scope of Work
- Schedule B – Performance Assurances Support Services
- Schedule C – Performance Guarantee
- Schedule D – Measurement and Verification Plan
- Schedule E – Owner Responsibilities for Performance Guarantee
- Schedule F – Start-Up and Commissioning
- Schedule G – Standards of Performance
- Schedule H – ESCO's Training Responsibilities
- Schedule I – Construction Phasing Plan
- Schedule J – Final Construction Price and Payment Schedule

Each of the above IGA Phases consist of the following 6 sequential Sprints:

- a. Sprint 0: Kick-Off
- b. Sprint 1: Data Collection
- c. Sprint 2: Engineering
- d. Sprint 3: Estimating and Procurement
- e. Sprint 4: Financial Analysis and Report
- f. Sprint 5: Stakeholder Engagement

Tasks for each IGA Phase and Sprint are identified below, some tasks may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables:

1. Sprint 0: Kick-Off
 - a. Client Goals and Objectives
 - b. Prioritized Scope List
 - c. Funding Approach
 - d. Project Approval Process
2. Sprint 1: Data Collection
 - a. Site Investigation
 - b. Client RFI
 - c. Regulatory Agency Engagement
 - d. Analysis of Utility and Operational Bills
 - e. Energy Baseline and End Use Breakdown
 - f. Process Baseline and Theory of Operations
 - g. Verification of As-built Equipment Data and Existing Conditions

3. Sprint 2: Engineering
 - a. Energy and Operational Savings Calculations
 - b. Utility Rebates and Other Incentives
 - c. Engineering Control Documents and Regulatory Compliance (see deliverable details below, under **SPECIFIC IGA ENGINEERING SCOPES OF SERVICES** heading)
 - d. Phasing Plan
 - e. Inspection, Testing, Commissioning Acceptance and Turnover Plan (ITCAT)
 - f. M&V Approach
 - g. O&M Approach
 - a. Operator Training
4. Sprint 3: Estimating and Procurement
 - a. Construction Price Estimate
 - a. O&M Estimates
5. Sprint 4: Financial Analysis and Report
 - a. Cash Flow Analysis (25-year)
 - a. Contract Schedules
6. Sprint 5: Stakeholder Engagement
 - a. Workshop Meetings
 - b. Deliverables Presentation
 - c. Stakeholder Review and Comment
 - d. Comment Discussion, Resolution, and Closeout

PROJECT MANAGEMENT

ESCO and its subconsultants (Design Build Team) will perform internal management of the project, schedule, and budget, partner with the project team members, and attend meetings and workshops. The Design Build Team will prepare meeting agendas, handouts, and minutes for all design meetings. The Design Build Team will maintain a Project Decision and Action Item log for tracking of all decisions and actions and will update this at each progress meeting and distribute to the team. Project management shall include overall management of the project; team coordination; coordination with the City and any other consultants; regular progress meetings; workshops; and presentations. Project management includes the following meetings, progress reports, and milestones:

- Biweekly Project Team Meetings, virtual
 - The Design Build Team shall meet with the City team via virtual meetings on a biweekly basis during **Phase 1** and **Phase 2**
- Customer Project Kick Off & Site Investigation, in person
 - The Design Build Team will meet with the City at the project site to gather and review the necessary data and documentation required to develop the project design criteria, and to discuss key considerations for selecting the appropriate criteria
- Customer Meeting & Site Investigation Teams Recap, virtual
 - The Design Build Team will meet with the City via virtual meeting to review and discuss the findings from the site investigation and results of documentation review and discuss site planning and preliminary construction phasing observation
- Alternative Analysis Workshop/Presentation, in person
 - The Design Build Team will meet with the City via virtual meeting to review the results of the alternative analysis and make a decision on project direction as a result of the analysis.
- Technical Design and Alternatives Analysis Memorandum Review Meeting, in person

- The Design Build Team will meet with the City in person to discuss and review comments on the Tech Memo
- Preliminary Design Report (PDR), and 30% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff Phase 2 as a result of final approved PDR. The purpose of the meeting will be to align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- PDR Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the PDR and discuss risks, budget, and schedule
- 30% Design Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the 30% design phase and discuss risks, early procurement items, budget, and schedule
- 60% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff the 60% design efforts as a result of approval of the 30% design. The purpose of the meeting will be to, again, align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- 60% Design Internal Review , virtual
 - The Design Build Team will meet via virtual meeting to review the 60% design deliverables and prepare for presentation of the design to the City
- 60% Design Project Team Presentation, in person
 - The Design Build Team will meet with the City in person to review the results of the 60% design phase and discuss risks, early procurement items, budget, and schedule. This meeting will also prepare the Project Team for delivery of Guaranteed Maximum Price (GMP), based on approval of the 60% design
- 60% Design & GMP Project Final Scope, Scheduled, and Negotiation
 - The Design Build Team will meet with the City to address city's team review comments on the submitted 60% design and GMP . The goal is to discuss and negotiate final scope, pricing, schedule, risks, and early procurement
- Regional Board and DDW Permitting Agency Coordination Meetings, virtual
 - The Design Build Team will meet with the Region 5 Regional Water Quality Control Board and Division of Drinking Water staff assigned to the project to review the design intent at the 30% and 60% design level to align the agencies with the project direction and address any concerns early in the project to minimize schedule interruptions by agency approval. After completion of the first meeting, the Report of Waste Discharge and Title 22 Engineering Reports will be drafted and submitted in draft form to the agencies. After completion of the second meeting, the reports will be updated to draft/final and submitted for permit approval.
- Federal Emergency Management Authority (FEMA) Agency Coordination Meetings, virtual
 - The Design Build Team will meet with FEMA, if required based on our floodplain analysis, to discuss the potential requirement for a CLOMR and LOMR and work with the agency to determine sequencing, schedule, and next steps
- CEQA Coordination Meetings, virtual
 - The Design Build Team will meet with the environmental permitting representatives to support the CEQA application process.

Deliverables:

- Project Decision & Action Item Log, Excel format
- Alternative Analysis, PDR, 30%, 60% Presentations, PowerPoint Format

QUALITY MANAGEMENT

The Design Build Team will perform quality control and quality assurance throughout the design phase of the project. A Quality Assurance/Quality Control (QA/QC) officer will be designated within the firm that is responsible for implementation of the QA/QC plan. The scope items that are performed by the Design Build Team will be peer reviewed internally by Schneider Electric prior to submission to the City. This process ensures a high level of precision and completion on deliverables prior to release to the various project teams.

For each client deliverable presented for review, Design Build Team will create a Bluebeam Studio review session, for all City and City Representatives (as applicable) to provide comments, track Design Build Team responses, and document closeout of all comments and changes. City and City Representatives will have 2 weeks to review and provide comments for each phase deliverable.

Deliverables:

- Comment and response logs, available upon request

GENERAL ASSUMPTIONS AND EXCLUSIONS

1. No architectural or MEP engineering services are included at the time of proposal based on the fact that a new operations or maintenance building is currently not in the project scope. It is anticipated that the current operations and maintenance buildings will be protected in place.
2. The scope of facilities described under the heading "Water Reclamation Facility (WWTF) Project Elements," above, is the basis for estimating our design effort. If the Preliminary Design phase of the project results in changes to this assumed scope, the design and construction support efforts may change, and a scope amendment may be required.
3. Additional assumptions and limitations are provided under corresponding tasks below.
4. Plan checks by the Building Department, Regional Board, DDW, and FEMA will be conducted in accordance with the overall project schedule for design and implementation. Comments from the Building Department will be limited to applicable building, plumbing, fire, and electrical code matters.
5. ADA compliance design will not be required for the facilities included in this scope.
6. Design for repurposing existing effluent storage pond to proposed influent equalization basin is assumed to be limited to rough and finished grading, levees, liner, pipe penetrations for inlet and pump suction, associated pumping and filtering facilities, access roads, and fencing.
7. Operations and Maintenance manuals will be prepared by equipment suppliers, separate from this scope.
8. Drawings will be prepared in a current version of AutoCAD Civil3D and will be based on Consultant standard drawing format, layering, and title blocks. Use of BIM or 3D design not included.
9. Technical specifications will be based on consultant boilerplate specifications, with City preferences and standards incorporated. Front-end specifications are assumed to not be required for the project.
10. Environmental clearance and permitting will be by ESCO and coordinated with the design.

11. Perimeter landscaping, hardscaping, or decorative fencing or walls not included or by others.
12. City WWTF Operations Team will have the opportunity to assist ESCO with collaborative development of the Project Definition Report, by participating in workshops and through review/comment of deliverables. In addition, collaboration and engagement with operations team on different controls strategies.
13. Any partnering activities would be addressed as part of the bi-weekly meetings. We can optionally add additional scope for separate formal partnering sessions.
14. Sites for facilities will be relatively flat or moderately sloped sites that can be graded for construction of facilities without retaining walls or other special grading features. Drainage will sheet flow off the sites to surrounding lands or discharge from on-site storm drains to outlet structures at the perimeter.
15. Geotechnical recommendations, prepared by others, will allow for slab-on-grade foundations without special foundation measures such as piles.
16. If the water balance determines that additional effluent disposal by spray, leach field, or similar is required, an additional service proposal can be provided for the design of these systems. They are not included in the base scope.
17. Design scope assumes that all improvements included in this package will be prepared as a single set of plans and specifications with a limited number of early procurement packages.
18. Design fees assume the use of a packaged MBR treatment system manufactured by Cloacina LLC. Phase 2 and 3 design fees could increase by up to 50-100% if a cast-in-place MBR system is selected by the City.
19. Meeting agendas and notes will be the responsibility of ESCO as host of the meeting schedule for the overall project.

SPECIFIC IGA ENGINEERING SCOPES OF SERVICES

PHASE 1 – ALTERNATIVES EVALUATIONS AND PROJECT DEFINITION

During Phase 1, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 1 regulatory and permitting analyses will be incorporated into the Alternative Analysis, Technical Memo, and Schematic Design providing for cohesive technical deliverables.

Wastewater Treatment Facility Design - WWTF Design Phase 1

Overview of Tasks:

- Data and documentation gathering and review
- Site investigation including preliminary topographic and boundary survey as well as geotechnical investigation of subsurface conditions and infiltration testing for any storm water post construction requirements the project may face
- Alternatives analyses regarding WWTF technologies, construction type, location, and phasing approaches
- Review of permitting and regulatory drivers and constraints set forth by the Regional Water Quality Control Board, Division of Drinking Water, CEQA, CalTrans, FEMA, and the local building authority
- Project funding strategy, including potential customer rate impacts
- Develop technical design memoranda to describe project constraints, design criteria, and alternatives available to the City
- Preliminary schedule development
- Develop construction scope, schedule, and budget
- Complete a GMP estimate through repeated cost modeling

Task 1 – Phase 1 Topographic and Record Boundary Survey for Design Approach

ESCO will provide a limited topographic survey of the approximate limits as shown in green in Figure 1 using a combination of aerial and field mapping. The aerial mapping will be augmented by field survey to locate significant features and be completed by conventional techniques. During the Phase 1 design approach, the surveying effort will be limited to setting aerial control, locating three to four survey monuments and best fit pin the record boundary line work to the mapping, and a limited amount of significant feature measurements to be collected at the engineer's direction. For budgeting purposes, we have included three (3) ten-hour days, including mobilization, to complete this limited field work.

The survey mapping will be constrained horizontally to the California Coordinate System of 1983 (CCS83), Zone 2 projection and vertically to the North American Vertical Datum of 1988 (NAVD88). Survey control stations will be set near the edges of the project mapping limits so that they are available for construction survey staking control and likely will remain through construction and the next phases of design. The compiled mapping will be completed with a mapping scale of 1" = 20' with a one-foot contour interval.

A preliminary title report(s) will be needed to provide further research tools and a better understanding of the existing parcels and easements. For budgeting purposes, we assume that the title report(s) will be provided by the owner and that no more than four (4) easements will need to be plotted.

The mapping will be provided as a Civil 3d 2024, or newer, survey base map drawing file with digital terrain model (DTM) surface. For budgeting purposes, we have assumed that sufficient monuments exist, no material discrepancies will be discovered, and that filing a Record of Survey or Corner Record will not be required, including in the event that a Record of Survey is required according to Section 8762 of the California Business and Professions Code (BPC) or rehabilitating of controlling monuments used as part of this survey is required due to their condition being less than permanent and durable and other requirements specified by Section 8771.6 of the BPC. However, if as a part of the survey for this project, a Record of Survey or Corner Record is required, or existing monuments are found and determined to need re-establishment to comply with state law the client agrees to authorize additional scope and budget to satisfy these requirements.



Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 2 – Design Criteria and Alternatives Analysis

Task 2.1 - Technical Design and Alternatives Analysis Memorandum

Drafting the Technical Memorandum involves creating a summary document that outlines the initial design concepts, constraints, and alternative approaches for the project. This report serves as a crucial communication tool between stakeholders and team members. The memo will include design criteria, results of floodplain analysis, results of environmental and wastewater discharge permitting analyses, high level summaries of alternatives, and Class 4 AACE cost estimate. The memo will be presented to the City for approval to proceed.

The memo will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Establishment of future expandability requirements for the facility
- Location and treatment technology alternatives analysis, including evaluation of repurposing existing facilities to integrate hydraulically and confirm capacity for the intended purpose. The alternatives analysis includes membrane treatment technologies (does not include ceramic or flat sheet), disinfection processes (e.g., in vessel UV, in channel, and chlorine), solids handling and dewatering, and screening for future odor control with a carbon technology.
- Preliminary approach
- Capital cost estimate (Class 4 AACE), provided as an attachment and summarized in the report

Deliverables:

- Technical Design Criteria and Alternatives Analysis Memorandum, PDF format

Task 2.2 - Schematic Design

Develop the schematic design to 10% design completion. The purpose of the schematic design is to coordinate the configuration, layouts, sizes, and major features of the overall design with the City and project team; optimize the project to best meet the project goals; firm up decisions; and obtain consensus on these items for the detailed design. Schematic design drawings will include the following:

- Preliminary Process Flow Diagrams
- Preliminary Hydraulic Profile
- Site plans, including identification of the footprint of future expansion to get to Buildout flow capacity.
- Major yard piping
- Building and equipment footprints and major features
- Major design criteria, equipment sizes, and features
- Existing facilities proposed for reuse and schematic design of rehab/upgrades
- Preliminary electrical single-line diagrams
- List of anticipated early procurement items

Deliverables:

- 10% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 1:

Regionalization, Reclamation, Recycling, and Conservation Report

This report will address the Central Valley Regional Water Quality Board's (Central Valley Water Board) Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants. Submittal of this report to Central Valley Water Board executive management is needed before Board management will advance discussions with the City regarding the need for an NPDES permit to allow WWTF effluent discharge to Sutter Creek. Resolution No. R5-2009-0028 requires that the report address the following elements.

- a. Efforts that have been taken by the City to promote new or expanded wastewater recycling and reclamation opportunities and programs.
- b. Water conservation measures promoted by the City.

- c. Regional wastewater management opportunities and solutions (e.g. regionalization) available to the City.
- d. An evaluation of wastewater reclamation and land disposal as alternative disposal methods to a surface water discharge.

It will be critically important to explain in this report why remaining a part of the Amador Regional Sanitation Authority (ARSA) is not feasible and why the City seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

NPDES Permitting Technical Memorandum

This technical memorandum will characterize the projected WWTF effluent quality (e.g., conventional pollutants, temperature, priority pollutants) with the new treatment processes compared to expected NPDES permit effluent limitations and reclamation permit requirements, and receiving water quality, which can affect NPDES permit limitations, and other anticipated permitting requirements. Key elements of this task are listed below.

- a. WWTF Effluent and Receiving Water Quality Characterization: A characterization of WWTF effluent and Sutter Creek water quality is necessary to support design of the new WWTF, as well as support NPDES permitting and CEQA compliance processes to identify the effects of the WWTF discharge on Sutter Creek water quality and beneficial uses. The data will assist in identifying constituents (e.g., trace metals) or parameters (e.g., temperature) that may pose a challenge for NPDES permit compliance and, thus, require additional investigation into source control options or specific treatment technologies to be incorporated into the WWTF design.
- b. WWTF Effluent Quality Projections: Characterizing existing WWTF effluent quality establishes the baseline condition, with the expectation that the new WWTF effluent quality will be no worse, and likely better, for many constituents due to improved removal efficiencies.
- c. Anticipated Effluent Limitations: The Central Valley Water Board makes determinations regarding the need for water quality-based effluent limitations in an NPDES permit through a reasonable potential analysis (RPA). Completing an RPA will be informative because it gives the Project Team advance notice of anticipated NPDES permit limitations, which can be useful for determining the feasibility of the surface water discharge and/or if treatment compliance strategies need to be developed for the project.

Environmental Opportunities and Constraints Technical Memorandum

This technical memorandum will address the environmental opportunities and constraints related to the siting of the new WWTF, focused on potential impacts on biological resources, a listing of environmental permits that may be required for construction of the new outfall in Sutter Creek (e.g., Clean Water Act [CWA] Section 404 permit), an overview of the CEQA compliance process, and a timeline and estimated cost for environmental permitting and CEQA compliance. Key elements of this task are listed below.

- a. Site visit conducted by ESCO biologists to visually survey for biological resources and potential impact-related issues.
- b. Identify federal and state endangered plant, fish, and wildlife species that could be affected by project construction and operation.
- c. Generate a list of potentially relevant environmental permits, such as a CWA Section 404 permit from the U.S. Army Corps of Engineers (USACE) and a CWA Section 401 water quality certification from the Central Valley Water Board. It is expected that any outfall proposed would

require a Lake and Streambed Alteration Agreement (LSAA) from the California Department of Fish and Wildlife (CDFW).

- d. Develop a preliminary permitting and CEQA compliance schedule and cost estimate.

Completing an environmental opportunities and constraints analysis allows for identifying potential effects of the project, which allows the Project Team to make refinements to the project to reduce or avoid potential adverse environmental effects that would otherwise require costly mitigation or could not be mitigated to a less-than-significant level (i.e., be significant and unavoidable).

Task 1 - Regionalization, Reclamation, Recycling, And Conservation Technical Memorandum

The Central Valley Water Board adopted Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants.

This resolution states that wastewater treatment plants seeking a new NPDES permit shall provide information regarding regionalization, reclamation, recycling, and conservation upon request by the Central Valley Water Board and identifies the type of information to be supplied by the discharger. All wastewater dischargers requesting an NPDES permit must provide an evaluation of wastewater reclamation and land disposal as alternative disposal methods. Central Valley Water Board management staff require this report be prepared and submitted by potential surface water dischargers wanting a new NPDES permit prior to allowing NPDES permitting staff to work with the discharger on a new permit (e.g., hold meetings with discharger, review a report of waste discharge or NOI for coverage under the Municipal General Order).

ESCO will prepare a technical memorandum that addresses the following major topic areas (with anticipated length of discussion in parentheses).

1. Introduction (1/2 page)
2. Background (1 page)
 - a. Existing Wastewater Treatment Facilities
 - b. Planned Uses and Development
 - c. Existing Wastewater Treatment Facilities
3. Regionalization Opportunities and Constraints (1-2 pages)
4. Reclamation and Recycling Opportunities and Constraints (1-2 pages)
 - a. Land Application
 - b. Indirect Potable Reuse
 - c. Direct Potable Reuse
 - d. Local Water Transfer or Exchange
5. Water Conservation Activities (1/2 page)
6. Best Practical Treatment and Control (1/2 page)
7. Conclusions (1/4 – 1/2 page)

Task 1.1 - Introduction and Background

ESCO will prepare the “Introduction” and “Background” sections of the report using information ESCO has learned through project development, supplemented with information provided by the City regarding planned development and buildout of the WWTF.

Task 1.2 - Reclamation and Recycling Opportunities

ESCO will describe reclamation and recycling opportunities, with input from the City and Project Team.

Task 1.3 - Regionalization Opportunities and Constraints

ESCO will describe the regulatory, socioeconomic, and physical factors that make regionalization of the City's wastewater treatment not feasible, with input from the City and the project team. This section will briefly address why remaining part of ARSA is not recommended and why the City instead seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

Task 1.4 - Water Conservation Activities

In collaboration with the City, ESCO will describe the City's current and planned water conservation activities.

Task 1.5 - Best Practical Treatment and Control

Central Valley Water Board Resolution No. R5-2009-0028 regarding regionalization, reclamation, recycling and water conservation states the following:

"State and federal antidegradation policies require Dischargers to demonstrate that degradation from new or expanded discharges are necessary, and to implement best practicable treatment or control of the discharge necessary to maintain the highest water quality consistent with maximum benefit to the people of the State. Regionalization, reclamation, recycling and conservation may enhance the implementation of these policies."

In the state and federal regulations, achievement of "best practical treatment or control" (BPTC) is defined in terms of performance and maintenance of water quality standards via achieving appropriate NPDES permit limitations, rather than specific treatment technologies. ESCO will describe how the term BPTC is addressed in state and federal water quality regulations and policy, and the extent to which the treatment technologies at the existing and proposed new WWTF provide BPTC.

Task 1.6 – Technical Memorandum

ESCO will compile the information developed in Tasks 1.1 through 1.5 a technical memorandum. ESCO will provide the City and Project Team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Task 1.7 – Central Valley Water Board Meeting

ESCO will participate in an in-person meeting with Central Valley Water Board executive management at their Rancho Cordova, CA office to convey information contained in the technical memorandum, and solicit questions and input regarding the level of detail in the technical memorandum relative to that needed to advance obtaining an NPDES permit for the proposed WWTF.

Assumptions:

- The above scope and budget assumes that all information ESCO requests from the City and project team in support of the report preparation will be adequately provided in a timely manner.
- The scope and budget is limited the number of rounds of review specified above.
- Central Valley Water Board requests for revisions to the technical memorandum beyond those editorial in nature for clarity, will require additional budget beyond that identified for this task.

Deliverables:

- Draft Technical Memorandum
- Final Technical Memorandum

Task 2 – Phase 1 NPDES Permitting Technical Memorandum

- ESCO will prepare a technical memorandum that defines NPDES permitting considerations for a new surface water discharge from the City WWTF to Sutter Creek. This will be similar to the technical memorandum

Identify important NPDES Permit compliance challenges for application of chlorination as an effluent disinfection method. Compare to UV disinfection approach in terms of regulatory compliance benefits and risks and regulatory validation requirements. ESCO will prepare an updated version of the February 2012 technical memorandum. The update will address several of the above-listed topics. Secondary effluent produced at the City's WWTF would not represent effluent discharged following tertiary filtration and disinfection upgrades necessary to support surface water discharge. Therefore, updating the reasonable potential analysis is not warranted. Instead, ESCO will review NPDES permits for similarly sized and situated WWTFs (e.g., Jackson, Placerville, Lathrop, Mountain House) that use tertiary-level treatment (e.g., membrane bioreactor) discharge to surface water and communicate effluent limitations and permit conditions issued to such facilities, relative to treatment technology utilized. ESCO will identify compliance strategies utilized to ensure compliance with such effluent limitations.

The technical memorandum also will include current effluent and receiving water monitoring requirements based on current Central Valley Water Board plans and policies. Finally, the process for obtaining an NPDES permit will be updated to reflect documentation needed to satisfy CEQA and Central Valley Water Board policies, as well as effluent and receiving water data needs. An estimated timeline and cost for each process component will be provided. No updates are needed to address critical design creek flows because all available data (for water years 1936–41 and 1961–80) was compiled previously.

ESCO will provide the City and the project team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

Task 3 - Environmental Opportunities and Constraints Technical Memorandum

Task 3.1 - Site Survey

ESCO biologists will conduct a reconnaissance-level survey of potential locations for the new WWTF and outfall to evaluate site conditions and presence of habitat for terrestrial and aquatic biological species of concern, with the purpose of identifying potential environmental impacts to biological resources from construction and operation of the project.

Task 3.2 - Special-Status Species Research

ESCO will conduct a literature review and database search to determine the potential for presence of special-status plant and wildlife species or their habitat in the project area, including the following sources.

- CDFW's California Natural Diversity Database

- USFWS Information for Planning and Consultation Species List
- California Native Plant Society Electronic Inventory of Rare and Endangered Plants of California

Task 3.3 - Outfall Permit Identification

ESCO will develop a list of resource agency approvals and regulatory permits that may be necessary for the construction and operation of a new WWTF outfall in Sutter Creek.

Task 3.4 - Technical Memorandum

ESCO will compile information developed in Tasks 3.1–3.3 into a technical memorandum. The technical memorandum also will address CEQA compliance for the project, provided by ESCO, and provide an estimated schedule and budget for securing the permits needs for outfall construction and operation, and for completing the CEQA compliance process.

Assumptions:

- The scope and budget for this task assumes one (1) site visit by two (2) ESCO biologists. However, if certain special-status plant species have the potential to be present at the site, additional blooming period surveys may be required.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

California Environmental Quality Act – CEQA Phase 1:

Task 1 - Biological Resources Investigation

ESCO will conduct a desktop survey to review information on potential biological resources at the project site. Data sources may include U.S. Geological Survey quadrangle maps, U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consulting (IPaC), the California Natural Diversity Database (CNDDDB), species data compiled by the California Native Plant Society (CNPS), and other technical literature related to the biotic resources in the project vicinity. ESCO will coordinate with the City to determine if existing documents, studies, and reports are available that provide relevant information related to biological resources in the project area. ESCO will also review aerial photographs of the area, if available, to identify potential habitat types, water resources, presence of special-status species, and other biological constraints.

Task 2 - Cultural Resources Investigation

The potential for presence of potential historic resources and buried archaeological sites will be evaluated at a preliminary level by conducting a desktop assessment using relevant maps and documents (e.g., archaeological studies, geologic reports, Quaternary geologic maps, soil surveys). ESCO will develop an Area of Potential Effects (APE) map for use in evaluating cultural resource impacts for the project area.

The APE will include the current WWTF as well as City-owned parcels (018-002-031 and 018-002-032) in an area bounded by Mahoney Mill Road, Highway 49 to the west, the residences behind Oro Madre Way to the east, and Sutter Lone Road to the north, which have been identified as optional sites to locate portions of the WWTF expansion within. The APE will be submitted for review and confirmation by the City.

Upon approval of the APE, ESCO will conduct a record search at the North Central Information Center (NCIC) of the California Historical Resources Information System at California State University, Sacramento, in Sacramento. This review will identify any previously recorded cultural resources within ¼ mile of the APE in order to (1) determine whether known cultural resources have been recorded within or adjacent to the project area; (2) determine whether any cultural resources studies have previously been conducted within or adjacent to the project area; (3) assess the likelihood of unrecorded cultural resources based on historical references and the distribution of environmental settings of nearby sites; and (4) develop a context for identification and preliminary evaluation of cultural resources. NCIC record search results are usually received within 4 weeks of the request for the search.

Task 3 - CEQA Review

ESCO will conduct a desktop review of the resource topics included in the CEQA Guidelines Appendix G Environmental Checklist to identify potential for significant environmental impacts. We will consult Federal Emergency Management Agency (FEMA) flood insurance rate maps to identify which portions of the project area are within the 100-year floodplain. To evaluate the potential for hazardous materials to be located within or near the project site, ESCO will conduct a search of the Department of Toxic Substances Control's (DTSC) EnviroStor database (<https://www.envirostor.dtsc.ca.gov/public/>) and consult DTSC's Cortese List to identify any known contamination sites within a 0.25-mile buffer of the potential project sites. Noise and air quality requirements will be reviewed to determine appropriate setback distances from sensitive receptors adjacent to the project area. We will also identify other constraints requiring additional analysis and will include recommendations for how to address these constraints. In addition, ESCO will identify responsible agencies and other federal, state, and local agencies that may have jurisdiction and/or approval authority over part or all of the project or project site.

We will also review the City's general plan, water and wastewater planning documents, and other relevant materials provided by the City.

Task 4 - Environmental Constraints Analysis Report

ESCO will prepare a draft environmental constraints analysis report that describes the findings with regard to biological resources, cultural resources, CEQA resource topics, and the appropriate level of CEQA evaluation. The report will include recommended next steps, such as a site visit and field surveys, that could help to identify project modifications that might avoid and/or minimize potential impacts to sensitive biological and cultural resources. ESCO will submit a draft report to the City for review.

If desired, ESCO will attend a virtual meeting with the City to present an overview of the environmental constraints analysis and our proposed approach for achieving CEQA compliance in an efficient manner based on previous experience.

Following review and comment by the City, ESCO will revise the report and provide a final version.

Assumptions:

- No site visit or field survey will be conducted under this Phase 1 portion of the scope of work.

Deliverables:

- Draft and revised environmental constraints analysis report (electronic)

Federal Emergency Management Agency – FEMA Phase 1:

The current floodplain and floodway limits include a FEMA Zone A, adjacent to the wastewater treatment facility (WWTF), and Zone AE (with a floodway overlay) at the upstream limits of the WWTF. The purpose of this study is to perform the hydrology and hydraulic modeling to determine the floodplain limits adjacent to the existing WWTF and determine if there is a tie in upstream at the Zone AE limits shown in the Figure below.



Task 1 - FEMA Model Request, Background Review, and Field Review

Task 1.1 - FEMA Model Request

The ESCO team will request the effective FEMA hydrology and hydraulic analyses from the FEMA library.

Task 1.2 - Review Background Information

ESCO will review all available background material, including the FEMA models requested in Task 1.1, for the project. This will include reviewing available as-built plans for the culverts and roadway design provided by others.

Task 1.3 (Optional) - Field Review

ESCO will field review the project location to determine Manning's roughness coefficients and any additional characteristics of the project site which would need to be included in the hydraulic model.

Assumptions:

- A quality FEMA model is available from the FEMA library.

Deliverables:

- A summary of the background and field reviews will be included in the Final Hydraulic Report.

Task 2 - Hydrology and Hydraulic Analyses

Task 2.1 – Hydrology

ESCO will create hydrographs with a peak flow equivalent to that of the FEMA published 100-year discharge for use in the 2D hydraulic model. ESCO will do this by creating a HEC-RAS 2D point precipitation model.

Task 2.2 - Existing Conditions Hydraulic Model Zone A

ESCO will create a 2D hydraulic model of the existing conditions at the project site based on existing topographic information (LiDAR), and as-built information for the existing bridge using HEC-RAS version 6.5 or newer.

Task 2.3 - Existing Conditions Hydraulic Model Zone AE

ESCO will determine if the Zone AE is within the WWTP right of way and if mapping updates are needed to remove it from the Zone AE. If mapping updates are needed, a separate task order will be required.

Assumptions:

- The discharges determined by FEMA are sufficient for this analysis. Determining the peak discharges is not included in this scope of work.
- Available LiDAR data will be used as the basis for terrain data within the HEC-RAS modeling.
- As-built plans provided by others.
- The proposed WWTF upgrades do not change any grading within the floodplain/floodway limits.
- No FEMA submittals, Conditional Letter of Map Revision (CLOMR), Letter of Map Revision (LOMR) or formal No-Rise analysis will be completed as part of this scope of work.
- No 500-year floodplain modeling
- Refinement of scope and fee for Phases 2A and 2B will occur at end of Phase 1, based on outcome and accuracy of assumptions above.

Deliverables:

- Details of the hydraulic analysis will be included in the Preliminary and Final Hydraulic Reports completed in Task 3.

Task 3 - Preliminary and Final Hydraulic Reports

Task 3.1 - Preliminary Hydraulic Report

ESCO will complete a Preliminary Hydraulic Report documenting the hydrology and hydraulic results for the existing conditions, and up to two proposed alternatives.

Task 3.2 - Final Hydraulic Report

ESCO will update the Preliminary Hydraulic Report to a Final Hydraulic Report, incorporating any comments on the Preliminary Report and documenting the results of the hydrology and hydraulics for the final proposed condition modeling.

Assumptions:

- The proposed project will not result in an increase in the water surface elevation and a “no rise certification”, Conditional Letter of Map Revision (CLOMR), or Letter of Map Revision (LOMR) will not be required. If a no rise, CLOMR or LOMR are required, this would require a separate task order.
- Preliminary hydraulic modeling results can only be prepared after receipt of FEMA library information for the existing hydrology and hydraulics.

Deliverables:

- Preliminary and Final Hydraulic Report will be provided via electronic mail. If FEMA's findings indicate that additional study is necessary, ESCO will address this requirement during Phase 2.

PHASE 2 – DETAILED DESIGN

During Phase 2, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 2 regulatory and permitting analyses will be incorporated into the Preliminary Design Report, 30% Design, and 60% Design, providing for cohesive technical deliverables.

Waste Water Treatment Facility Design - WWTF Design Phase 2:

Overview of Tasks:

- Perform detailed topographic survey
- Complete the Project Definition Report (assume 15% design)
- Develop the design to 30% and 60% completion (design progression from 60% to 100% is part of the construction in Phase 3)
- Prepare permitting applications and supporting reports
- Preparation of Guaranteed Maximum Price (GMP)

Task 3 – Topographic and Boundary Survey for Detailed Design

During Task 1 and phase 2 of the project, we will collect measurements to refine the retracement of the property boundary and measurements within the treatment plant at the direction of the engineer as needed for further informing their design and engineering. This includes pipe inverts, major structures, drainage structures, equipment pads, and other improvements. This does not include survey of the interior of equipment buildings. For budgeting purposes, we have included up to four (4) ten-hour days, including mobilization, to complete these measurements. These measurements will be compiled and incorporated into the existing Civil 3d survey base map.

Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 4 - Existing Utility Research – Utility ‘A’ Letters

We will use the Amador County’s Underground Service Alert web portal to obtain a list of utility providers and operators within and adjacent to the project site. We will contact and request utility information and atlas maps from each of the utility companies listed as part of this inquiry via certified return receipt mailers, or as indicated by their preferred contact method if provided through the Underground Service Alert inquiry. We will document the correspondence process and share with the client the information we obtain. The information returned from the utility companies showing the location of existing utilities will be digitized and shown with the existing utility base map. We are assuming that up to 5 utility companies will require contact and have utility infrastructure in the project area that should be shown on the existing utility base map. The digitized record utility information will be married and resolved with the survey measurements of existing utilities and utility markings.

Deliverables:

- Utility ‘A’ Letters, PDF format

Task 5 – Preliminary Design Report Development

Drafting the Preliminary Design Report (PDR) involves creating a comprehensive document that outlines the initial design concepts, requirements, and considerations for the project. This report serves as a crucial communication tool between stakeholders and team members. The report will include

purpose and scope, requirements, standards, design concept and alternatives, challenges, and risks. The report and schematic design, below, will be presented to the City for consideration for Approval to Proceed.

The PDR will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Target effluent quality for the selected treatment technology and configuration demonstrating ability to comply with the anticipated discharge requirements
- Evaluation of alternatives
- Up to two alternatives for treatment system locating, sizing, and configuration, including the footprint and connections required for expanding the WWTF in the future to the identified Buildout flow. The alternative analysis will be based on FEMA outcomes, geotechnical studies, and effluent requirements, with consideration given to the most feasible options to minimize additional costs.
- Up to two alternatives for WWTF technology, including cast-in-place and packaged membrane bioreactor systems, considering location, size, cost, and future expansion.
- Evaluation of opportunities to reuse/repurpose existing structures
- Up to two alternatives locating and hydraulically configuring the site influent lift station
- Schematic drawings (listed in Task 2.2 above)
- Recommendation of preferred alternative based on feasibility, affordability, and risk
- Preliminary construction sequencing and phasing plan demonstrating feasibility of the proposed approach
- Capital cost estimate, prepared by Project Team as an attachment and summarized in the report
- Preliminary project schedule, prepared by Project Team as an attachment and summarized in the report
- Life cycle cost estimate, prepared by Project Team, incorporating life cycle cost estimate for the MBR systems and preliminary O&M staffing estimates supported by the City's operations staff
- Identification of value engineering opportunities to be further examined collaboratively as the design progresses

Deliverables:

- Draft Preliminary Design Report, PDF format
- Final Preliminary Design Report, PDF format

Task 6 – 30% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the PDR, the Design Build Team will develop the Design Documents to 30% design completion. Preparation of a table of contents for technical specifications will be provided with the 30% submittal. All major drawing sheets will be included with this submittal to convey the overall project direction. The 30% design package will be presented in a design review meeting.

Deliverables:

- Draft 30% Design Package, PDF format
- Final 30% Design Package, PDF format

The following drawings will be submitted during this phase:

1. Title Sheet	13. Overall Yard Piping Plan	25. Placeholder Sheet X of X for Effluent Dispersal
2. General Notes	14. County Standard Details, Sheet X of X	26. Mechanical Details, Sheet X of X
3. Legend, Abbreviations, and Symbology	15. Civil Typical Details, Sheet X of X	27. Structural Notes
4. Process Design Criteria	16. Civil Details, Sheet X of X	28. Structural Abbreviations, Legends, Symbology
5. Process Flow Diagram	17. Equipment and Pipe Tables	29. Overall Structural Site Plan
6. Overall Site Plan	18. Overall Mechanical Plan	30. Electrical Notes
7. Demolition Plan - Overall	19. Influent Liftstation Plan & Sections, Sheet X of X	31. Electrical Abbreviations, Legends, Symbology
8. Demolition Plan - WWTP Area	20. Influent Equalization	32. Overall Electrical Plan
9. Demolition Plan - Equalization Pond	21. Membrane Bioreactor Plan & Sections, Sheet X of X	33. Overall Single Line Diagram
10. Demolition Plan - Temporary Facilities	22. Solids Handling Plan & Sections, Sheet X of X	34. Lighting Plan
11. Overall Grading Plan	23. Odor Control Plan & Sections, Sheet X of X	
12. Pipe, Structure Tables	24. Effluent Liftstation Plan & Sections, Sheet X of X	

Task 7 – 60% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the 30% design package, the Design Build Team will develop the Design Documents to 60% design completion. Preparation of draft technical specifications will be provided with the 60% submittal. All drawing sheets will be included with this submittal with the exception of some detail sheets. The 60% design package will be presented in a design review meeting for City Staff and City Representative review and comment, per procedure referenced above.

As part of the 60% design task, the Design Build Team will utilize the project team's construction and operations expertise to perform internal reviews of designs under development and provide input to maximize ease-of-construction, cost-effectiveness, and value while minimizing the cost of long-term operations and maintenance. ESCO will incorporate input into the design where appropriate.

Finally, the Design Build Team will prepare the GMP and construction schedule by information collection (such as vendor quotes) and interpreting the design intent. This coordination will include review of equipment cutsheets and quotations, procurement scope breakdowns, and other documentation as required.

Deliverables:

- Draft 60% Design Package, PDF format
- Final 30% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 2:

The following scope of work is provided with less detail as compared to the Phase 1 scope of work, to provide a non-binding, indicative budgetary estimate for Phase 2:

Task 4 - NPDES Permit Coverage for WWTF

ESCO will advance the NPDES permitting for the new WWTF by developing the Notice of Intent (NOI) for coverage under the Central Valley Water Board's Order No. R5-2023-0025, "Waste Discharge Requirements for Municipal Wastewater Dischargers that Meet Objectives/Criteria at the Point of Discharge to Surface Water (Municipal General Order)," and support reviewing and negotiating the terms of the Notice of Applicability (NOA) issued by the Central Valley Water Board for Municipal General Order coverage.

Task 5 - Antidegradation Analysis

ESCO will prepare the Antidegradation Analysis, which will need to be submitted with the Municipal General Order NOI. The Antidegradation Analysis will characterize how the new WWTF effluent discharge to Sutter Creek will affect water quality downstream of the discharge and will demonstrate that the anticipated degradation is consistent with the state's Antidegradation Policy embodied in State Water Resources Control Board Resolution No. 68-16. The Antidegradation Analysis also will support the CEQA document analyses of water quality impacts.

Task 6 - CEQA Support

ESCO will support preparation of the environmental impact report (EIR) for CEQA compliance by preparing the Hydrology and Water Quality, and Aquatic Biological Resources chapters, and other related resource sections, of the EIR (e.g., alternatives analysis and cumulative impacts analyses for these resource categories).

Task 7 - Outfall Permitting

Based on final design and siting of the WWTF outfall, ESCO will make final determinations for permits needed for outfall construction. Should a CWA Section 404 permit and Section 401 water quality certification be required, ESCO will prepare the applications to obtain these permits as well as the LSAA.

Task 8 - Design Engineer Coordination

Because the WWTF discharge to Sutter Creek would be new, the Central Valley Water Board cannot issue compliance schedules for NPDES permit limitations prior to the new discharge. Therefore, ESCO will coordinate with Project Team WWTF engineers regarding NPDES permit limitations to be met by the new WWTF, so that the facility can comply with the Municipal General Order NOA upon discharge to Sutter Creek. Furthermore, ESCO wastewater engineers will coordinate with Project Team WWTF engineers to advise on PLC and SCADA programming of alarms and meters to facilitate operational compliance and the collection of all necessary effluent quality and quantity information to facilitate preparation of routine (e.g., monthly, quarterly) electronic self-monitoring reports that will be required by the NOA.

California Environmental Quality Act – CEQA Phase 2:

Task 5 - Technical Studies

Task 5.1 - Biological Resources Surveys and Report

Based on the information gathered during the desktop review in Task 1, ESCO will conduct a single reconnaissance-level field survey of the proposed project area to document the existing biological conditions. ESCO will describe the dominant habitat and characterize both botanical resources and wildlife habitat values in the project area. The reconnaissance survey will also be used to determine the potential for occurrence of special-status plants and animals, although no species-specific or protocol-level surveys are proposed. Regulated habitats, such as wetlands and other waters of the U.S./state, will be mapped in Task 5.3.

ESCO will prepare a draft report that describes existing biological conditions, including existing habitats, potential for occurrence of special-status plants and animals, potentially jurisdictional or sensitive habitats, and any other biological resources that might be of concern. The report will also describe minimization measures that would reduce impacts to sensitive biological resources. ESCO will submit a draft report to the City for one round of review and comment. Following review, ESCO will revise the report. The revised report will be used to support preparation of the CEQA document (Task 7) and environmental permitting (Task 8).

Assumptions:

- The City will coordinate site access.
- Protocol-level surveys for special-status plant and wildlife species are not included but can be provided via a contract modification.

Deliverables:

- Draft and revised biological resources report (electronic)

Task 5.2 - Wetland Delineation Report

ESCO will prepare a preliminary jurisdictional delineation report for the proposed project area. The wetland delineation will be prepared in accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and the regional supplements for the Western Mountains, Valleys and Coast Region, and/or Arid West Region, whichever is most appropriate for the site location and conditions. ESCO will conduct a site visit to map wetlands and other waters of the U.S./state in the proposed project area. ESCO will prepare a draft report for review by the City. Following review, ESCO will revise and submit the wetland delineation to USACE with the CWA Section 404 application package as described in Task 8.

If requested by USACE, ESCO will organize and attend one field visit with USACE to review the wetland delineation findings. Based on feedback received from USACE, ESCO will revise the wetland delineation and submit the revised version to USACE. Under this scope of work, it is assumed that refinements to the wetland delineation would be minor and related to adjustments to report mapping or minor text edits.

Assumptions:

- Field visit with USACE to review wetland delineation, if requested

Deliverables:

- Draft and revised wetland delineation report (electronic)

Task 5.3 - Cultural Resources Survey and Report

The Native American Heritage Commission (NAHC) will be contacted to determine whether Native American sacred sites are known to be located in or near the project area and to request a list of Native American tribes that have a traditional and cultural affiliation with the project area. Note that the response from the NAHC can take 3-4 weeks. Upon receipt of the list from the NAHC, ESCO will send project notification letters to listed tribes and tribal contacts. ESCO will draft general outreach letters to solicit comments or concerns from NAHC-listed tribes, send them out on behalf of the City via email, and follow up by phone and/or email, as necessary. ESCO will participate in up to 2 hours of conference calls with the City and Native American tribes, if requested. As described in Public Resources Code Section 21080.3.1(b)(2), contacted tribes must respond

to the project notification letters within 30 days. ESCO will also send request letters to relevant historical societies or other institutions to determine if any areas of historical concern have previously been documented. Responses from historical societies are generally received within 1 month.

A cultural resources field inventory of the APE (approximately 21 acres) based on the results of the record search conducted in Task 2. Archaeologists will examine the ground surface within the direct APE by walking closely spaced transects. Trowels or hoes may be used to clear vegetation and increase ground surface visibility, if needed. If deemed warranted by the field reconnaissance, minor subsurface probing using a shovel and trowel will be performed to gain a better understanding of the subsurface conditions. A ¼-inch screen may be used to further separate potential cultural items within the soil. Any identified archaeological resources will be recorded on the standard page of the California Department of Parks and Recreation (DPR) Form 523. These will include photographs and a site map, and global positioning system data will be collected to accurately delineate the locations of all resources. DPR record updates will be prepared for any resources within the APE that had been recorded previously. Recorded archaeological resources will not be evaluated for National Register of Historic Places (NRHP) and California Register of Historical Resources (CRHR) eligibility under this scope of work. This scope assumes that, if potentially significant archaeological resources are identified on the project property, measures will be taken to avoid impacts so that there is no need to formally evaluate their significance.

The current WWTF was constructed in 1949; therefore, it is of sufficient age to require evaluation for NRHP and CRHR eligibility. An architectural historian will visit the project area to record the facility. DPR forms will be prepared, which will include NRHP and CRHR eligibility evaluations. If available, the architectural historian will review as-built drawings or any other useful materials relating to the

structures. The results of the evaluation will be incorporated into the draft Cultural Resources Assessment Report.

ESCO will prepare a draft Cultural Resources Assessment Report once the field inventory is completed. Due to the involvement of FEMA in this project, it is assumed that the project will also require review under Section 106 of the National Historic Preservation Act (Section 106), as well as CEQA. Therefore, the Cultural Resources Assessment Report will comply with the requirements of Section 106 and will be prepared according to the inventory requirements of the California Office of Historic Preservation. The report will include, at a minimum, a project description, project location, results of the records and literature searches, results of the field studies, a summary of findings (including a NRHP/CRHR eligibility recommendation for the current WWTF), and conclusions. The report will include mapping of archaeological site location data and survey coverage areas, as appropriate, and will identify built environment features.

A copy of the report will also be submitted to the NCIC.

Assumptions:

- Up to 20 Native American tribes and individuals will be contacted through tribal outreach.
- There will be no field visits with Native American tribes.
- The City will provide access to parcels 018-002-031 and 018-002-032 as well as the current WWTF facility for archaeological survey.
- The City will provide access to the project site so that the buildings may be photographed. Access to pertinent records regarding construction of the WWTF will also be provided.
- This scope assumes that no more than two archaeological resources will be recorded.
- This scope of work does not include evaluation of archaeological resources for the NRHP/CRHR, should resources be present in the direct APE that cannot be avoided by project construction. This evaluation can be provided as an additional scope item.

Deliverables:

- Draft and revised cultural resources assessment report (electronic)

Task 6 - Environmental Document

At the conclusion of Task 4, the City will determine the level of CEQA review for the project. This scope of work assumes that an IS/MND will be prepared. If a different determination is made, this scope of work and budget may require revision and augmentation.

Task 6.1 - Site Visit and Project Description

To initiate work on the project, ESCO's project management team will visit the project site along with the City's project leads. Based on the information collected during Phase I and the site visit, ESCO will develop a project description for the CEQA evaluation. In conformance with CEQA Guidelines Section 15124, the project description will include a site location map, description of the proposed project and its goals, project features, construction methods, and long-term operations and maintenance. The project description will also include a list of responsible and/or trustee agencies with jurisdiction over the project, including local, state, and federal regulatory agencies. ESCO will submit the draft project description for review, revise it based on the comments received, and incorporate the final draft into the environmental document.

Assumptions:

- Once the project description has been finalized, any substantive changes to the proposed project may require an amendment to the work plan and budget based on work already completed that requires revision to reflect those changes.

Deliverables:

- Draft and revised project description (electronic)

Task 6.2 - Administrative Draft Initial Study

Once the project description is finalized, ESCO will prepare an IS. The IS is a preliminary analysis to identify the potential for the proposed project to result in significant environmental effects. Assuming that all impacts can be mitigated to a less-than-significant level, the IS will be combined with an MND. However, if one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, preparation of an EIR may be necessary. In that case, an amendment to the scope of work and cost estimate would be required.

Consistent with the requirements of CEQA Guidelines Section 15063, the IS will include: (1) the project description developed in Task 1; (2) a description of the environmental setting; (3) an evaluation of environmental impacts using the CEQA Guidelines Appendix G environmental checklist; (4) feasible mitigation measures that will reduce any significant impacts to a less-than-significant level, if possible; and (5) the names of individuals who prepared the IS.

Assumptions:

- If one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, ESCO will notify the City immediately. If it is determined that preparation of an EIR is necessary, an amendment to the scope of work and cost estimate would be required.
- The City will provide one set of consolidated comments on the administrative draft IS with any discrepancies resolved.

Deliverables:

- Administrative draft IS (electronic)

Task 6.3 - Screen-check Draft IS/MND

Following receipt of the City's comments, ESCO will conduct a conference call with the City to discuss comments and agree on revisions to the draft IS. Based on the conference call and comments received, the City will determine whether to continue forward with an IS/MND or whether an EIR may be necessary.

Assuming that an IS/MND is appropriate, ESCO will prepare a screen-check draft IS/MND and draft mitigation monitoring and reporting plan (MMRP), which will be incorporated as an appendix to the IS/MND.

ESCO will prepare a Notice of Intent (NOI), alerting the public to the availability of the draft IS/MND for review. In compliance with CEQA requirements, the NOI will contain a description of the project and location; identification of significant environmental impacts; dates of the public review period; addresses of locations where the draft IS/MND and supporting documents are available for review; and a

statement of whether the project site is a listed toxic site. A draft and final NOI will be prepared for the City's review and approval. This work plan assumes that the NOI will be posted on the City's website and will not be distributed by mail. In addition, ESCO will prepare a newspaper notice based on the NOI for review by the City.

In accordance with CEQA Guidelines Section 15085, ESCO will prepare a Notice of Completion (NOC) for filing along with the IS/MND at the State Clearinghouse. The NOC will contain information describing the project (including location), physical and/or electronic locations where the draft IS/MND is available for public review, and the dates of the 30-day review period.

ESCO will submit an electronic copy of the screen-check draft IS/MND and notices to the City for review. ESCO will finalize the IS/MND and notices based on comments received from the City on the screen-check draft IS/MND. It is assumed that, at this stage, comments will be primarily related to minor editing and document layout and format.

As required by California law (Section 7405 of the California Government Code), the revised screen-check draft IS/MND will then be sent to Allyant, a nationally known accessibility contractor, to be remediated to meet California ADA requirements for file accessibility.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.

Deliverables:

- Screen-check draft IS/MND (electronic)
- Draft MMRP
- Draft NOI, NOC, and newspaper notices

Task 6.4 - Public Draft IS/MND and Public Notices

ESCO will coordinate with a newspaper of general circulation to post the legal notice. ESCO will work with the City to coordinate permission to submit the IS/MND, NOC, and NOI to the State Clearinghouse and County Clerk and will coordinate filing to begin the 30-day public review period.

This work plan assumes that no public meeting will be held to gather public comments on the proposed project.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.
- The State Clearinghouse requires up to 3 days to officially post a document for public review; therefore, scheduling of the public review period will be approximate.

- No public meeting will be held during the 30-day public review period.

Deliverables:

- Public draft IS/MND (electronic), NOI, and NOC posted to SCH
- NOI provided to County Clerk’s office
- Newspaper notice published

Task 6.5 - Response to Comments Memorandum, MMRP, and Notice of Determination

This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary. The level of effort for this task is assumed to address no more than 20 individual comments.

Following the close of the public comment period on the IS/MND, ESCO and the City will review the comments received. ESCO will conduct a conference call with the City to discuss the key comments received and determine the approach to response preparation. ESCO will then prepare a draft and final memorandum that briefly considers the comments received and provides responses for the City’s use in adopting the IS/MND.

In conformance with CEQA Guidelines Section 15132, ESCO will finalize the response-to-comments memo and MMRP for adoption. In addition, ESCO will be available to attend an approval hearing to present information about the CEQA process and the findings of the IS/MND and to answer questions from decision makers.

ESCO will prepare a Notice of Determination (NOD) conforming to CEQA Guidelines Section 15094. The NOD will identify the project description, location, date of project approval, statement that the IS/MND was adopted, summary of the project’s significant effects, statement of whether mitigation measures were made, conditions of project approval, and the address where the IS/MND can be reviewed. Within 5 days of project approval, ESCO will file the NOD with the local county clerk/recorder and the State Clearinghouse. ESCO will pay county clerk processing fees (\$50) and California Department of Fish and Wildlife filing fees (currently \$2,968.75) to accompany delivery of the NOD to the State Clearinghouse.

Assumptions:

- This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary.
- The level of effort for this task is assumed to address no more than 20 individual comments.

Deliverables:

- Administrative draft response-to-comments memo (electronic)
- Final response-to-comments memo (electronic)
- Attendance at approval hearing

Task 7 - Environmental Permitting

Task 7.1 - Clean Water Act Section 404 – USACE

The project may require authorization from USACE under CWA Section 404 for fill and/or dredge within jurisdictional waters of the U.S. ESCO will evaluate whether the project may qualify under a Nationwide Permit (NWP). The application package will include:

- Cover letter to introduce the project;
- PCN form;
- Design Plans (provided by ESCO and the City); and
- Technical studies, including the biological conditions report (Task 5.1), wetland delineation report (Task 5.2), and cultural resources assessment (Task 5.3).

ESCO will prepare and submit a draft NWP application package to the City for review. ESCO will address one round of comments from the City and revise and submit the permit application package to USACE. This scope of work will include up to two conference calls with the City and USACE during the permit application process.

Task 7.2 - CWA Section 401 – RWQCB

The project will require authorization from the Central Valley RWQCB under CWA Section 401 for fill and/or dredge in waters of the state. ESCO will prepare the following permit application items:

- Cover letter to introduce the project;
- Application for Discharges of Dredged or Fill Material to Waters of the State (401 Certification), which is the standard permit application form for RWQCB permits;
- Design Plans (provided by the City and ESCO);
- Technical studies, including the biological conditions report (Task 5.1) and wetland delineation report (Task 5.2);
- Revegetation Monitoring Plan, if needed; and
- CEQA compliance documentation (Task 6).

Before submitting the 401 Certification package to RWQCB, it is now a standard requirement that a Prefiling Meeting be requested. ESCO will prepare a 401 Certification Pre-filing Meeting request for submittal to RWQCB, which will determine whether the meeting will be held. If a meeting is held, ESCO will accompany the City.

The draft 401 Certification package will be submitted to the City for one round of review. ESCO will revise and submit the permit application package to RWQCB. This scope of work will include up to two conference calls with the City and RWQCB during the permit application process.

Supplemental information or data may be requested by RWQCB during the application review process. ESCO will support the information response process with RWQCB, to the extent that remaining budget is available in this task once the permit application is developed and submitted.

Task 7.3 - California Fish & Game Code Section 1602 – CDFW

ESCO will prepare a standard application for a Streambed Alteration Agreement (SAA) following the application format provided in the CDFW Environmental Permit Information Management System (EPIMS) External Permitting Portal. ESCO will also prepare supplemental information, as needed, to support the application. ESCO will prepare and submit a draft version of the application and supplemental information for review by the City. ESCO will revise the application materials based on one round of comments and upload the material to the EPIMS portal. This scope of work will include one conference call with the City and CDFW SAA reviewers during the permit application process.

Task 7.4 - Regulatory Agency Coordination

Under this task, ESCO will support the City with additional regulatory agency coordination to track the permit review and approval process. The tracking and coordination process may include activities such

as answering questions from regulatory staff on the application materials; providing project updates to the regulatory agencies; preparing memoranda to address regulatory requests for information; and participating in calls, meetings, and site tours with agency representatives.

The budget estimate for this task is based on our experience with similar projects. Actual costs will be dependent on the level of assistance requested by the City. ESCO will provide regulatory coordination services up to the level of effort shown in the cost estimate for this task.

Assumptions:

- If CDFW requests additional information for the application to be considered complete, ESCO will be available to revise and/or supplement the SAA application package within the available budget remaining in this task once the permit application has been developed and submitted.
- If USACE determines that the project does not meet NWP requirements and elects to authorize the project under an alternative permitting pathway, such as a standard permit, then ESCO will discuss the permitting process with the City and an amendment to this scope of work may be required.
- This scope assumes that permanent impacts to waters and wetlands of the U.S./state would be less than 0.1 acre. If the project impacts would exceed this area, then authorization by USACE would be required to qualify for a NWP.
- It is assumed the project can be designed and constructed in a manner that avoids take of federally listed and/or state-listed species. If take of a listed species is unavoidable, an amendment to this scope of work may be required.
- The City will be the primary contact with regulatory agency staff throughout the permitting process. ESCO will provide support as remaining budget for Task 7 allows.
- The cost estimate does not include permit submittal fees or annual permitting fees. Permit submittal fees will be paid by the City or can be added to the budget when known.
- Surveys will be reconnaissance level and daytime events only; no protocol-level surveys will be conducted.

Task 8 - Administrative Record

ESCO will maintain all aspects of the administrative record as it relates to the development of various environmental documents for the duration of the contract. Entries to the administrative record will be collected from technical staff and incorporated into the administrative record. Throughout the project contract, ESCO will make the administrative record readily available to the City upon request.

The complete administrative record will be delivered to the City within 6 weeks following filing of the NOD.

NON-WASTEWATER TREATMENT FACILITY (WWTF) - IGA SCOPE OF WORK

1. **Scope of Work**

Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM) and is a preliminary look at different options that will be discussed with the Customer to identify priorities and finalize the Phase 1 scoping project.

- A. ESCO will utilize city's existing energy reports, such as "Distributed Energy Resource (DER) Recommendations Summary" dated March 17, 2025 for solar PV, battery storage and EV charging recommendations at the Auditorium, Community and Admin Building, and Miner's Bend for purposes of potential project estimates and feasibility. ESCO will use report's data for solar, battery and EV charging for Phase 1 non-wastewater sites, however, will do own analysis for solar and battery storage sizing at wastewater treatment plant.
- B. Additional scope items to be evaluated include lighting and mechanical work at all (7) sites listed in the Facilities table in Section 3. ESCO will work with City to prioritize the oldest HVAC units and any remaining non-LED interior and exterior lighting.
- C. Any scope items outside of solar, battery storage, EV charging, lighting and mechanical will fall into Phase 2 after determination of Wastewater Treatment Plant Upgrades scope and financials, for evaluation by ESCO. Examples include: streetlighting, irrigation, building automation, and other energy and water savings measures. During Phase 2, ESCO will also perform due diligence regarding existing energy report data and assumptions as they advance to Phase 2.

2. **Phases of Design**

The Design Scope of Work shall consist of one phase: Conceptual Development (Up to 30% Design Scoping Meeting).

- A. Phase 1: Conceptual Development (Project Scoping)
 - a. At the Phase 1 final meeting, ESCO shall demonstrate for Customer whether recommended improvement measures are viable and whether financial benefits (including grants) can be derived by their implementation in an amount sufficient to cover costs associated with the Project.
 - b. Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM), a clear understanding of grant criteria and estimated probability of securing grants, calculation of energy and operational savings, and preliminary costs for the construction of the scope.
- B. Phase 2: Final Design Development
 - a. During Phase 2, ESCO will use final scope determination from Phase 1 to put together a firm fixed price for all non-waste water scope, including all due diligence to finalize design documents as well as costs and savings for each ECM.
 - b. Phase 2 will include: Final scope of work, final fixed firm pricing, financial pro-forma, guaranteed annual energy savings and M&V plan, commissioning plan, operations & maintenance plan, training plan and final drawings and equipment specifications.

3. **Facilities Included**

The Design Services will be performed in the following Customer facilities. Any additional facilities to be added in the future must be by mutual agreement between Customer and ESCO:

Facilities			
Building Name	Address	Square Footage	Year Built
Auditorium	18 Main St, Sutter Creek, CA 95642	5,040	1928
Community Building	33 Church St, Sutter Creek, CA 95642	3,370	2005
Administrative Building	35 Church St, Sutter Creek, CA 95642	1,155	1880
Historic Grammar School	111 Cole St, Sutter Creek, CA 95642	6,000	1856
Monteverde Store	11 Randolph St, Sutter Creek, CA 95642	1,600	1896
WWTP	340 Mahoney Mill Rd, Sutter Creek, Ca 95642	-	-
Miner's Bend Park	29 Old Rte 49, Sutter Creek, CA 95685	-	-

4. **Responsibilities**

Customer Will:

- A. Provide ESCO with all such access, knowledge and history as may be relevant to ESCO's analysis and/or design, including, without limitation:
 - (vi) access to Customer's Facilities, systems and equipment, including remote network access, as necessary or appropriate to facilitate ESCO's analysis and design (i.e. enabling ESCO to take equipment inventory, determine operating schedules, evaluate known operational deficiencies, perform an energy efficiency analysis, measure actual energy use, etc.);
 - (vi) access to key personnel to discuss operating requirements, maintenance practices, and other information relevant to ESCO's analysis;
 - (vi) information relating to any and all known or suspected deficiencies, defects and malfunctions of or affecting the Facilities, systems, equipment and components thereof;
 - (vi) information relating to any site conditions that should be considered in planning and executing the construction services;
 - (vi) twenty-six (26) months of electric, gas, and water data, including utility billings on meters for all premises owned by Customer; and
 - (vi) access to copies or loans of such documentation as may be relevant to ESCO's analysis, including, as applicable and without limitation, Facility plans, equipment lists, and/or other utility invoices.
- B. Meet with ESCO to establish Project criteria and make Project decisions in a timely manner.
- C. Promptly inform ESCO if at any point Customer becomes aware of any portions of scope that will not be included or funding that will not be available for final Project implementation.

ESCO Will:

- A. Compile information reasonably requested by Customer for purposes of any grant applications being submitted by the Customer in connection with the Project.
- B. Conduct a Project programming meeting, Facility walk-through(s) and personnel interview(s) to gain an understanding of Facility operations, concerns, needs, and desired performance criteria.
- C. Work with Customer to refine performance requirements, financial criteria, and Project scope.
- D. Provide Customer an energy, revenue, and cost savings analysis demonstrating the simple ROI effect of project finances and operations.
- E. Provide Customer with a Scoping Proposal setting forth the following:
 - (iv) Proposed Scope of Work for Phase 2
 - (iv) Proposed Preliminary Schedule for Phase 2 Development and Phase 3 Construction
 - (iv) Preliminary Project Estimate for Phase 3 Construction

Appendix I - IGA Scope of Work

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WASTEWATER TREATMENT FACILITY (WWTF) - PROJECT SCOPE OF WORK

The WWTF is being designed for 0.5mgd average dry weather flow with buildout up to 0.8mgd. The system will be built to accommodate planned growth in the City and will treat effluent to disinfected tertiary standards for recycling as part of a future project. Major WWTF project scope elements include the following, subject to further definition and revision during Phases I and II:

- WWTF Wastewater Treatment System with Equalization
 - Influent equalization pond assumed to be a 1,100,000+ lined pond created by converting the existing effluent storage pond. Pond storage may be combined with additional membrane bioreactor (MBR) tankage to meet total equalization and emergency storage volume requirements. Reuse of the existing equalization pond is subject to FEMA review and any required approvals related to floodplain impacts or regulatory constraints. An alternate equalization strategy shall be developed as an optional scope item if reuse of the equalization pond is not feasible.
 - Skid-mounted and shop-assembled and tested MBR wastewater treatment system utilizing 304 SS tanks installed on concrete foundations. selected package shall be designed and supplied by Cloacina LLC, Arroyo Grande, CA.
 - Package to include influent fine screens, equalized flow delivery pumps, anoxic and aerobic treatment tanks, blowers, forward activated sludge pumps, membrane tanks, including additional membrane capacity for peak flow management, clearwell, outdoor inline UV disinfection system or chlorine disinfection system, auxiliary pumps, main control panel, stairs, platforms, and canopies
 - Flows pumped directly to WWTF influent fine screens from Lift Station (MBR tanks and equalization basin), with valving and controls system adjustments depending on the final site layout and theory of peak flow operation.
 - Chemical storage totes and metering pumps in an outdoor pad with sun/rain cover
 - Flow to Equalization Basins will pass through ~~existing~~existing course screens, if suitable.
- Effluent Transfer Pump Station
 - Outdoor horizontal centrifugal variable speed pumps to deliver effluent from clearwell through UV system to Recycled Water Storage Tank or to surface water disposal
 - Pump station sizing to be similar to WWTF influent flow criteria, based on analysis of future recycled water demands
- WWTF Solids Handling
 - Shop-assembled packaged dewatering system consisting of sludge holding tank, feed pump, chemical addition, and volute or screw press dewatering unit installed outdoors under a canopy. Canopy designed by PTV and attached to shop-assembled system or the pad it is mounted on
 - Control panel integrated into SCADA
 - Discharge to a rolling bin for offsite disposal in a landfill
 - Evaluation of repurposing existing pond and trickling filter as equalization basin, in addition to an assessment of feasibility for utilizing other available basins as sludge holding basin(s)
Optional: provisions made for future Class A or B biosolids treatment. Provisions limited to allocating a space for additional equipment and stubbed out process connections
- Odor Control

- Provision site layout and connections for future odor scrubber utilizing dry absorptive media (GAC or similar) in a fiberglass scrubber vessel plumbed to scrub air spaces at influent screening, equalization tanks, and site drain pump station, if required by City. Site location and likely use of effluent storage pond for influent equalization may render odor control of influent screening and other areas less effective. To be analyzed during Phase 1 services
- Yard and Process Piping
 - All piping within the WWTF parcel interconnecting process units
- Site Features
 - Grading to create a flat site with sheet flow drainage offsite, except in process areas (drainage study of surrounding lands not included)
 - ~~MOSes to add language on access road, topology survey should include roadway~~
 - A high-level assessment of the site drainage in phase 1 of the design, considering the final plant layout. Based of Phase 1 outcome, final scope and level of efforts will be determined in Phase 2.
 - Process areas drain to local drain pump station for return to treatment
 - Process drain pump station with submersible pumps discharging to headworks
 - LED site lighting with photocell and occupancy sensor
 - Fire hydrants connecting to existing nearby water supply, assuming an existing fire hydrant is within 500 ft of entrance to the plant. Design and Improvements to the existing water system near new plant site may be required to supply required flow and pressure to site for fire flow. Phase 1 should identify any deficiencies to be addressed in Phase 2.
 - Hose bibs/yard hydrants for washdown water
 - Access for entry, exit, and staging of a crane to perform long-term heavy maintenance and plant expansion
 - Curbs and catch basins
 - Chain link fencing and gates
- Recycled Water Pumping Facility (future / by others)
 - The site layout will allocate space for future pump station, recycled water piping connections, and electrical/comms infrastructure for a future effluent pump station for the potential Gold Rush Ranch recycled water strategy. Provision for a future pump station and its associated electrical infrastructure is included in the current phase. The design and construction of future facilities related to pumping and conveyance of recycled water to GRR will be performed by others. Anticipated to be a pressurized pipeline capable of disposing of 500 AF per year.
- Power
 - 480-v 3-phase power distribution (power service and transformer designed by Utility and applied for by Owner, with technical support from ESCO for application and coordination with Utility)
 - Evaluation and design of an adjacent solar PV & battery storage system to supplement part of the new plant design power needs
 - Diesel standby generator(s) and automatic transfer switch, sized to allow plant to operate at full capacity. ESCO must obtain will support the city of obtaining the air permit from Amador County Air Pollution District for generator operation. ESCO will design any backup generators to follow the Amador County Air Pollution District requirements. All permit fees are paid by the city.
 -

- Controls
 - Design a SCADA system and radio telemetry system or fiber optic connection ~~as indicated in the Control System Block Diagram~~ to provide for monitoring, trending, and remote access. ~~It is assumed this system will be linked to offsite utility monitoring systems~~
 - Design the integration of the overall SCADA system with the included SCADA system as part of the packaged MBR system
 - System integration and programming services will be by a qualified system integrator provided by the ESCO
- Influent Lift Station
 - Influent flows into the WWTF will collect in a new influent lift station. The lift station will convey influent to the packaged headworks system. Peak event flows will be screened if possible and buffered in the influent equalization pond.
 - Sized for peak hour wet weather flow and turndown for average dry weather flow
 - Concrete cast-in-place wet well with protective coating, concrete lid with spring assist H2O loaded access hatch and safety grating
 - Duplex or triplex submersible pumps with discharge elbows and rail systems, design to consider City phasing of influent flows
 - Davit crane for pump service and replacement
 - SCADA control panel
 - Odor scrubber

POTENTIAL OPTIONAL SCOPE ITEMS

The following is a list of potential optional scope items that we have identified during preparation of this RFP Response. We can provide detailed scopes and prices for these items upon request.

- Chemical storage building, base scope includes concrete equipment pad and sun/rain cover.
- Recycled Water System Model – base scope assumes future recycled water system curve is provided by others.
- Fire sprinkler design (if required) and Master Fire Protection Plan designed by Fire Protection Engineer.
- Operations and maintenance building for the WWTF
- Cast-in-place MBR
- Layout on the adjacent property (uphill) and new EQ strategy assuming project constraints are found to be such that constructing improvements on the existing site is determined to be infeasible
- CEQA+/NEPA documentation if Federal funding is pursued and requires this

GENERAL IGA SCOPE OF SERVICES

IGA PROCESS AND DELIVERABLES FOR WASTEWATER TREATMENT UPGRADES

In general, the IGA will be executed per the three following Phases of the ESCO Team's process:

1. Phase 1 – Preliminary Assessment: The goal of this phase is to Define Customer Problem(s) and a Create a Prioritized Scope List to Solve those Problem(s). This goal is achieved by completing the necessary due diligence to create *Complete* Utility, End Use Breakdown & Process ~~Baseline~~Baselines, *Preliminary* Process Performance & Energy/ Operational Savings, *Preliminary Engineering Control Documents* (Basis of Design Report~~;~~), and *Preliminary* Construction Pricing based on AACE Class 4 Estimate. Goals of this Phase also include:
 - Advance, evaluate, and compare the cost, schedule, and feasibility of WWTF alternatives.
 - Advance permitting, cost estimating, scheduling, environmental review, and other critical project elements to a sufficient level that—at the conclusion of this phase—the City can make an informed decision about project feasibility, risks, costs, schedule, and regulatory concurrence.
 - Complete topographic survey and geotechnical investigations required to inform the evaluation and support a subsequent design phase.
 - Identify candidate Energy Conservation Measures (ECMs). Evaluate opportunities to reduce long-term operational costs, capital reinvestment needs, and regulatory exposure through replacement or major upgrade of the existing WWTF. The analysis shall quantify both energy savings and non-energy value streams, including cost avoidance, operational efficiency improvements, deferred capital costs, and other benefits.
 - Identify proposed project funding and potential impacts to City wastewater rates.
 - Develop a proposed detailed project schedule.
2. Phase 2A – Mid-Term IGA: The goal of this phase is to Obtain Customer Commitments for Technology, Scope and Contract Terms and Conditions. This goal is achieved by completing the necessary due diligence to create *Contract* Utility, End Use Breakdown & Process ~~Baseline~~Baselines, *Complete* Process Performance & Energy/ Operational Savings, *Complete Engineering Control Documents* (30% Engineering and Design Docs~~;~~), *Complete* Construction Pricing based on AACE Class 3 Estimate, and *Complete* Construction Terms and Conditions.
3. Phase 2B – Final IGA: The goal of this phase is to Engage in Customer Contract for Construction with Risks (Technically, Financially or Contractually) Mitigated. This goal is achieved by completing the necessary due diligence to create *Contract* Process Performance & Energy/ Operational Savings, *Contract Engineering Control Documents* (60% Engineering & Design Docs~~;~~), *Contract* Construction Pricing based on AACE Class 2 Estimate, and *Contract* Construction Terms and Conditions.

The definitions below are applicable to the level of completeness used in the descriptions above:

- *Preliminary*: Early versions of design documents that outline the general concepts, ideas, and direction of a project. Typically used to communicate the design concept to stakeholders and to seek feedback on the direction of the project.
- *Complete*: Final versions of design documents that include all of the necessary information and details to fully execute and implement a project. Once issued, these documents are considered

frozen and may not be revised or changed without proper approval via the project change management process. With the approval of ESCO, these documents may contain clearly identified holds for missing information such as vendor provided details.

- **Contract:** Complete versions of documents with final edits for use in contract between Customer and ESCO.

The deliverables of each IGA phase will be formatted to match the Energy Savings Performance Contract attachments, with the level of completeness generally advancing with each successive IGA phase. Some Schedules may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables. Based on previous construction contracts with other Customers, those attachments could include some or all of the following:

- Schedule A – Scope of Work
- Schedule B – Performance Assurances Support Services
- Schedule C – Performance Guarantee
- Schedule D – Measurement and Verification Plan
- Schedule E – Owner Responsibilities for Performance Guarantee
- Schedule F – Start-Up and Commissioning
- Schedule G – Standards of Performance
- Schedule H – ESCO's Training Responsibilities
- Schedule I – Construction Phasing Plan
- Schedule J – Final Construction Price and Payment Schedule

Each of the above IGA Phases consist of the following 6 sequential Sprints:

- a. Sprint 0: Kick-Off
- b. Sprint 1: Data Collection
- c. Sprint 2: Engineering
- d. Sprint 3: Estimating and Procurement
- e. Sprint 4: Financial Analysis and Report
- f. Sprint 5: Stakeholder Engagement

Tasks for each IGA Phase and Sprint are identified below, some tasks may not be applicable to Phase 1 Preliminary and/or Phase 2A Mid-Term deliverables:

1. Sprint 0: Kick-Off
 - a. Client Goals and Objectives
 - b. Prioritized Scope List
 - c. Funding Approach
 - d. Project Approval Process
2. Sprint 1: Data Collection
 - a. Site Investigation
 - b. Client RFI
 - c. Regulatory Agency Engagement
 - d. Analysis of Utility and Operational Bills
 - e. Energy Baseline and End Use Breakdown
 - f. Process Baseline and Theory of Operations
 - g. Verification of As-built Equipment Data and Existing Conditions
3. Sprint 2: Engineering

- a. Energy and Operational Savings Calculations
- b. Utility Rebates and Other Incentives
- c. Engineering Control Documents and Regulatory Compliance (see deliverable details below, under **SPECIFIC WWTP IGA ENGINEERING SCOPES OF SERVICES** heading)
- d. Phasing Plan
- e. Inspection, Testing, Commissioning Acceptance and Turnover Plan (ITCAT)
- f. M&V Approach
- g. O&M Approach
- a. Operator Training
- 4. Sprint 3: Estimating and Procurement
 - a. Construction Price Estimate
 - a. O&M Estimates
- 5. Sprint 4: Financial Analysis and Report
 - a. Cash Flow Analysis (25-year)
 - a. Contract Schedules
- 6. Sprint 5: Stakeholder Engagement
 - a. Workshop Meetings
 - b. Deliverables Presentation
 - c. Stakeholder Review and Comment
 - d. Comment Discussion, Resolution, and Closeout

PROJECT MANAGEMENT

ESCO and its subconsultants (Design Build Team) will perform internal management of the project, schedule, and budget, partner with the project team members, and attend meetings and workshops. The Design Build Team will prepare meeting agendas, handouts, and minutes for all design meetings. The Design Build Team will maintain a Project Decision and Action Item log for tracking of all decisions and actions and will update this at each progress meeting and distribute to the team. Project management shall include overall management of the project; team coordination; coordination with the City and any other consultants; regular progress meetings; workshops; and presentations. Project management includes the following meetings, progress reports, and milestones:

- Biweekly Project Team Meetings, virtual
 - The Design Build Team shall meet with the City team via virtual meetings on a biweekly basis during **Phase 1** and **Phase 2**
- Customer Project Kick Off & Site Investigation, in person
 - The Design Build Team will meet with the City at the project site to gather and review the necessary data and documentation required to develop the project design criteria, and to discuss key considerations for selecting the appropriate criteria
- Customer Meeting & Site Investigation Teams Recap, virtual
 - The Design Build Team will meet with the City via virtual meeting to review and discuss the findings from the site investigation and results of documentation review and discuss site planning and preliminary construction phasing observation
- Alternative Analysis Workshop/Presentation, in person
 - The Design Build Team will meet with the City via virtual meeting to review the results of the alternative analysis and make a decision on project direction as a result of the analysis.
- Technical Design and Alternatives Analysis Memorandum Review Meeting, in person

- The Design Build Team will meet with the City in person to discuss and review comments on the Tech Memo
- Preliminary Design Report (PDR), and 30% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff Phase 2 as a result of final approved PDR. The purpose of the meeting will be to align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- PDR Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the PDR and discuss risks, budget, and schedule
- 30% Design Project Team Presentation, virtual or in person
 - The Design Build Team will meet with the City via virtual meeting, or in person, to review the results of the 30% design phase and discuss risks, early procurement items, budget, and schedule
- 60% Design Project Team Kick Off, virtual or in person
 - The Design Build Team will meet with the City either remotely, or in person, to kickoff the 60% design efforts as a result of approval of the 30% design. The purpose of the meeting will be to, again, align the team on project direction, discuss early project risks and mitigation strategies, permitting strategy, and next steps
- 60% Design Internal Review , virtual
 - The Design Build Team will meet via virtual meeting to review the 60% design deliverables and prepare for presentation of the design to the City
- 60% Design Project Team Presentation, in person
 - The Design Build Team will meet with the City in person to review the results of the 60% design phase and discuss risks, early procurement items, budget, and schedule. This meeting will also prepare the Project Team for delivery of Guaranteed Maximum Price (GMP), based on approval of the 60% design
- 60% Design & GMP Project Final Scope, Scheduled, and Negotiation
 - The Design Build Team will meet with the City to address city's team review comments on the submitted 60% design and GMP . The goal is to discuss and ~~anegotiations~~ negotiation final scope, pricing, scheduled, risks, and early procurement
- Regional Board and DDW Permitting Agency Coordination Meetings, virtual
 - The Design Build Team will meet with the Region 5 Regional Water Quality Control Board and Division of Drinking Water staff assigned to the project to review the design intent at the 30% and 60% design level to align the agencies with the project direction and address any concerns early in the project to minimize schedule interruptions by agency approval. After completion of the first meeting, the Report of Waste Discharge and Title 22 Engineering Reports will be drafted and submitted in draft form to the agencies. After completion of the second meeting, the reports will be updated to draft/final and submitted for permit approval.
- Federal Emergency Management Authority (FEMA) Agency Coordination Meetings, virtual
 - The Design Build Team will meet with FEMA, if required based on our floodplain analysis, to discuss the potential requirement for a CLOMR and LOMR and work with the agency to determine sequencing, schedule, and next steps
- CEQA Coordination Meetings, virtual
 - The Design Build Team will meet with the environmental permitting representatives to support the CEQA application process.

Deliverables:

- Project Decision & Action Item Log, Excel format
- Alternative Analysis, PDR, 30%, 60% Presentations, PowerPoint Format

QUALITY MANAGEMENT

The Design Build Team will perform quality control and quality assurance throughout the design phase of the project. A Quality Assurance/Quality Control (QA/QC) officer will be designated within the firm that is responsible for implementation of the QA/QC plan. The scope items that are performed by the Design Build Team will be peer reviewed internally by Schneider Electric prior to submission to the City. This process ensures a high level of precision and completion on deliverables prior to release to the various project teams.

For each client deliverable presented for review, Design Build Team will create a Bluebeam Studio review session, for all City and City Representatives (as applicable) to provide comments, track Design Build Team responses, and document closeout of all comments and changes. City and City Representatives will have 2 weeks to review and provide comments for each phase deliverable.

Deliverables:

- Comment and response logs, available upon request

GENERAL ASSUMPTIONS AND EXCLUSIONS

1. No architectural or MEP engineering services are included at the time of proposal based on the fact that a new operations or maintenance building is currently not in the project scope. It is anticipated that the current operations and maintenance buildings will be protected in place. Prefab options will be explored for a workspace and lab to supplement existing building.
2. The scope of facilities described under the heading "Water Reclamation Facility (WWTF) Project Elements," above, is the basis for estimating our design effort. If the Preliminary Design phase of the project results in changes to this assumed scope, the design and construction support efforts may change, and a scope amendment may be required.
3. Additional assumptions and limitations are provided under corresponding tasks below.
4. Plan checks by the Building Department, Regional Board, DDW, and FEMA will be conducted in accordance with the overall project schedule for design and implementation. Comments from the Building Department will be limited to applicable building, plumbing, fire, and electrical code matters.
5. ADA compliance design will not be required for the facilities included in this scope.
6. Design for repurposing existing effluent storage pond to proposed influent equalization basin is assumed to be limited to rough and finished grading, levees, liner, pipe penetrations for inlet and pump suction, associated pumping and filtering facilities, access roads, and fencing.
7. Operations and Maintenance manuals will be prepared by equipment suppliers, separate from this scope.
8. Drawings will be prepared in a current version of AutoCAD Civil3D and will be based on Consultant standard drawing format, layering, and title blocks. Use of BIM or 3D design not included.
9. Technical specifications will be based on consultant boilerplate specifications, with City preferences and standards incorporated. Front-end specifications are assumed to not be required for the project.
10. Environmental clearance and permitting will be by ESCO- and coordinated with the design.

11. Perimeter landscaping, hardscaping, or decorative fencing or walls not included or by others.
12. City WWTF Operations Team will have the opportunity to assist ESCO with collaborative development of the Project Definition Report, by participating in workshops and through review/comment of deliverables. In addition, collaboration and engagement with operations team on different controls strategies.
13. Any partnering activities would be addressed as part of the bi-weekly meetings. We can optionally add additional scope for separate formal partnering sessions.
14. Sites for facilities will be relatively flat or moderately sloped sites that can be graded for construction of facilities without retaining walls or other special grading features. Drainage will sheet flow off the sites to surrounding lands or discharge from on-site storm drains to outlet structures at the perimeter.
15. Geotechnical recommendations, prepared by others, will allow for slab-on-grade foundations without special foundation measures such as piles.
16. If the water balance determines that additional effluent disposal by spray, leach field, or similar is required, an additional service proposal can be provided for the design of these systems. They are not included in the base scope.
17. Design scope assumes that all improvements included in this package will be prepared as a single set of plans and specifications with a limited number of early procurement packages.
18. Design fees assume the use of a packaged MBR treatment system manufactured by Cloacina LLC. Phase 2 and 3 design fees could increase by up to 50-100% if a cast-in-place MBR system is selected by the City.
19. Meeting agendas and notes will be the responsibility of ESCO as host of the meeting schedule for the overall project.

SPECIFIC WWTP IGA ENGINEERING SCOPES OF SERVICES

PHASE 1 – ALTERNATIVES EVALUATIONS AND PROJECT DEFINITION

During Phase 1, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 1 regulatory and permitting analyses will be incorporated into the Alternative Analysis, Technical Memo, and Schematic Design providing for cohesive technical deliverables.

Wastewater Treatment Facility Design - WWTF Design Phase 1

Overview of Tasks:

- Data and documentation gathering and review
- Site investigation including preliminary topographic and boundary survey as well as geotechnical investigation of subsurface conditions and infiltration testing for any storm water post construction requirements the project may face
- Alternatives analyses regarding WWTF technologies, construction type, location, and phasing approaches
- Review of permitting and regulatory drivers and constraints set forth by the Regional Water Quality Control Board, Division of Drinking Water, CEQA, CalTrans, FEMA, and the local building authority
- Project funding strategy, including potential customer rate impacts
- Develop technical design memoranda to describe project constraints, design criteria, and alternatives available to the City
- Preliminary schedule development
- Develop construction scope, schedule, and budget
- Complete a GMP estimate through repeated cost modeling

Task 1 – Phase 1 Topographic and Record Boundary Survey for Design Approach

ESCO will provide a limited topographic survey of the approximate limits as shown in green in Figure 1 and ESCO will plan to perform survey of access road and adjacent topography and boundary as part of overall WWTF survey efforts to prepare for potential access road improvements required to construct/upgrade WWTF facilities. using a combination of aerial and field mapping. The aerial mapping will be augmented by field survey to locate significant features and be completed by conventional techniques. During the Phase 1 design approach, the surveying effort will be limited to setting aerial control, locating three to four survey monuments and best fit pin the record boundary line work to the mapping, and a limited amount of significant feature measurements to be collected at the engineer's direction. For budgeting purposes, we have included three (3) ten-hour days, including mobilization, to complete this limited field work.

The survey mapping will be constrained horizontally to the California Coordinate System of 1983 (CCS83), Zone 2 projection and vertically to the North American Vertical Datum of 1988 (NAVD88). Survey control stations will be set near the edges of the project mapping limits so that they are available for construction survey staking control and likely will remain through construction and the next phases of design. The compiled mapping will be completed with a mapping scale of 1" = 20' with a one-foot contour interval.

A preliminary title report(s) will be needed to provide further research tools and a better understanding of the existing parcels and easements. For budgeting purposes, we assume that the title report(s) will be provided by the owner and that no more than four (4) easements will need to be plotted.

The mapping will be provided as a Civil 3d 2024, or newer, survey base map drawing file with digital terrain model (DTM) surface. For budgeting purposes, we have assumed that sufficient monuments exist, no material discrepancies will be discovered, and that filing a Record of Survey or Corner Record will not be required, including in the event that a Record of Survey is required according to Section 8762 of the California Business and Professions Code (BPC) or rehabilitating of controlling monuments used as part of this survey is required due to their condition being less than permanent and durable and other requirements specified by Section 8771.6 of the BPC. However, if as a part of the survey for this project, a Record of Survey or Corner Record is required, or existing monuments are found and determined to need re-establishment to comply with state law the client agrees to authorize additional scope and budget to satisfy these requirements.



Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 2 – Design Criteria and Alternatives Analysis

Task 2.1 - Technical Design and Alternatives Analysis Memorandum

Drafting the Technical Memorandum involves creating a summary document that outlines the initial design concepts, constraints, and alternative approaches for the project. This report serves as a crucial communication tool between stakeholders and team members. The memo will include design criteria, results of floodplain analysis, results of environmental and wastewater discharge permitting analyses, high level summaries of alternatives, and Class 4 AACE cost estimate. The memo will be presented to the City for approval to proceed.

The memo will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Establishment of future expandability requirements for the facility
- Location and treatment technology alternatives analysis, including evaluation of repurposing existing facilities to integrate hydraulically and confirm capacity for the intended purpose. The alternatives analysis includes membrane treatment technologies (does not include ceramic or flat sheet), disinfection processes (e.g., in vessel UV, in channel, and chlorine), solids handling and dewatering, and screening for future odor control with a carbon technology.
- Preliminary approach
- Capital cost estimate (Class 4 AACE), provided as an attachment and summarized in the report

Deliverables:

- Technical Design Criteria and Alternatives Analysis Memorandum, PDF format

Task 2.2 - Schematic Design

Develop the schematic design to 10% design completion. The purpose of the schematic design is to coordinate the configuration, layouts, sizes, and major features of the overall design with the City and project team; optimize the project to best meet the project goals; firm up decisions; and obtain consensus on these items for the detailed design. Schematic design drawings will include the following:

- Preliminary Process Flow Diagrams
- Preliminary Hydraulic Profile
- Site plans, including identification of the footprint of future expansion to get to Buildout flow capacity.
- Major yard piping
- Building and equipment footprints and major features
- Major design criteria, equipment sizes, and features
- Existing facilities proposed for reuse and schematic design of rehab/upgrades
- Preliminary electrical single-line diagrams
- List of anticipated early procurement items

Deliverables:

- 10% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 1:

ESCO originally proposed completing the following activities during Phase 1 of the project:

Regionalization, Reclamation, Recycling, and Conservation Report

This report will address the Central Valley Regional Water Quality Board's (Central Valley Water Board) Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants. Submittal of this report to Central Valley Water Board executive management is needed before Board management will advance discussions with the City regarding the need for an NPDES permit to allow WWTF effluent discharge to Sutter Creek. Resolution No. R5-2009-0028 requires that the report address the following elements.

- a. Efforts that have been taken by the City to promote new or expanded wastewater recycling and reclamation opportunities and programs.
- b. Water conservation measures promoted by the City.
- c. Regional wastewater management opportunities and solutions (e.g. regionalization) available to the City.
- d. An evaluation of wastewater reclamation and land disposal as alternative disposal methods to a surface water discharge.

It will be critically important to explain in this report why remaining a part of the Amador Regional Sanitation Authority (ARSA) is not feasible and why the City seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

NPDES Permitting Technical Memorandum

This technical memorandum will characterize the projected WWTF effluent quality (e.g., conventional pollutants, temperature, priority pollutants) with the new treatment processes compared to expected NPDES permit effluent limitations and reclamation permit requirements, and receiving water quality, which can affect NPDES permit limitations, and other anticipated permitting requirements. Key elements of this task are listed below.

- a. WWTF Effluent and Receiving Water Quality Characterization: A characterization of WWTF effluent and Sutter Creek water quality is necessary to support design of the new WWTF, as well as support NPDES permitting and CEQA compliance processes to identify the effects of the WWTF discharge on Sutter Creek water quality and beneficial uses. The data will assist in identifying constituents (e.g., trace metals) or parameters (e.g., temperature) that may pose a challenge for NPDES permit compliance and, thus, require additional investigation into source control options or specific treatment technologies to be incorporated into the WWTF design.
- b. WWTF Effluent Quality Projections: Characterizing existing WWTF effluent quality establishes the baseline condition, with the expectation that the new WWTF effluent quality will be no worse, and likely better, for many constituents due to improved removal efficiencies.
- c. Anticipated Effluent Limitations: The Central Valley Water Board makes determinations regarding the need for water quality-based effluent limitations in an NPDES permit through a reasonable potential analysis (RPA). Completing an RPA will be informative because it gives the Project Team advance notice of anticipated NPDES permit limitations, which can be useful for determining the feasibility of the surface water discharge and/or if treatment compliance strategies need to be developed for the project.

Environmental Opportunities and Constraints Technical Memorandum

This technical memorandum will address the environmental opportunities and constraints related to the siting of the new WWTF, focused on potential impacts on biological resources, a listing of environmental permits that may be required for construction of the new outfall in Sutter Creek (e.g., Clean Water Act [CWA] Section 404 permit), an overview of the CEQA compliance process, and a timeline and estimated cost for environmental permitting and CEQA compliance. Key elements of this task are listed below.

- a. Site visit conducted by ESCO biologists to visually survey for biological resources and potential impact-related issues.
- b. Identify federal and state endangered plant, fish, and wildlife species that could be affected by project construction and operation.

- c. Generate a list of potentially relevant environmental permits, such as a CWA Section 404 permit from the U.S. Army Corps of Engineers (USACE) and a CWA Section 401 water quality certification from the Central Valley Water Board. It is expected that any outfall proposed would require a Lake and Streambed Alteration Agreement (LSAA) from the California Department of Fish and Wildlife (CDFW).
- d. Develop a preliminary permitting and CEQA compliance schedule and cost estimate.

Completing an environmental opportunities and constraints analysis allows for identifying potential effects of the project, which allows the Project Team to make refinements to the project to reduce or avoid potential adverse environmental effects that would otherwise require costly mitigation or could not be mitigated to a less-than-significant level (i.e., be significant and unavoidable).

The detailed scope of work presented below for the proposed Phase 1 activities has now been streamlined, because ESCO has been informed that Central Valley Water Board staff are in support of the City's desire to construct and operate a new WWTF that would discharge Title 22, tertiary-treated effluent into Sutter Creek.

Task 1 - Regionalization, Reclamation, Recycling, And Conservation Technical Memorandum

The Central Valley Water Board adopted Resolution No. R5-2009-0028 in support of regionalization, reclamation, recycling, and conservation for wastewater treatment plants.

This resolution states that wastewater treatment plants seeking a new NPDES permit shall provide information regarding regionalization, reclamation, recycling, and conservation upon request by the Central Valley Water Board and identifies the type of information to be supplied by the discharger. All wastewater dischargers requesting an NPDES permit must provide an evaluation of wastewater reclamation and land disposal as alternative disposal methods. Central Valley Water Board management staff require this report be prepared and submitted by potential surface water dischargers wanting a new NPDES permit prior to allowing NPDES permitting staff to work with the discharger on a new permit (e.g., hold meetings with discharger, review a report of waste discharge or NOI for coverage under the Municipal General Order).

ESCO will prepare a technical memorandum that addresses the following major topic areas (with anticipated length of discussion in parentheses).

1. Introduction (1/2 page)
2. Background (1 page)
 - a. Existing Wastewater Treatment Facilities
 - b. Planned Uses and Development
 - c. Existing Wastewater Treatment Facilities
3. Regionalization Opportunities and Constraints (1-2 pages)
4. Reclamation and Recycling Opportunities and Constraints (1-2 pages)
 - a. Land Application
 - b. Indirect Potable Reuse
 - c. Direct Potable Reuse
 - d. Local Water Transfer or Exchange
5. Water Conservation Activities (1/2 page)
6. Best Practical Treatment and Control (1/2 page)
7. Conclusions (1/4 – 1/2 page)

Task 1.1 - Introduction and Background

ESCO will prepare the “Introduction” and “Background” sections of the report using information ESCO has learned through project development, supplemented with information provided by the City regarding planned development and buildout of the WWTF.

Task 1.2 - Reclamation and Recycling Opportunities

ESCO will describe reclamation and recycling opportunities, with input from the City and Project Team.

Task 1.3 - Regionalization Opportunities and Constraints

ESCO will describe the regulatory, socioeconomic, and physical factors that make regionalization of the City’s wastewater treatment not feasible, with input from the City and the project team. This section will briefly address why remaining part of ARSA is not recommended and why the City instead seeks to construct a new tertiary WWTF that would discharge effluent to Sutter Creek.

Task 1.4 - Water Conservation Activities

In collaboration with the City, ESCO will describe the City’s current and planned water conservation activities.

Task 1.5 - Best Practical Treatment and Control

Central Valley Water Board Resolution No. R5-2009-0028 regarding regionalization, reclamation, recycling and water conservation states the following:

“State and federal antidegradation policies require Dischargers to demonstrate that degradation from new or expanded discharges are necessary, and to implement best practicable treatment or control of the discharge necessary to maintain the highest water quality consistent with maximum benefit to the people of the State. Regionalization, reclamation, recycling and conservation may enhance the implementation of these policies.”

In the state and federal regulations, achievement of “best practical treatment or control” (BPTC) is defined in terms of performance and maintenance of water quality standards via achieving appropriate NPDES permit limitations, rather than specific treatment technologies. ESCO will describe how the term BPTC is addressed in state and federal water quality regulations and policy, and the extent to which the treatment technologies at the existing and proposed new WWTF provide BPTC.

Task 1.6 – Technical Memorandum

ESCO will compile the information developed in Tasks 1.1 through 1.5 a technical memorandum. ESCO will provide the City and Project Team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Task 1.7 – Central Valley Water Board Meeting

ESCO will participate in an in-person meeting with Central Valley Water Board executive management at their Rancho Cordova, CA office to convey information contained in the technical memorandum, and solicit questions and input regarding the level of detail in the technical memorandum relative to that needed to advance obtaining an NPDES permit for the proposed WWTF.

Assumptions:

- The above scope and budget assumes that all information ESCO requests from the City and project team in support of the report preparation will be adequately provided in a timely manner.

- The scope and budget is limited the number of rounds of review specified above.
- Central Valley Water Board requests for revisions to the technical memorandum beyond those editorial in nature for clarity, will require additional budget beyond that identified for this task.

Deliverables:

- Draft Technical Memorandum
- Final Technical Memorandum

Task 2 – Phase 1 NPDES Permitting Technical Memorandum

ESCO will prepare a technical memorandum that defines NPDES permitting considerations for a new surface water discharge from the City WWTF to Sutter Creek. This will be similar to the technical memorandum RBI prepared in February 2012. The technical memorandum addressed the following topics.

- Designated beneficial uses of Sutter Creek that must be protected
- Analysis of critical design creek flows for dilution credit
- Reasonable potential analysis of WWTP effluent data to identify potential NPDES permit effluent limitations to protect beneficial uses
- Likely effluent and receiving water monitoring requirements
- Process for obtaining an NPDES permit and estimated cost
- Penalties for non-compliance with the NPDES permit
- Identify important NPDES Permit compliance challenges for application of chlorination as an effluent disinfection method. Compare to UV disinfection approach in terms of regulatory compliance benefits and risks and regulatory validation requirements.

ESCO will prepare an updated version of the February 2012 technical memorandum. The update will address several of the above-listed topics. Secondary effluent produced at the City's WWTF would not represent effluent discharged following tertiary filtration and disinfection upgrades necessary to support surface water discharge. Therefore, updating the reasonable potential analysis is not warranted. Instead, ESCO will review NPDES permits for similarly sized and situated WWTFs (e.g., Jackson, Placerville, Lathrop, Mountain House) that use tertiary-level treatment (e.g., membrane bioreactor) discharge to surface water and communicate effluent limitations and permit conditions issued to such facilities, relative to treatment technology utilized. ESCO will identify compliance strategies utilized to ensure compliance with such effluent limitations.

The technical memorandum also will include current effluent and receiving water monitoring requirements based on current Central Valley Water Board plans and policies. Finally, the process for obtaining an NPDES permit will be updated to reflect documentation needed to satisfy CEQA and Central Valley Water Board policies, as well as effluent and receiving water data needs. An estimated timeline and cost for each process component will be provided. No updates are needed to address critical design creek flows because all available data (for water years 1936–41 and 1961–80) was compiled previously.

ESCO will provide the City and the project team a draft technical memorandum for review and comment. ESCO will then prepare a final technical memorandum for submittal to the Central Valley Water Board.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

Task 3 - Environmental Opportunities and Constraints Technical Memorandum

Task 3.1 - Site Survey

ESCO biologists will conduct a reconnaissance-level survey of potential locations for the new WWTF and outfall to evaluate site conditions and presence of habitat for terrestrial and aquatic biological species of concern, with the purpose of identifying potential environmental impacts to biological resources from construction and operation of the project.

Task 3.2 - Special-Status Species Research

ESCO will conduct a literature review and database search to determine the potential for presence of special-status plant and wildlife species or their habitat in the project area, including the following sources.

- CDFW's California Natural Diversity Database
- USFWS Information for Planning and Consultation Species List
- California Native Plant Society Electronic Inventory of Rare and Endangered Plants of California

Task 3.3 - Outfall Permit Identification

ESCO will develop a list of resource agency approvals and regulatory permits that may be necessary for the construction and operation of a new WWTF outfall in Sutter Creek.

Task 3.4 - Technical Memorandum

ESCO will compile information developed in Tasks 3.1–3.3 into a technical memorandum. The technical memorandum also will address CEQA compliance for the project, provided by ESCO, and provide an estimated schedule and budget for securing the permits needs for outfall construction and operation, and for completing the CEQA compliance process.

Assumptions:

- The scope and budget for this task assumes one (1) site visit by two (2) ESCO biologists. However, if certain special-status plant species have the potential to be present at the site, additional blooming period surveys may be required.

Deliverables:

- Draft Technical Memorandum in PDF
- Final Technical Memorandum in PDF

Task 4 - Effluent and Receiving Water Characterization

The Effluent and Receiving Water Quality Characterization task consists of monitoring the existing WWTF effluent and Sutter Creek to develop a data set for priority pollutants and other constituents of concern, as well as temperature, which will be used to support the Antidegradation Analysis, NOI for Municipal General Order coverage, and project EIR analyses. Data collected under this task will be evaluated to identify constituent levels that may trigger NPDES permit effluent limitations. ESCO will initiate data collection under Phase 1, as follows. Completion of data collection, the data evaluation

consisting of a “reasonable potential analysis,” and associated technical memorandum will be completed in Phase 2.

Task 4.1 - Priority Pollutants and Other Constituents of Concern

The Central Valley Water Board has established a list of pollutants that it requires Central Valley municipal wastewater dischargers monitor for one year within each NPDES permit cycle. ESCO anticipates that quarterly sampling of the WWTF effluent and Sutter Creek will be needed, which is the typical sampling frequency required by the Central Valley Water Board for similarly sized WWTFs. ESCO will provide the following services under this task.

1. The ESCO Project Manager and an ESCO Project Scientist will conduct a site visit to WWTF and Sutter Creek to identify sample collection locations.
2. ESCO will prepare a brief Sampling and Analysis Plan defining sample collection locations, frequency, and methods; analytical laboratories, methods, and detection limits; and QA/QC protocols.
3. An ESCO Project Scientist will obtain sample bottles, collect samples from the WWTF and Sutter Creek, and arrange for sample delivery to the contract laboratory. ESCO will use its field meters to measure electrical conductivity, temperature, and pH while onsite each month, so that sufficient data is collected to calculate ammonia effluent limitations. Sampling events will be coordinated with retrieval of temperature logger data under Task 4.2.
4. ESCO will review laboratory reports to verify all required analyses are completed, identify potential QA/QC issues, and determine the need for any resampling.
5. ESCO will compile data into an MS Excel database in the standardized format used by the Central Valley Water Board when preparing the Municipal General Order NOA and NPDES permits.

Task 4.2 - Temperature Data Collection

Collecting WWTF effluent and Sutter Creek temperature data is necessary to support the NPDES permitting process and the CEQA EIR impact analyses on water quality and aquatic biological resources of the creek. A minimum of 12 months of data collection is recommended. ESCO will provide the following services under this task.

1. ESCO will monitor effluent and creek temperatures on an hourly frequency using HOBO Temperature Loggers (Onset Corporation ®). These data loggers are battery-powered, research-grade instruments that are widely used for monitoring water temperatures.
2. As part of the site visit to establish monitoring locations in Task 4.1, ESCO will establish the temperature monitoring locations.
3. ESCO will deploy the loggers during the initial site visit and, thereafter, retrieve data from the loggers once per month for four months (see “Assumptions” below).
4. ESCO will offload data from the shuttle to the company server, review the data for abnormalities (e.g., outliers, air temperature readings), and compile the data into a temperature database (MS Excel or Access) to facilitate future data analyses.

Assumptions:

- Given that Task 4 in Phase 1 is planned to last 5 months, the fee in Phase 1 assumes that only one round of sampling under Task 4.1 will be completed, and there will be up to four trips to the site for temperature data retrieval under Task 4.2. Continuation of data collection to complete a full 12 months by ESCO will be contingent on a contract amendment to include Phase 2.

- Laboratory analytical costs are estimated based on ESCO's experience conducting similar studies for other Central Valley Water Board dischargers. Actual costs will be determined as part of developing the Sampling and Analysis Plan, and the fee in Phase 1 may need to be adjusted accordingly.

Deliverables:

- Initial databases with effluent and receiving water characterization and temperature data

California Environmental Quality Act – CEQA Phase 1:

Task 1 - Biological Resources Investigation

ESCO will conduct a desktop survey to review information on potential biological resources at the project site. Data sources may include U.S. Geological Survey quadrangle maps, U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consulting (IPaC), the California Natural Diversity Database (CNDDB), species data compiled by the California Native Plant Society (CNPS), and other technical literature related to the biotic resources in the project vicinity. ESCO will coordinate with the City to determine if existing documents, studies, and reports are available that provide relevant information related to biological resources in the project area. ESCO will also review aerial photographs of the area, if available, to identify potential habitat types, water resources, presence of special-status species, and other biological constraints.

Task 2 - Cultural Resources Investigation

The potential for presence of potential historic resources and buried archaeological sites will be evaluated at a preliminary level by conducting a desktop assessment using relevant maps and documents (e.g., archaeological studies, geologic reports, Quaternary geologic maps, soil surveys). ESCO will develop an Area of Potential Effects (APE) map for use in evaluating cultural resource impacts for the project area.

The APE will include the current WWTF as well as City-owned parcels (018-002-031 and 018-002-032) in an area bounded by Mahoney Mill Road, Highway 49 to the west, the residences behind Oro Madre Way to the east, and Sutter Lone Road to the north, which have been identified as optional sites to locate portions of the WWTF expansion within. The APE will be submitted for review and confirmation by the City.

Upon approval of the APE, ESCO will conduct a record search at the North Central Information Center (NCIC) of the California Historical Resources Information System at California State University, Sacramento, in Sacramento. This review will identify any previously recorded cultural resources within ¼ mile of the APE in order to (1) determine whether known cultural resources have been recorded within or adjacent to the project area; (2) determine whether any cultural resources studies have previously been conducted within or adjacent to the project area; (3) assess the likelihood of unrecorded cultural resources based on historical references and the distribution of environmental settings of nearby sites; and (4) develop a context for identification and preliminary evaluation of cultural resources. NCIC record search results are usually received within 4 weeks of the request for the search.

Task 3 - CEQA Review

ESCO will conduct a desktop review of the resource topics included in the CEQA Guidelines Appendix G Environmental Checklist to identify potential for significant environmental impacts. We will consult

Federal Emergency Management Agency (FEMA) flood insurance rate maps to identify which portions of the project area are within the 100-year floodplain. To evaluate the potential for hazardous materials to be located within or near the project site, ESCO will conduct a search of the Department of Toxic Substances Control's (DTSC) EnviroStor database (<https://www.envirostor.dtsc.ca.gov/public/>) and consult DTSC's Cortese List to identify any known contamination sites within a 0.25-mile buffer of the potential project sites. Noise and air quality requirements will be reviewed to determine appropriate setback distances from sensitive receptors adjacent to the project area. We will also identify other constraints requiring additional analysis and will include recommendations for how to address these constraints. In addition, ESCO will identify responsible agencies and other federal, state, and local agencies that may have jurisdiction and/or approval authority over part or all of the project or project site.

We will also review the City's general plan, water and wastewater planning documents, and other relevant materials provided by the City.

Task 4 - Environmental Constraints Analysis Report

ESCO will prepare a draft environmental constraints analysis report that describes the findings with regard to biological resources, cultural resources, CEQA resource topics, and the appropriate level of CEQA evaluation. The report will include recommended next steps, such as a site visit and field surveys, that could help to identify project modifications that might avoid and/or minimize potential impacts to sensitive biological and cultural resources. ESCO will submit a draft report to the City for review.

If desired, ESCO will attend a virtual meeting with the City to present an overview of the environmental constraints analysis and our proposed approach for achieving CEQA compliance in an efficient manner based on previous experience.

Following review and comment by the City, ESCO will revise the report and provide a final version.

Assumptions:

- No site visit or field survey will be conducted under this Phase 1 portion of the scope of work.

Deliverables:

- Draft and revised environmental constraints analysis report (electronic)

Federal Emergency Management Agency – FEMA Phase 1:

The current floodplain and floodway limits include a FEMA Zone A, adjacent to the wastewater treatment facility (WWTF), and Zone AE (with a floodway overlay) at the upstream limits of the WWTF. The purpose of this study is to perform the hydrology and hydraulic modeling to determine the floodplain limits adjacent to the existing WWTF and determine if there is a tie in upstream at the Zone AE limits shown in the Figure below.



Task 1 - FEMA Model Request, Background Review, and Field Review

Task 1.1 - FEMA Model Request

The ESCO team will request the effective FEMA hydrology and hydraulic analyses from the FEMA library.

Task 1.2 - Review Background Information

ESCO will review all available background material, including the FEMA models requested in Task 1.1, for the project. This will include reviewing available as-built plans for the culverts and roadway design provided by others.

Task 1.3 (Optional) - Field Review

ESCO will field review the project location to determine Manning's roughness coefficients and any additional characteristics of the project site which would need to be included in the hydraulic model.

Assumptions:

- A quality FEMA model is available from the FEMA library.

Deliverables:

- A summary of the background and field reviews will be included in the Final Hydraulic Report.

Task 2 - Hydrology and Hydraulic Analyses

Task 2.1 – Hydrology

ESCO will create hydrographs with a peak flow equivalent to that of the FEMA published 100-year discharge for use in the 2D hydraulic model. ESCO will do this by creating a HEC-RAS 2D point precipitation model.

Task 2.2 - Existing Conditions Hydraulic Model Zone A

ESCO will create a 2D hydraulic model of the existing conditions at the project site based on existing topographic information (LiDAR), and as-built information for the existing bridge using HEC-RAS version 6.5 or newer.

Task 2.3 - Existing Conditions Hydraulic Model Zone AE

ESCO will determine if the Zone AE is within the WWTP right of way and if mapping updates are needed to remove it from the Zone AE. If mapping updates are needed, a separate task order will be required.

Assumptions:

- The discharges determined by FEMA are sufficient for this analysis. Determining the peak discharges is not included in this scope of work.
- Available LiDAR data will be used as the basis for terrain data within the HEC-RAS modeling.
- As-built plans provided by others.
- The proposed WWTF upgrades do not change any grading within the floodplain/floodway limits.
- No FEMA submittals, Conditional Letter of Map Revision (CLOMR), Letter of Map Revision (LOMR) or formal No-Rise analysis will be completed as part of this scope of work.
- No 500-year floodplain modeling
- Refinement of scope and fee for Phases 2A and 2B will occur at end of Phase 1, based on outcome and accuracy of assumptions above.

Deliverables:

- Details of the hydraulic analysis will be included in the Preliminary and Final Hydraulic Reports completed in Task 3.

Task 3 - Preliminary and Final Hydraulic Reports

Task 3.1 - Preliminary Hydraulic Report

ESCO will complete a Preliminary Hydraulic Report documenting the hydrology and hydraulic results for the existing conditions, and up to two proposed alternatives.

Task 3.2 - Final Hydraulic Report

ESCO will update the Preliminary Hydraulic Report to a Final Hydraulic Report, incorporating any comments on the Preliminary Report and documenting the results of the hydrology and hydraulics for the final proposed condition modeling.

Assumptions:

- The proposed project will not result in an increase in the water surface elevation and a “no rise certification”, Conditional Letter of Map Revision (CLOMR), or Letter of Map Revision (LOMR) will not be required. If a no rise, CLOMR or LOMR are required, this would require a separate task order.

- Preliminary hydraulic modeling results can only be prepared after receipt of FEMA library information for the existing hydrology and hydraulics.

Deliverables:

- Preliminary and Final Hydraulic Report will be provided via electronic mail. If FEMA's findings indicate that additional study is necessary, ESCO will address this requirement during Phase 2.

PHASE 2 – DETAILED DESIGN

During Phase 2, ESCO will coordinate and manage team members performing multiple design, regulatory, and permitting professional services. The work will be conducted so that feedback from all Phase 2 regulatory and permitting analyses will be incorporated into the Preliminary Design Report, 30% Design, and 60% Design, providing for cohesive technical deliverables.

Waste Water Treatment Facility Design - WWTF Design Phase 2:

Overview of Tasks:

- Perform detailed topographic survey
- Complete the Project Definition Report (assume 15% design)
- Develop the design to 30% and 60% completion (design progression from 60% to 100% is part of the construction in Phase 3)
- Prepare permitting applications and supporting reports
- Preparation of Guaranteed Maximum Price (GMP)

Task 3 – Topographic and Boundary Survey for Detailed Design

During Task 1 and phase 2 of the project, we will collect measurements to refine the retracement of the property boundary and measurements within the treatment plant at the direction of the engineer as needed for further informing their design and engineering. This includes pipe inverts, major structures, drainage structures, equipment pads, and other improvements. This does not include survey of the interior of equipment buildings. For budgeting purposes, we have included up to four (4) ten-hour days, including mobilization, to complete these measurements. These measurements will be compiled and incorporated into the existing Civil 3d survey base map.

Deliverables:

- Civil 3D 2021 or newer Survey Base Map, DWG format

Task 4 - Existing Utility Research – Utility ‘A’ Letters

We will use the Amador County’s Underground Service Alert web portal to obtain a list of utility providers and operators within and adjacent to the project site. We will contact and request utility information and atlas maps from each of the utility companies listed as part of this inquiry via certified return receipt mailers, or as indicated by their preferred contact method if provided through the Underground Service Alert inquiry. We will document the correspondence process and share with the client the information we obtain. The information returned from the utility companies showing the location of existing utilities will be digitized and shown with the existing utility base map. We are assuming that up to 5 utility companies will require contact and have utility infrastructure in the project area that should be shown on the existing utility base map. The digitized record utility information will be married and resolved with the survey measurements of existing utilities and utility markings.

Deliverables:

- Utility ‘A’ Letters, PDF format

Task 5 – Preliminary Design Report Development

Drafting the Preliminary Design Report (PDR) involves creating a comprehensive document that outlines the initial design concepts, requirements, and considerations for the project. This report serves as a crucial communication tool between stakeholders and team members. The report will include

purpose and scope, requirements, standards, design concept and alternatives, challenges, and risks. The report and schematic design, below, will be presented to the City for consideration for Approval to Proceed.

The PDR will include the following items:

- Development and presentation of facility design criteria (flows, loads, volumes, sizes, and configuration)
- Target effluent quality for the selected treatment technology and configuration demonstrating ability to comply with the anticipated discharge requirements
- Evaluation of alternatives
- Up to two alternatives for treatment system locating, sizing, and configuration, including the footprint and connections required for expanding the WWTF in the future to the identified Buildout flow. The alternative analysis will be based on FEMA outcomes, geotechnical studies, and effluent requirements, with consideration given to the most feasible options to minimize additional costs.
- Up to two alternatives for WWTF technology, including cast-in-place and packaged membrane bioreactor systems, considering location, size, cost, and future expansion.
- Evaluation of opportunities to reuse/repurpose existing structures
- Up to two alternatives locating and hydraulically configuring the site influent lift station
- Schematic drawings (listed in Task 2.2 above)
- Recommendation of preferred alternative based on feasibility, affordability, and risk
- Preliminary construction sequencing and phasing plan demonstrating feasibility of the proposed approach
- Capital cost estimate, prepared by Project Team as an attachment and summarized in the report
- Preliminary project schedule, prepared by Project Team as an attachment and summarized in the report
- Life cycle cost estimate, prepared by Project Team, incorporating life cycle cost estimate for the MBR systems and preliminary O&M staffing estimates supported by the City's operations staff
- Identification of value engineering opportunities to be further examined collaboratively as the design progresses

Deliverables:

- Draft Preliminary Design Report, PDF format
- Final Preliminary Design Report, PDF format

Task 6 – 30% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the PDR, the Design Build Team will develop the Design Documents to 30% design completion. Preparation of a table of contents for technical specifications will be provided with the 30% submittal. All major drawing sheets will be included with this submittal to convey the overall project direction. The 30% design package will be presented in a design review meeting.

Deliverables:

- Draft 30% Design Package, PDF format
- Final 30% Design Package, PDF format

The following drawings will be submitted during this phase:

1. Title Sheet	13. Overall Yard Piping Plan	25. Placeholder Sheet X of X for Effluent Dispersal
2. General Notes	14. County Standard Details, Sheet X of X	26. Mechanical Details, Sheet X of X
3. Legend, Abbreviations, and Symbology	15. Civil Typical Details, Sheet X of X	27. Structural Notes
4. Process Design Criteria	16. Civil Details, Sheet X of X	28. Structural Abbreviations, Legends, Symbology
5. Process Flow Diagram	17. Equipment and Pipe Tables	29. Overall Structural Site Plan
6. Overall Site Plan	18. Overall Mechanical Plan	30. Electrical Notes
7. Demolition Plan - Overall	19. Influent Liftstation Plan & Sections, Sheet X of X	31. Electrical Abbreviations, Legends, Symbology
8. Demolition Plan - WWTP Area	20. Influent Equalization	32. Overall Electrical Plan
9. Demolition Plan - Equalization Pond	21. Membrane Bioreactor Plan & Sections, Sheet X of X	33. Overall Single Line Diagram
10. Demolition Plan - Temporary Facilities	22. Solids Handling Plan & Sections, Sheet X of X	34. Lighting Plan
11. Overall Grading Plan	23. Odor Control Plan & Sections, Sheet X of X	
12. Pipe, Structure Tables	24. Effluent Liftstation Plan & Sections, Sheet X of X	

Task 7 – 60% Design Preparation

Upon Approval to Proceed by the City as a result of approval of the 30% design package, the Design Build Team will develop the Design Documents to 60% design completion. Preparation of draft technical specifications will be provided with the 60% submittal. All drawing sheets will be included with this submittal with the exception of some detail sheets. The 60% design package will be presented in a design review meeting for City Staff and City Representative review and comment, per procedure referenced above.

As part of the 60% design task, the Design Build Team will utilize the project team’s construction and operations expertise to perform internal reviews of designs under development and provide input to maximize ease-of-construction, cost-effectiveness, and value while minimizing the cost of long-term operations and maintenance. ESCO will incorporate input into the design where appropriate.

Finally, the Design Build Team will prepare the GMP and construction schedule by information collection (such as vendor quotes) and interpreting the design intent. This coordination will include review of equipment cutsheets and quotations, procurement scope breakdowns, and other documentation as required.

Deliverables:

- Draft 60% Design Package, PDF format
- Final 30% Design Package, PDF format

Regional Water Quality Control Board – RWQCB Phase 2:

The following scope of work is provided with less detail as compared to the Phase 1 scope of work, to provide a non-binding, indicative budgetary estimate for Phase 2:

Task 4.3 - Continue Effluent and Receiving Water Quality Characterization

Continuation of balance of scope of work as described in Phase 1, Task 4.

Task 4.4 - Continue Effluent and Receiving Water Temperature Data Collection

Continuation of balance of scope of work as described in Phase 1, Task 4.

Task 4.5 - Reasonable Potential Analysis / Effluent Limitation Identification

Continuation of balance of scope of work as described in Phase 1, Task 4.

Task 5 - NPDES Permit Coverage for WWTF

ESCO will advance the NPDES permitting for the new WWTF by developing the Notice of Intent (NOI) for coverage under the Central Valley Water Board’s Order No. R5-2023-0025, “Waste Discharge Requirements for Municipal Wastewater Dischargers that Meet Objectives/Criteria at the Point of Discharge to Surface Water (Municipal General Order),” and support reviewing and negotiating the terms of the Notice of Applicability (NOA) issued by the Central Valley Water Board for Municipal General Order coverage.

Task 5.6 - Antidegradation Analysis

ESCO will prepare the Antidegradation Analysis, which will need to be submitted with the Municipal General Order NOI. The Antidegradation Analysis will characterize how the new WWTF effluent discharge to Sutter Creek will affect water quality downstream of the discharge and will demonstrate that the anticipated degradation is consistent with the state’s Antidegradation Policy embodied in State Water Resources Control Board Resolution No. 68-16. The Antidegradation Analysis also will support the CEQA document analyses of water quality impacts.

Task 6.7 - CEQA Support

ESCO will support preparation of the environmental impact report (EIR) for CEQA compliance by preparing the Hydrology and Water Quality, and Aquatic Biological Resources chapters, and other

related resource sections, of the EIR (e.g., alternatives analysis and cumulative impacts analyses for these resource categories).

Task 78 - Outfall Permitting

Based on final design and siting of the WWTF outfall, ESCO will make final determinations for permits needed for outfall construction. Should a CWA Section 404 permit and Section 401 water quality certification be required, ESCO will prepare the applications to obtain these permits as well as the LSAA.

Task 89 - Design Engineer Coordination

Because the WWTF discharge to Sutter Creek would be new, the Central Valley Water Board cannot issue compliance schedules for NPDES permit limitations prior to the new discharge. Therefore, ESCO will coordinate with Project Team WWTF engineers regarding NPDES permit limitations to be met by the new WWTF, so that the facility can comply with the Municipal General Order NOA upon discharge to Sutter Creek. Furthermore, ESCO wastewater engineers will coordinate with Project Team WWTF engineers to advise on PLC and SCADA programming of alarms and meters to facilitate operational compliance and the collection of all necessary effluent quality and quantity information to facilitate preparation of routine (e.g., monthly, quarterly) electronic self-monitoring reports that will be required by the NOA.

California Environmental Quality Act – CEQA Phase 2:

Task 5 - Technical Studies

Task 5.1 - Biological Resources Surveys and Report

Based on the information gathered during the desktop review in Task 1, ESCO will conduct a single reconnaissance-level field survey of the proposed project area to document the existing biological conditions. ESCO will describe the dominant habitat and characterize both botanical resources and wildlife habitat values in the project area. The reconnaissance survey will also be used to determine the potential for occurrence of special-status plants and animals, although no species-specific or protocol-level surveys are proposed. Regulated habitats, such as wetlands and other waters of the U.S./state, will be mapped in Task 5.3.

ESCO will prepare a draft report that describes existing biological conditions, including existing habitats, potential for occurrence of special-status plants and animals, potentially jurisdictional or sensitive habitats, and any other biological resources that might be of concern. The report will also describe minimization measures that would reduce impacts to sensitive biological resources. ESCO will submit a draft report to the City for one round of review and comment. Following review, ESCO will revise the report. The revised report will be used to support preparation of the CEQA document (Task 7) and environmental permitting (Task 8).

Assumptions:

- The City will coordinate site access.
- Protocol-level surveys for special-status plant and wildlife species are not included but can be provided via a contract modification.

Deliverables:

- Draft and revised biological resources report (electronic)

Task 5.2 - Wetland Delineation Report

ESCO will prepare a preliminary jurisdictional delineation report for the proposed project area. The wetland delineation will be prepared in accordance with the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual and the regional supplements for the Western Mountains, Valleys and Coast Region, and/or Arid West Region, whichever is most appropriate for the site location and conditions. ESCO will conduct a site visit to map wetlands and other waters of the U.S./state in the proposed project area. ESCO will prepare a draft report for review by the City. Following review, ESCO will revise and submit the wetland delineation to USACE with the CWA Section 404 application package as described in Task 8.

If requested by USACE, ESCO will organize and attend one field visit with USACE to review the wetland delineation findings. Based on feedback received from USACE, ESCO will revise the wetland delineation and submit the revised version to USACE. Under this scope of work, it is assumed that refinements to the wetland delineation would be minor and related to adjustments to report mapping or minor text edits.

Assumptions:

- Field visit with USACE to review wetland delineation, if requested

Deliverables:

- Draft and revised wetland delineation report (electronic)

Task 5.3 - Cultural Resources Survey and Report

The Native American Heritage Commission (NAHC) will be contacted to determine whether Native American sacred sites are known to be located in or near the project area and to request a list of Native American tribes that have a traditional and cultural affiliation with the project area. Note that the response from the NAHC can take 3-4 weeks. Upon receipt of the list from the NAHC, ESCO will send project notification letters to listed tribes and tribal contacts. ESCO will draft general outreach letters to solicit comments or concerns from NAHC-listed tribes, send them out on behalf of the City via email, and follow up by phone and/or email, as necessary. ESCO will participate in up to 2 hours of conference calls with the City and Native American tribes, if requested. As described in Public Resources Code Section 21080.3.1(b)(2), contacted tribes must respond

to the project notification letters within 30 days. ESCO will also send request letters to relevant historical societies or other institutions to determine if any areas of historical concern have previously been documented. Responses from historical societies are generally received within 1 month.

A cultural resources field inventory of the APE (approximately 21 acres) based on the results of the record search conducted in Task 2. Archaeologists will examine the ground surface within the direct APE by walking closely spaced transects. Trowels or hoes may be used to clear vegetation and increase ground surface visibility, if needed. If deemed warranted by the field reconnaissance, minor subsurface probing using a shovel and trowel will be performed to gain a better understanding of the subsurface conditions. A ¼-inch screen may be used to further separate potential cultural items within the soil. Any identified archaeological resources will be recorded on the standard page of the California Department of Parks and Recreation (DPR) Form 523. These will include photographs and a site map, and global positioning system data will be collected to accurately delineate the locations of all resources. DPR record updates will be prepared for any resources within the APE that had been recorded previously. Recorded archaeological resources will not be evaluated for National Register of

Historic Places (NRHP) and California Register of Historical Resources (CRHR) eligibility under this scope of work. This scope assumes that, if potentially significant archaeological resources are identified on the project property, measures will be taken to avoid impacts so that there is no need to formally evaluate their significance.

The current WWTF was constructed in 1949; therefore, it is of sufficient age to require evaluation for NRHP and CRHR eligibility. An architectural historian will visit the project area to record the facility. DPR forms will be prepared, which will include NRHP and CRHR eligibility evaluations. If available, the architectural historian will review as-built drawings or any other useful materials relating to the structures. The results of the evaluation will be incorporated into the draft Cultural Resources Assessment Report.

ESCO will prepare a draft Cultural Resources Assessment Report once the field inventory is completed. Due to the involvement of FEMA in this project, it is assumed that the project will also require review under Section 106 of the National Historic Preservation Act (Section 106), as well as CEQA. Therefore, the Cultural Resources Assessment Report will comply with the requirements of Section 106 and will be prepared according to the inventory requirements of the California Office of Historic Preservation. The report will include, at a minimum, a project description, project location, results of the records and literature searches, results of the field studies, a summary of findings (including a NRHP/CRHR eligibility recommendation for the current WWTF), and conclusions. The report will include mapping of archaeological site location data and survey coverage areas, as appropriate, and will identify built environment features.

A copy of the report will also be submitted to the NCIC.

Assumptions:

- Up to 20 Native American tribes and individuals will be contacted through tribal outreach.
- There will be no field visits with Native American tribes.
- The City will provide access to parcels 018-002-031 and 018-002-032 as well as the current WWTF facility for archaeological survey.
- The City will provide access to the project site so that the buildings may be photographed. Access to pertinent records regarding construction of the WWTF will also be provided.
- This scope assumes that no more than two archaeological resources will be recorded.
- This scope of work does not include evaluation of archaeological resources for the NRHP/CRHR, should resources be present in the direct APE that cannot be avoided by project construction. This evaluation can be provided as an additional scope item.

Deliverables:

- Draft and revised cultural resources assessment report (electronic)

Task 6 - Environmental Document

At the conclusion of Task 4, the City will determine the level of CEQA review for the project. This scope of work assumes that an IS/MND will be prepared. If a different determination is made, this scope of work and budget may require revision and augmentation.

Task 6.1 - Site Visit and Project Description

To initiate work on the project, ESCO's project management team will visit the project site along with the City's project leads. Based on the information collected during Phase I and the site visit, ESCO will

develop a project description for the CEQA evaluation. In conformance with CEQA Guidelines Section 15124, the project description will include a site location map, description of the proposed project and its goals, project features, construction methods, and long-term operations and maintenance. The project description will also include a list of responsible and/or trustee agencies with jurisdiction over the project, including local, state, and federal regulatory agencies. ESCO will submit the draft project description for review, revise it based on the comments received, and incorporate the final draft into the environmental document.

Assumptions:

- Once the project description has been finalized, any substantive changes to the proposed project may require an amendment to the work plan and budget based on work already completed that requires revision to reflect those changes.

Deliverables:

- Draft and revised project description (electronic)

Task 6.2 - Administrative Draft Initial Study

Once the project description is finalized, ESCO will prepare an IS. The IS is a preliminary analysis to identify the potential for the proposed project to result in significant environmental effects. Assuming that all impacts can be mitigated to a less-than-significant level, the IS will be combined with an MND. However, if one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, preparation of an EIR may be necessary. In that case, an amendment to the scope of work and cost estimate would be required.

Consistent with the requirements of CEQA Guidelines Section 15063, the IS will include: (1) the project description developed in Task 1; (2) a description of the environmental setting; (3) an evaluation of environmental impacts using the CEQA Guidelines Appendix G environmental checklist; (4) feasible mitigation measures that will reduce any significant impacts to a less-than-significant level, if possible; and (5) the names of individuals who prepared the IS.

Assumptions:

- If one or more environmental impacts are identified during preparation of the IS that have the potential to be significant, ESCO will notify the City immediately. If it is determined that preparation of an EIR is necessary, an amendment to the scope of work and cost estimate would be required.
- The City will provide one set of consolidated comments on the administrative draft IS with any discrepancies resolved.

Deliverables:

- Administrative draft IS (electronic)

Task 6.3 - Screen-check Draft IS/MND

Following receipt of the City's comments, ESCO will conduct a conference call with the City to discuss comments and agree on revisions to the draft IS. Based on the conference call and comments received, the City will determine whether to continue forward with an IS/MND or whether an EIR may be necessary.

Assuming that an IS/MND is appropriate, ESCO will prepare a screen-check draft IS/MND and draft mitigation monitoring and reporting plan (MMRP), which will be incorporated as an appendix to the IS/MND.

ESCO will prepare a Notice of Intent (NOI), alerting the public to the availability of the draft IS/MND for review. In compliance with CEQA requirements, the NOI will contain a description of the project and location; identification of significant environmental impacts; dates of the public review period; addresses of locations where the draft IS/MND and supporting documents are available for review; and a statement of whether the project site is a listed toxic site. A draft and final NOI will be prepared for the City’s review and approval. This work plan assumes that the NOI will be posted on the City’s website and will not be distributed by mail. In addition, ESCO will prepare a newspaper notice based on the NOI for review by the City.

In accordance with CEQA Guidelines Section 15085, ESCO will prepare a Notice of Completion (NOC) for filing along with the IS/MND at the State Clearinghouse. The NOC will contain information describing the project (including location), physical and/or electronic locations where the draft IS/MND is available for public review, and the dates of the 30-day review period.

ESCO will submit an electronic copy of the screen-check draft IS/MND and notices to the City for review. ESCO will finalize the IS/MND and notices based on comments received from the City on the screen-check draft IS/MND. It is assumed that, at this stage, comments will be primarily related to minor editing and document layout and format.

As required by California law (Section 7405 of the California Government Code), the revised screen-check draft IS/MND will then be sent to Allyant, a nationally known accessibility contractor, to be remediated to meet California ADA requirements for file accessibility.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.

Deliverables:

- Screen-check draft IS/MND (electronic)
- Draft MMRP
- Draft NOI, NOC, and newspaper notices

Task 6.4 - Public Draft IS/MND and Public Notices

ESCO will coordinate with a newspaper of general circulation to post the legal notice. ESCO will work with the City to coordinate permission to submit the IS/MND, NOC, and NOI to the State Clearinghouse and County Clerk and will coordinate filing to begin the 30-day public review period.

This work plan assumes that no public meeting will be held to gather public comments on the proposed project.

Assumptions:

- The City will provide one set of consolidated comments on the screen-check draft IS/MND with any discrepancies resolved.
- The cost for ADA remediation included in this proposal is an approximation only; the City will be provided a cost estimate from Allyant before submittal of files for remediation.
- The City acknowledges that ESCO cannot control the schedule for remediation; therefore, scheduling of the public review period will be approximate.
- The State Clearinghouse requires up to 3 days to officially post a document for public review; therefore, scheduling of the public review period will be approximate.
- No public meeting will be held during the 30-day public review period.

Deliverables:

- Public draft IS/MND (electronic), NOI, and NOC posted to SCH
- NOI provided to County Clerk's office
- Newspaper notice published

Task 6.5 - Response to Comments Memorandum, MMRP, and Notice of Determination

This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary. The level of effort for this task is assumed to address no more than 20 individual comments.

Following the close of the public comment period on the IS/MND, ESCO and the City will review the comments received. ESCO will conduct a conference call with the City to discuss the key comments received and determine the approach to response preparation. ESCO will then prepare a draft and final memorandum that briefly considers the comments received and provides responses for the City's use in adopting the IS/MND.

In conformance with CEQA Guidelines Section 15132, ESCO will finalize the response-to-comments memo and MMRP for adoption. In addition, ESCO will be available to attend an approval hearing to present information about the CEQA process and the findings of the IS/MND and to answer questions from decision makers.

ESCO will prepare a Notice of Determination (NOD) conforming to CEQA Guidelines Section 15094. The NOD will identify the project description, location, date of project approval, statement that the IS/MND was adopted, summary of the project's significant effects, statement of whether mitigation measures were made, conditions of project approval, and the address where the IS/MND can be reviewed. Within 5 days of project approval, ESCO will file the NOD with the local county clerk/recorder and the State Clearinghouse. ESCO will pay county clerk processing fees (\$50) and California Department of Fish and Wildlife filing fees (currently \$2,968.75) to accompany delivery of the NOD to the State Clearinghouse.

Assumptions:

- This task assumes that public comments do not result in substantial revision to the impacts or mitigation measures identified in the IS/MND, and that recirculation is not necessary.
- The level of effort for this task is assumed to address no more than 20 individual comments.

Deliverables:

- Administrative draft response-to-comments memo (electronic)
- Final response-to-comments memo (electronic)

- Attendance at approval hearing

Task 7 - Environmental Permitting

Task 7.1 - Clean Water Act Section 404 – USACE

The project may require authorization from USACE under CWA Section 404 for fill and/or dredge within jurisdictional waters of the U.S. ESCO will evaluate whether the project may qualify under a Nationwide Permit (NWP). The application package will include:

- Cover letter to introduce the project;
- PCN form;
- Design Plans (provided by ESCO and the City); and
- Technical studies, including the biological conditions report (Task 5.1), wetland delineation report (Task 5.2), and cultural resources assessment (Task 5.3).

ESCO will prepare and submit a draft NWP application package to the City for review. ESCO will address one round of comments from the City and revise and submit the permit application package to USACE. This scope of work will include up to two conference calls with the City and USACE during the permit application process.

Task 7.2 - CWA Section 401 – RWQCB

The project will require authorization from the Central Valley RWQCB under CWA Section 401 for fill and/or dredge in waters of the state. ESCO will prepare the following permit application items:

- Cover letter to introduce the project;
- Application for Discharges of Dredged or Fill Material to Waters of the State (401 Certification), which is the standard permit application form for RWQCB permits;
- Design Plans (provided by the City and ESCO);
- Technical studies, including the biological conditions report (Task 5.1) and wetland delineation report (Task 5.2);
- Revegetation Monitoring Plan, if needed; and
- CEQA compliance documentation (Task 6).

Before submitting the 401 Certification package to RWQCB, it is now a standard requirement that a Prefiling Meeting be requested. ESCO will prepare a 401 Certification Pre-filing Meeting request for submittal to RWQCB, which will determine whether the meeting will be held. If a meeting is held, ESCO will accompany the City.

The draft 401 Certification package will be submitted to the City for one round of review. ESCO will revise and submit the permit application package to RWQCB. This scope of work will include up to two conference calls with the City and RWQCB during the permit application process.

Supplemental information or data may be requested by RWQCB during the application review process. ESCO will support the information response process with RWQCB, to the extent that remaining budget is available in this task once the permit application is developed and submitted.

Task 7.3 - California Fish & Game Code Section 1602 – CDFW

ESCO will prepare a standard application for a Streambed Alteration Agreement (SAA) following the application format provided in the CDFW Environmental Permit Information Management System

(EPIMS) External Permitting Portal. ESCO will also prepare supplemental information, as needed, to support the application. ESCO will prepare and submit a draft version of the application and supplemental information for review by the City. ESCO will revise the application materials based on one round of comments and upload the material to the EPIMS portal. This scope of work will include one conference call with the City and CDFW SAA reviewers during the permit application process.

Task 7.4 - Regulatory Agency Coordination

Under this task, ESCO will support the City with additional regulatory agency coordination to track the permit review and approval process. The tracking and coordination process may include activities such as answering questions from regulatory staff on the application materials; providing project updates to the regulatory agencies; preparing memoranda to address regulatory requests for information; and participating in calls, meetings, and site tours with agency representatives.

The budget estimate for this task is based on our experience with similar projects. Actual costs will be dependent on the level of assistance requested by the City. ESCO will provide regulatory coordination services up to the level of effort shown in the cost estimate for this task.

Assumptions:

- If CDFW requests additional information for the application to be considered complete, ESCO will be available to revise and/or supplement the SAA application package within the available budget remaining in this task once the permit application has been developed and submitted.
- If USACE determines that the project does not meet NWP requirements and elects to authorize the project under an alternative permitting pathway, such as a standard permit, then ESCO will discuss the permitting process with the City and an amendment to this scope of work may be required.
- This scope assumes that permanent impacts to waters and wetlands of the U.S./state would be less than 0.1 acre. If the project impacts would exceed this area, then authorization by USACE would be required to qualify for a NWP.
- It is assumed the project can be designed and constructed in a manner that avoids take of federally listed and/or state-listed species. If take of a listed species is unavoidable, an amendment to this scope of work may be required.
- The City will be the primary contact with regulatory agency staff throughout the permitting process. ESCO will provide support as remaining budget for Task 7 allows.
- The cost estimate does not include permit submittal fees or annual permitting fees. Permit submittal fees will be paid by the City or can be added to the budget when known.
- Surveys will be reconnaissance level and daytime events only; no protocol-level surveys will be conducted.

Task 8 - Administrative Record

ESCO will maintain all aspects of the administrative record as it relates to the development of various environmental documents for the duration of the contract. Entries to the administrative record will be collected from technical staff and incorporated into the administrative record. Throughout the project contract, ESCO will make the administrative record readily available to the City upon request.

The complete administrative record will be delivered to the City within 6 weeks following filing of the NOD.

NON-WASTEWATER TREATMENT FACILITY (~~WWTF~~)- IGA SCOPE OF WORK

~~1.~~ SCOPE OF WORK

Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM) and is a preliminary look at different options that will be discussed with the Customer to identify priorities and finalize the Phase 1 scoping project.

ESCO will utilize city's existing energy reports, such as "Distributed Energy Resource (DER) Recommendations Summary" dated March 17, 2025 for solar PV, battery storage and EV charging recommendations at the Auditorium, Community and Admin Building, and Miner's Bend for purposes of potential project estimates and feasibility. ESCO will use report's data for solar, battery and EV charging for Phase 1 non-wastewater sites, however, will do own analysis for solar and battery storage sizing at wastewater treatment plant.

Additional scope items to be evaluated include lighting and mechanical work at all (7) sites listed in the Facilities table in Section 3. ESCO will work with City to prioritize the oldest HVAC units and any remaining non-LED interior and exterior lighting.

Any scope items outside of solar, battery storage, EV charging, lighting and mechanical will fall into Phase 2 after determination of Wastewater Treatment Plant Upgrades scope and financials, for evaluation by ESCO. Examples include: streetlighting, irrigation, building automation, and other energy and water savings measures. During Phase 2, ESCO will also perform due diligence regarding existing energy report data and assumptions as they advance to Phase 2.

~~2.~~ PHASES OF DESIGN

The Design Scope of Work shall consist of one phase: Conceptual Development (Up to 30% Design Scoping Meeting).

Phase 1: Conceptual Development (Project Scoping)

At the Phase 1 final meeting, ESCO shall demonstrate for Customer whether recommended improvement measures are viable and whether financial benefits (including grants) can be derived by their implementation in an amount sufficient to cover costs associated with the Project.

Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM), a clear understanding of grant criteria and estimated probability of securing grants, calculation of energy and operational savings, and preliminary costs for the construction of the scope.

Phase 2: Final Design Development

During Phase 2, ESCO will use final scope determination from Phase 1 to put together a firm fixed price for all non-waste water scope, including all due diligence to finalize design documents as well as costs and savings for each ECM.

Phase 2 will include: Final scope of work, final fixed firm pricing, financial pro-forma, guaranteed annual energy savings and M&V plan, commissioning plan, operations & maintenance plan, training plan and final drawings and equipment specifications.

3. FACILITIES INCLUDED

The Design Services will be performed in the following Customer facilities. Any additional facilities to be added in the future must be by mutual agreement between Customer and ESCO:

Facilities			
Building Name	Address	Square Footage	Year Built
Auditorium	18 Main St, Sutter Creek, CA 95642	5,040	1928
Community Building	33 Church St, Sutter Creek, CA 95642	3,370	2005
Administrative Building	35 Church St, Sutter Creek, CA 95642	1,155	1880
Historic Grammar School	111 Cole St, Sutter Creek, CA 95642	6,000	1856
Monteverde Store	11 Randolph St, Sutter Creek, CA 95642	1,600	1896
WWTP	340 Mahoney Mill Rd, Sutter Creek, Ca 95642	-	-
Miner's Bend Park	29 Old Rte 49, Sutter Creek, CA 95685	-	-

4. RESPONSIBILITIES

~~Customer Will:~~

Customer will:

1. Provide ESCO with all such access, knowledge and history as may be relevant to ESCO's analysis and/or design, including, without limitation:
 - a. access to Customer's Facilities, systems and equipment, including remote network access, as necessary or appropriate to facilitate ESCO's analysis and design (i.e. enabling ESCO to take equipment inventory, determine operating schedules, evaluate known operational deficiencies, perform an energy efficiency analysis, measure actual energy use, etc.);
 - b. access to key personnel to discuss operating requirements, maintenance practices, and other information relevant to ESCO's analysis;
 - c. information relating to any and all known or suspected deficiencies, defects and malfunctions of or affecting the Facilities, systems, equipment and components thereof;
 - d. information relating to any site conditions that should be considered in planning and executing the construction services;
 - e. twenty-six (26) months of electric, gas, and water data, including utility billings on meters for all premises owned by Customer; and
 - f. access to copies or loans of such documentation as may be relevant to ESCO's analysis, including, as applicable and without limitation, Facility plans, equipment lists, and/or other utility invoices.

2. Meet with ESCO to establish Project criteria and make Project decisions in a timely manner.
3. Promptly inform ESCO if at any point Customer becomes aware of any portions of scope that will not be included or funding that will not be available for final Project implementation.

ESCO ~~Will:~~

ESCO will:

1. Compile information reasonably requested by Customer for purposes of any grant applications being submitted by the Customer in connection with the Project.
2. Conduct a Project programming meeting, Facility walk-through(s) and personnel interview(s) to gain an understanding of Facility operations, concerns, needs, and desired performance criteria.
3. Work with Customer to refine performance requirements, financial criteria, and Project scope.
4. Provide Customer an energy, revenue, and cost savings analysis demonstrating the simple ROI effect of project finances and operations.
5. Provide Customer with a Scoping Proposal setting forth the following:
 - a. Proposed Scope of Work for Phase 2
 - b. Proposed Preliminary Schedule for Phase 2 Development and Phase 3 Construction
 - c. Preliminary Project Estimate for Phase 3 Construction

PROJECT FUNDING SUPPORT

ESCO will assist the City in identifying and understanding available grants and incentive programs, including their eligibility requirements, timelines, and qualification criteria. ESCO will also provide support throughout the application process for these incentives and contribute to the grant writing efforts.

In addition, ESCO will collaborate with the City and its designated financial advisor or manager to coordinate and pursue funding opportunities, including loan applications from potential private and public financial institutions.

City of Sutter Creek
City Treasurer's Report
August 2025

Receipts & Disbursements Report

City's Checking Account

Receipts

Deposits	\$	415,874	
Reversal of Bank Charges		-	
Total			\$ 415,874

Disbursements

Accounts Payable	\$	714,331	
Payroll & Benefits		138,864	
Bank Charges		45	
Total			\$ 853,240

Net Amount of Investment Transfers \$ -

Recap of City Treasury

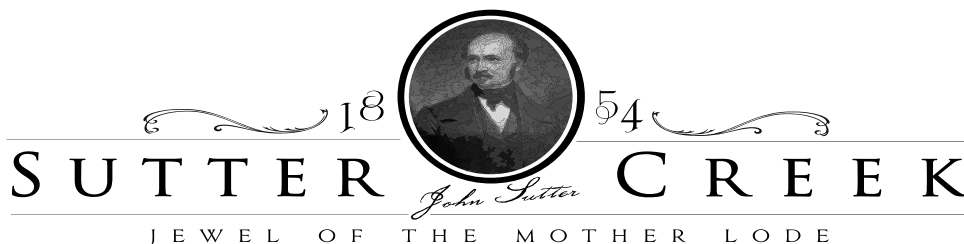
Investments on Hand August 31, 2025

		Market or Withdrawal Value	Rate of Return
	Bank of Marin Checking	\$ 1,224,418	0.01%
	Bank of Marin Money Market	\$ 12,222	4.34%
	Bank of Marin Money Market #2	\$ 2,002,853	434.00%
*	California State Treasurer's LAIF	\$ 1,754,691	4.40%
	Total	\$ 4,994,184	
	Total this month last year	\$ 4,442,042	

* LAIF 1 \$ 64,519
LAIF 2 \$ 1,690,172

The investment information provided in this report reflects the City's ability to meet expenditure requirements for the next six months. The investment portfolio is in compliance with the City's investment policy.

Victoria Runquist 9/5/2025



STAFF REPORT

TO: TOM DUBOIS, CITY MANAGER
MEETING DATE: SEPTEMBER 15, 2025
FROM: AARON WOLCOTT, CITY CLERK
SUBJECT: CITY CLERK REPORT – AUGUST 2025

RECOMMENDATION:

Information only.

BACKGROUND:

August continued as a slower month for the City Clerk with only one City Council meeting. I was able to complete work on an updated record retention schedule and also spent time exploring options for an updated website. Additionally, I organized a staff breakfast which was held at the Grammar School. The below items represent the key functions of the role and activities completed in the month of August.

DISCUSSION:

- **City Clerk:**
 - Agendas and minutes created for 1 City Council meeting and 1 Design Review Committee meeting.
 - 2 Public Record Requests. Both were for police records. This adds additional administrative burden on the Police Department
 - 3 City Council Resolutions
 - Permits: 2 Event Permits, 4 Encroachment Permits
 - Record Retention: A new Record Retention schedule was completed. I have identified gaps in our minutes from 2006-2011 and so far have not found any backup of these files.
 - Website: I held multiple calls with CivicPlus to discuss changes to our website. I am hopeful that we can get a better look to our site and also better functionality for editing and managing our content going forward.
- **Risk Management**
 - We have one pending historical Workers Compensation claim that is being worked on. This claim has been slow going as the staff member seeks appropriate treatment.
 - A presentation on our RMA was given to Council. Council members can contact myself or Mason for additional information as needed.
- **Human Resources**
 - I attended the JPA meeting for our health insurance. New rates were voted on and the new rate is going to 9.85% higher than last year for premiums.



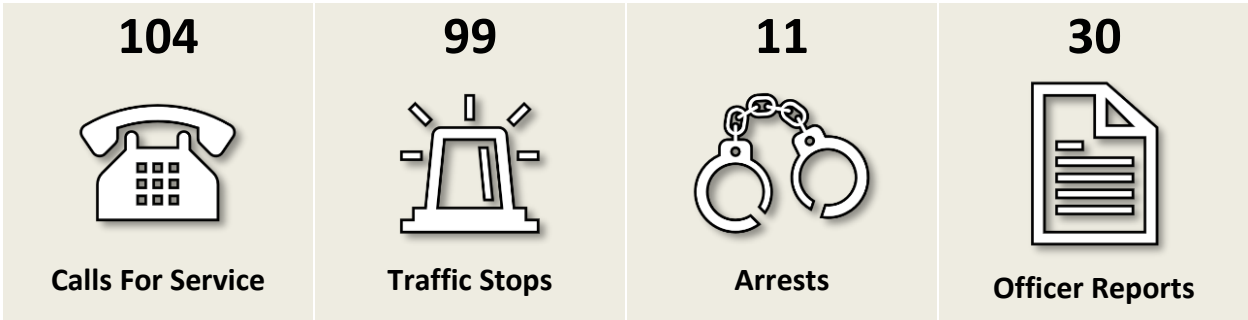
POLICE

SUTTER CREEK

Monthly Report August 2025

To: Tom DuBois, City Manager
From: Jim O’Connell, Chief of Police
Date: September 15, 2025
Re: August 2025 Staff Report

August 2025 Department Statistics			
Calls For Service	104	-14	↓
Traffic Stops	99	+30	↑
Officer Initiated Incidents	378	+105	↑
Business Checks	279	+124	↑
Vehicle/Pedestrian Checks	6	-4	↓
Total Officer Reports	30	+7	↑
Arrests	11	-3	↓
Moving Citations	3	-5	↓
Parking Citations	1	+1	↑
TOTAL	911	+240	↑



Volunteer Contributions:
During the month of July, our dedicated volunteers provided 18 hours of service to the community.

Community Engagement:
SCPD Officers continue to conduct regular foot patrol downtown on each of their respective shifts. Officers also spend regular time on our school campuses.



Staff Report

To: Tom DuBois, City Manager
Meeting Date: September 15, 2025
From: Frank Whitmore, PE City Engineer
Subject: Project Status Update

Type: Project Status Memo

Tom, the following is a status update of all projects WGA is currently working on:

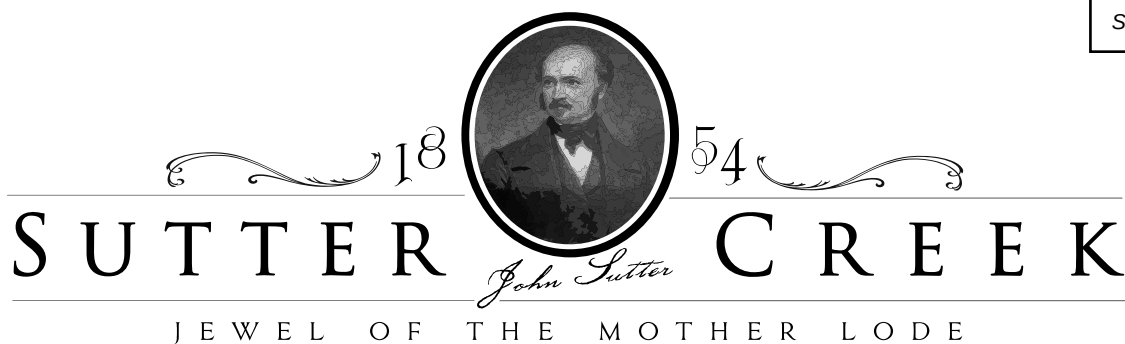
- 1. **Building Inspections/Plan Check** – Continuing building inspections on Tuesdays and Thursdays or as needed. Building plan check is being performed on a continual basis as plans are submitted. For August 2025:
 - 5 Plan checks were completed
 - 29 Inspections were completed

- 2. **Encroachment Permit Review** – Encroachment permits are reviewed as needed when requested by the City’s Account Clerk, Holly Boehme. For August 2025:
 - 1 Permit reviews were completed
 - 0 Inspections were completed

A. CVIN – The proposed encroachment permit plans for CVIN Fiberoptic Facilities through town have been reviewed by City Staff and awaiting further information (i.e. insurance, performance bond, fees, etc.) from the applicant prior to issuance of the encroachment permit.

- 3. **Code Enforcement**
 - A. **30 Ridge Road** – Owner has provided documentation to support eviction process and letter stating he will follow through with eviction proceedings or remove nuisance. Tank Replacement Plans for State required upgrades have been plan checked by city staff. City is currently waiting for updated plans with plan check comments addressed.

- B. **300 Hanford Street** – Awaiting Mr. Navarro to provide a complete application and plans for a Use Permit. Currently scheduled to meet with Mr. Navarro on 9/9/2025 for a site visit to confirm that there are no hazardous chemicals stored on site. Spoke with Michelle Gallaher at Amador County Code Enforcement and she confirmed Mr. Navarro has had a contract with Amador County for over ten years. The County has a separate contract for hazardous material removal and that contractor removes all liquids from vehicles and Mr. Navarro only removes the debris.
- C. **Eureka Mine Site** – Planner and/or City Manager would need to provide update on this. No action by code enforcement currently. WGA drove by the site on Wednesday 8/27/2025 after a meeting in Amador City at 8:00 P.M. and did not observe people in the RV's from Ridge Road and Sweet Pea Way. Also, drove by the site on Tuesday 9/2/2025 at 10:30 P.M. when returning from Sacramento Airport and observed the same thing.
- D. **Vehicles** – 93 Badger Street. Met with occupant and discussed dodge truck. The truck is currently registered and recently had its mechanical issues repaired. The occupant will now be making dump runs to dispose of household waste. Code enforcement is following up with occupant on 9/9/2025.
- 4. **Bryson Park Expansion Project** – 95% plans and specifications have been sent to Public Works for review and comment. Once comments have been received, WGA will incorporate public works comments and complete project plans/specifications for a complete bid package.
- 5. **City Standards Update** – WGA is working with Public Works, City Manager and City Attorney to update the City's Improvement Standards and Municipal Code to adopt a pavement moratorium to protect the City's paving/resurfacing investments. The moratorium will help preserve the integrity, appearance, and ride quality of the new pavement, which will extend its lifespan and delay the need for costly repairs.



STAFF REPORT

TO: TOM DUBOIS, CITY MANAGER
MEETING DATE: SEPTEMBER 15, 2025
FROM: DAN LAFONTAINE, PUBLIC WORKS DIRECTOR
SUBJECT: PUBLIC WORKS DEPARTMENT REPORT FOR AUGUST 2025

Objective: The objective of this staff report is to provide a monthly status update regarding activities within the Public Works Department.

Executive Summary: August has come and gone, and we are in the middle of some very large projects. The largest project affecting residents is the Miscellaneous Sewer Main Replacement Project and we are happy to report that the project is over 75% completed. This project will wrap up by the end of September and the City appreciates all the patience with the road closures. We also began work on the Henderson Underdrain Project at the face of the Henderson Reservoir. Our first big problem was dealing with the amount of existing sludge, which proved a much bigger problem than anticipated. Campbell construction has mitigated the sludge, and the project is moving forward. We completed some more vegetation clearing along old Hwy 49 and are far ahead of schedule this year thanks to the availability of the Cal Fire crews. We received approval from the council and the Measure P oversight committee to pave the other half of Broadway. This work should be completed by the end of the year through AWA. See more details of the major projects below:

The *Miscellaneous Sewer Main Replacement Project* – Work continues on the 2025 collection system projects as we finish up the largest section of work putting the project over 75% complete. As of September 5, 2025, the contractor has finished Areas A (Napa Auto Parts – Installed one manhole), Area B (Raylan Drive - Installed two new manholes and 160 feet of open cut), Area C (Dennis Street - Installing one new cleanout and 400 feet of pipe bursting), Area E (Old Highway 49 – Highland Drive to Old Sutter Hill Road) and Area F (Greenstone Terrace - Installed one new cleanout, two new manholes and 30 feet of open cut, and approximately 800 feet of pipe bursting) and is finishing up on Area G (Eureka Street at Broad Street – Installing one cleanout and 160 feet of pipe bursting).

The crew is currently working on Area D (Sutter Hotel/Fiefield Alley – Installing one manhole and 215 feet of pipe bursting) which will be our most difficult access area of the project. Fiefield will most likely be closed (due to the limited width of the road) .

ARSA Henderson Underdrain Project – The Henderson reservoir is empty, and construction prep is underway as of August 18, 2025. A temporary rip-rap wall has been erected along the front of the

entrance to the vault in front of the underdrain pipe. The initial cleaning and video inspection of the pipe has been completed. It was discovered that the underdrain pipe, although deteriorating, is encased in concrete. Based on this new evidence, the contractor has proposed to remove what remains of the pipe and replace by cure in place pipe (CIPP) vs slip lining. The new design has been sent to DSOD and we are currently waiting for approval to proceed. Water is being supplied to the troughs by water trucks and the pump around when viable.

Wastewater Treatment Request for Proposals – The City is working with Schnieder Electric to finalize the scope of work and sign a contract.

Upcoming: *Miscellaneous Sewer Main Replacement Project* – After Area D and G the project will be complete, and the City will do a final punch list of items for closeout. The project will be completed around the beginning of October.

Wastewater Treatment Plant – An update is being presented to the council tonight

ARSA Henderson Underdrain – Construction will continue as soon as DSOD approval is granted.

Detailed Summary: Below is a detailed summary and/or status of the main PW responsibilities; Collection System, Wastewater Treatment Plant, Effluent Disposal, Streets and City Right of Way, Parks and Buildings, and Service Callouts.

Collection System Status:

CIP work

- *Miscellaneous Sewer main Replacement Projects.* – Work continues on the 2025 collection system projects as we finish up the largest section of work putting the project over 75% complete. As of September 5, 2025, the contractor has finished Areas A (Napa Auto Parts – Installed one manhole), Area B (Raylan Drive - Installed two new manholes and 160 feet of open cut), Area C (Dennis Street - Installing one new cleanout and 400 feet of pipe bursting), Area E (Old Highway 49 – Highland Drive to Old Sutter Hill Road) and Area F (Greenstone Terrace - Installed one new cleanout, two new manholes and 30 feet of open cut, and approximately 800 feet of pipe bursting). The work on Area B and Area E had many obstacles to overcome. We encountered gas lines that were installed right next to our sewer lines, concrete encased pipe across old Hwy 49, and a multitude of paving issues that had to be addressed. We also encountered an old storm drain that was well past its lifespan that needed to be replaced. See below:



Additional paving had to be completed to return the road to drivable conditions. The crew is finishing up on Area G (Eureka Street at Broad Street – Installing one cleanout and 160 feet of pipe bursting) with some landscaping left to restore the area. The crew is currently working on Area D (Sutter Hotel/Fiefield Alley – Installing one manhole and 215 feet of pipe bursting), which will be our most difficult access area of the project.

- *Upcoming Miscellaneous Sewer Main Replacement Projects* – After Area D and G the project will be complete, and the City will do a final punch list of items for closeout.
- RH Borden presented the results of the collection system flow meters from the sewer manholes in March. Generally, the results show that infiltration is occurring in four of the basins located downtown in varying degrees. The assessment also found some manholes that have signs of degradation (not properly sealed from groundwater). With the spill in the creek last month and pending repairs, staff is putting together a targeted list of items to investigate/repair further for next year’s collection system repairs. This list will be presented to council by the end of October and finalized before the end of the year.
- The City excavation on Eureka St to replace 120 feet of pipe and install a cleanout halfway down Eureka St. was postponed as priorities shifted to identifying deficiencies in the leak detection areas for the upcoming AWA construction. This work will be accomplished before the rainy season.

SSMP Activity

Calls for service.

- 9/1/25; Pump station failure. The primary pump failed in the pump station resulting in a backup into the emergency vault. The emergency contractor was called to pump 3 truckloads (approximately 10K gallons) from the vault. A spare pump was installed on September 3, 2025. A replacement pump has been ordered.

Sewer System Cleaning and Maintenance.

- Last month reported an error in footage cleaned as 0 feet. The correct totals are, In July 2025 there was 4,437 Lineal feet and in August 2025, there was 100 Lineal feet of pipe cleaned. The total amount cleaned for the calendar year 2025 is 8,374 ft. The total cleaned for the calendar year 2024 is 19,207 feet.

Wastewater Treatment Plant Status:

The WWTP met all the effluent quality discharge requirements for the month of August 2025.

Table 1. Monthly Status of required reporting constituents.

Constituent	Monthly Results	Monthly Limits
Monthly Influent Flow	9.577 MG 0.315 MGD daily avg	0.48 mgd ¹
Effluent BOD, mg/L	19 mg/L	30 mg/l
Effluent Settleable Matter, mL/L	< 0.1 ml/L	0.5 ml/l
Effluent TSS, mg/L	8.2 mg/L	30 mg/l
Total Coliform, MPN	< 1.8 MPN	23 MPN
Sludge Wasted	46,349 gallons	
Rain	0.00 in.	24.15 in. YTD –27.52” Last YTD

¹ The 0.48 MGD is daily dry weather flow (May through October).

Plant Compliance Issues: The monthly July 2025 report was electronically submitted to the Regional Water Quality Control Board.

Operational Strategy Modifications:

- The rag bin was hauled on August 20, 2025.
- We continued normal sludge wasting in August with 46K gallons dewatered.

- The Aerator has been shipped back to the manufacturer to receive a new power section.
- The second Chlorine tank has been installed and piping connected in the chlorine building. The chlorine line was clogged causing some restrictions in the line. Upon clearing the line, we discovered that the pumps were still running hotter than the old pumps (136° vs 82°). We are talking with the field representative and waiting for correspondence back from the manufacturer.

Wastewater RFP updates – In August the City has been working with Schneider to come to terms on a contract for the new treatment plant. The contract is expected to be brought to council on the second meeting of September.

Effluent Disposal

- Bowers and irrigation resumed for the irrigation season on May 27, 2025. Ione has started receiving ARSA water on June 6, 2025, for the disposal season. On August 26, 2025, Ione stopped receiving water from ARSA. As of August 31, 2025, Ione has received approximately 250 acre-feet of ARSA water.
- *Henderson Underdrain* – The underdrain project commenced on August 18, 2025. A rip-rap wall was installed in front of the valve vault to keep the sludge away from the work area. The initial camera inspection of the underdrain pipe was completed on August 26, 2025. The initial investigation revealed that the underdrain pipe is deteriorating and is believed to be encased in concrete the entire length of the pipe. The contractor has proposed to change the new pipe installation method to cure in place pipe vs slip lining. This will save the project time as CIPP is much faster to install. Design drawings of the proposed change are being developed and will be submitted to DSOD upon completion along with the initial camera inspection.





- On September 2, 2025, The waterman valve tech arrived onsite to inspect the valve. The technician indicated that the valve looked in great condition and just needs to be filed adjusted. A spare gasket was purchased to install prior to field adjustment. The majority of the problem with the valve lies in the alignment of the elongated valve stem. When the pier is reinforced the valve stem will be plumed up to help the valve travel. See pictures of the existing pier hardware below (note that this will be changed out when we retrofit the pier)



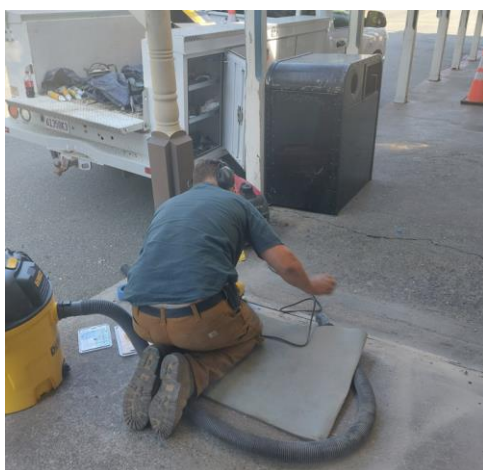
- The manufacturer of the flow meter for Bowers has proposed a shorter spool length with a restocking cost of 2K. City staff reviewed using the existing flow meter at the Preston

Forebay but due to the size of the existing pipe the flow meter would not be feasible in that section of the pipe. The City has elected to pay the restocking fee and once an RMA has been received the existing flow meter will be returned to the manufacturer.

- The joint water balance was submitted on August 8, 2025. The technical memo concludes that both the City of Ione WWTF and the Combined System indicated there will be excess effluent volume from both system's respective water balance calculations.
- Ongoing maintenance of the cattle water troughs along the pipeline are occurring during the underdrain project. Irrigation sprinklers and valves were being repaired constantly (only at Bowers irrigation).
- Weed and rodent abatement at the three reservoirs.
- Send weekly updates to the Regional Board on reservoir levels and volumes.
- Daily flow checks and level readings.

Streets and City Right of Way.

- The City has sent drawings and cost estimates to AWA for the additional work (approved by the council) to replace the storm drain line, install 2 new DI's and pave the other half of Broadway. AWA will work with the contractor and the City to get this newly approved work completed. The City has issued an encroachment permit for the work and expects the work to be completed by the end of October. Per the grant, all work must be completed by the end of the calendar year.
- The City has received bids to fix the gutter on David drive and is waiting for the contractor to find time in the schedule to begin this repair. We hope to have this repair done before the rainy season.
- August 28, 2025 – City Staff removed a tree limb on Sutter Hills Rd that was blocking the stop sign.
- On August 12, 2025 – City Staff patched a section of asphalt in front of 67 Woodworth Street that had become broken up by the water meter.
- On September 4, 2025 – City employees ground down a concrete tripping hazard that was caused by our previous grinding that left an unintentional lip on the concrete.



- In August, City crews cleared the triangle on Sutter Ione Rd and Spanish Street

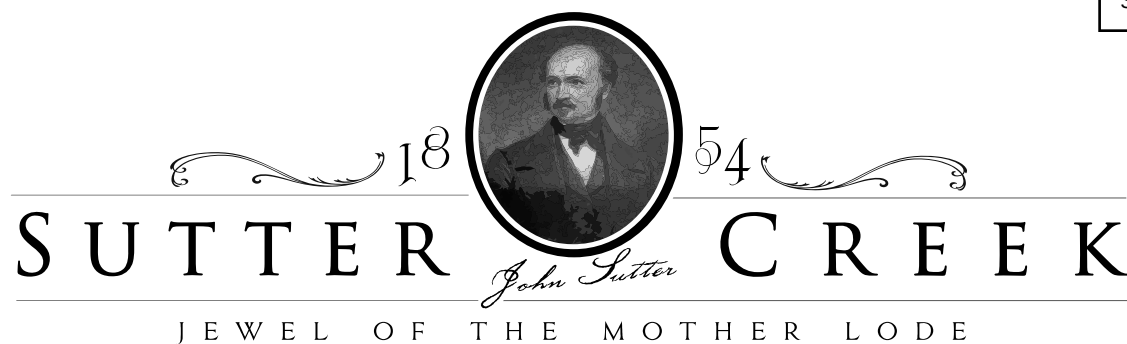


Parks and Buildings

- The CalFire crews have had a few days of availability to help with fuel mitigation in Sutter Creek in August. We took advantage of the road closure on Old Hwy 49 and had crews clear both sides of the road along with some of the “Big ditch” along Lorinda Dr. for a few days. The crew also got out to ARSA to do some brush work at Preston. Crews were scheduled to perform cleaning on Bryson but were called away to fight fires in the area. We will most likely not see the crews again until after the fire season. We are grateful to all the assistance they provide and made some real headway this year.



- Bryson Bathroom – WGA has finalized the plans for the new bathroom and has sent them to the City to review. After the City review, the work will be sent out for bid.



TO: TOM DUBOIS, CITY MANAGER
MEETING DATE: SEPTEMBER 15, 2025
FROM: ERIN VENTURA, CONTRACT PLANNER
SUBJECT PLANNING DEPARTMENT REPORT FOR AUGUST 2025

Executive Summary

Planning Commission was cancelled due to lack of agenda items.

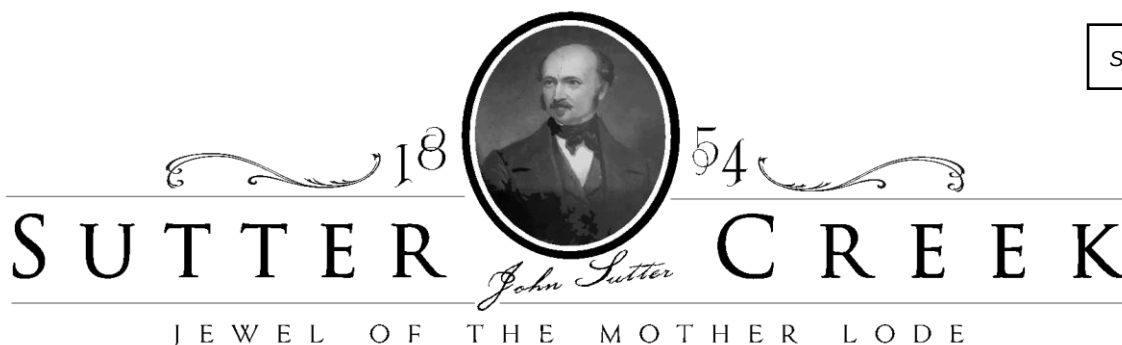
The Following items were reviewed at the August 11, 2025 DRC meeting:

- 110 Gold Dust Trail- New SFR- approved with conditions
- 40 Gold Dust Trail- remodel of church- approved with conditions

Detailed Summary

Additional Projects:

- Impact Fee Study: The City is revising its LEAP Grant application to secure additional funding. A consultant is updating the Nexus Study.
- Zoning Code Cleanup: The City is utilizing remaining LEAP funds to clarify and update the zoning code. This project is currently in progress.
- Staff is working on revising the ADU ordinance incompliance with State Law.
- Panner Creek: Staff continues to work with the applicant regarding the creek crossing. County Staff has reviewed the proposed creek crossing.
- 130 Lincoln Ave (Cell towner) is close to receiving a building permit
- DANCO has initiated a preliminary review of their building plans.
- Crest View 3 and 4: Property owners rep is inquiring about how to reinstate the project.



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
MEETING DATE: SEP 15, 2025
FROM: TAYLERED MARKETING
SUBJECT: AUGUST 2025 SOCIAL MEDIA DATA ANALYSIS

Social Media Analysis: City of Sutter Creek (Period: August 2025)

Instagram Performance Quantitative Highlights

- 22,394 views in August (↑ 41% from July).
- **Followers vs Non-followers reached:** 50.2% followers / 49.8% non-followers → strong discovery potential.
- **Content type performance:**
 - Posts = 59.3% of views
 - Reels = 29.7%
 - Stories = 11%
- **Top posts:**
 - Aug 13 (Sutter Creek Fireman's Ball Promotion) → 4.3K views
 - Aug 5 (National Night Out) → 2.5K views
 - Aug 8 (Ragtime Festival promo) → 1.6K views
- **Engagement: 837 total interactions**
 - Likes: 356
 - Comments: 7
 - Shares: 66
 - Saves: 8
- **Follower Growth:** +15.3% vs July (452 followers total).
- **Audience demographics:**
 - Gender: 81.6% women / 18.4% men.
 - Age: majority between 35–64 (67%).
 - Top cities: Sutter Creek (19.8%), Jackson (11.3%), Pine Grove (9.3%), Ione (5.3%).

Qualitative Insights

- Visual storytelling works: Fire Dept., PD, and historic-themed posts performed best → audiences resonate with people + community pride.
- Event promotion effective: Ragtime Festival content had consistent traction.
- Limited conversation: Very few comments show that people watch but don't talk back.
- **Demographic skew:** Female-heavy audience suggests messaging may lean toward community, family, arts, and lifestyle.

Facebook Performance

Quantitative Highlights

- Publishing activity (last 28 days): 78 posts
 - 55 Stories
 - 13 Photos
 - 10 Other (Reels, Videos, etc.)
- Top performing content:
 - Grand opening celebration (Photo) → 5,660 views
 - Staff Spotlight (Video) → 5,223 views
 - Fireman's Ball. invite (Reel) → 2,244 views
- Followers: 2,241 total (+1% vs previous 28 days, +27 net followers).
- Audience demographics:
 - Gender: 73% women / 27% men
 - Age: majority 55+ (65+ = 32.3%, 55–64 = 24.7%)
 - Locations: Sutter Creek (11.7%), Jackson (6.9%), Pine Grove (3.8%), Ione (3.7%).
- **Net follows by content type:**
 - Videos → 61.5% of growth
 - Reels → 38.5%

Qualitative Insights

- Video & spotlight content drive reach: People enjoy personal stories (staff, community highlights).
- Older demographic on FB: More than half the audience is 55+ → reflects local residents more than tourists.
- Event info is valuable: Road closure posts still pulled >1,500 views → practical updates matter.
- Consistency is high: 78 posts shows effort, but Stories dominate (which disappear quickly).

Successes Across Both Platforms

Strong reach & visibility — IG discovery is high; FB serves locals effectively. Community pride content resonates — Fire Dept., PD, and staff features are top-performing.

Event promotion is working — Ragtime Festival posts consistently drew views and engagement.

Steady follower growth — modest but consistent on both platforms.

Areas for Improvement

Low interaction rates: Comments, shares, and saves are underperforming relative to views.

Content balance: FB relies heavily on Stories; IG has fewer Reels than optimal for discovery.

Younger audiences underrepresented: Only ~15% under age 35 across both platforms.

Calls-to-action (CTAs): Few posts prompt engagement beyond viewing.

Recommendations

On Social Media

1. Interactive Content:

- Add polls, Q&A, or “vote on your favorite” posts to Stories.
- Use “comment with your...” CTAs (favorite Sutter Creek event, photo memories, etc.).

2. More Reels (IG + FB cross-post):

- Behind-the-scenes of city events, quick updates, local “day in the life” clips.
- Reels will boost discovery with non-followers.

3. Community Spotlights:

- Continue staff highlights → expand to volunteers, business owners, longtime residents.
- Encourages shares among featured individuals’ networks.

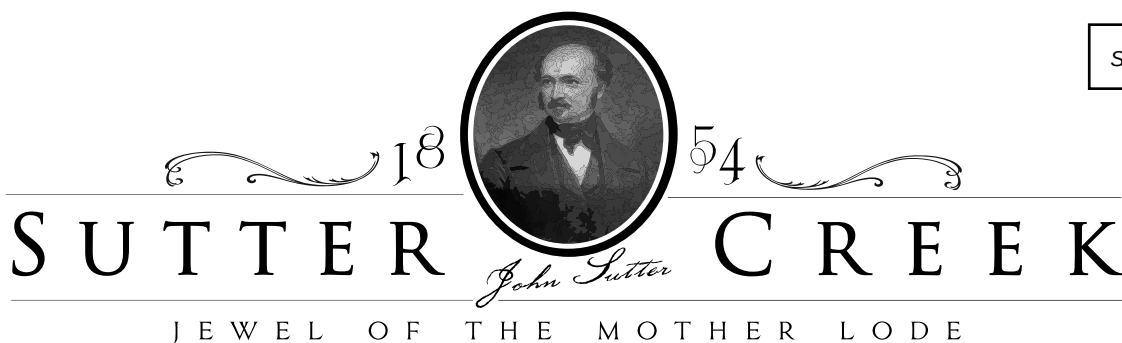
4. Content Mix:

- IG → more event reels and lifestyle visuals.
- FB → fewer Stories, more permanent videos + shareable graphics (e.g., road closures, city alerts).

5. Strengthen Engagement CTAs:

- End posts with clear prompts (“Share this with a neighbor,” “Tell us your favorite memory,” “Tag a friend”).

Overall, the City of Sutter Creek’s social presence is growing steadily and serving as a strong tool for visibility. With more emphasis on engagement, interactivity, and Reels, the city can expand reach to younger demographics while maintaining strong connections with its core local audience.



TO: TOM DUBOIS, CITY MANAGER
MEETING DATE: SEPTEMBER 15, 2025
FROM: MASON PETERS, FINANCE SUPERVISOR
SUBJECT: FINANCE DEPT. AUGUST 2025 REPORT

CITY HALL/FINANCE DEPARTMENT UPDATE

- Sewer billing process is working as we had hoped for, but due to the loss of all autopay customers, we continue to not charge late fees as residents set up their autopay service again. We did not want this transition to impact customers in a negative way and we continue to mitigate those impacts as we can. We have a lot of enrollment coming through and it is taking quite a bit of time, but we are happy to see people are paying attention and are asking questions.
- We finished the payroll setup in Tyler Technologies' ERP Pro 10 and we ran both payrolls in the new system this month, and it all went smoothly. We are incorporating some new processes as a result of this transition so I am learning and adapting as we go, but so far things are working well.
- We had a test run for digital timesheet submittals in the 2nd payroll run of August, and the testing went well. We learned some things from the testing and made changes, while most other things worked as intended. We will be fully rolling out the online timesheet submittal process in September, I will give an update on how that goes.
- The online sewer payment website is gaining more use as residents are becoming increasingly aware of our billing system transition. The eCheck option is still in the works, and will hopefully be rolled out in September.
- Tom and I met with the CDTFA and went over how to review Measure P reports that they send over to us, and the data we receive is very thorough and detailed. I will be bringing a Q1 update in October that will go into more detail about performance based on budget, but for FY25, we received much more revenue than we had originally budgeted for. Keep in mind, we only anticipated to receive Measure P funds starting in April 2025, so we only saw activity for Q4 of last fiscal year.

ACCOUNTS PAYABLE ACTIVITY

In August 2025, 45 warrants were issued, totaling \$660,287.69. For comparison, in August 2024, all warrants totaled \$656,998.37. The major items this month in Accounts Payable included a progress payment for the Misc Sewer Collection System repairs to Soracco and our annual property & general liability insurance premium payment through Central San Joaquin Valley Risk Management Authority. We also paid our first quarter of worker's compensation insurance premiums to CSJVRMA as well.

ACCOUNTS RECEIVABLE ACTIVITY

In August 2025, we received:

- Transient Occupancy Tax (TOT):
 - In August 2025, we have received \$27,887.31 for July short term rentals. For comparison, in August 2024, we received \$27,930.74.
- Building Permits:
 - In August 2025, we issued 9 building permits, totaling \$7,210.81. Compared to August 2024, we issued 11 permits and total revenue generated at that time was \$7,716.60. We saw a lot of reroof projects as well as a pool project.
- Sewer Billing
 - Auto Pay Customers
 - Customers are still coming into City Hall or calling in asking for assistance with enrolling in auto pay, we have had a lot of progress getting folks re-established. Once eCheck is set up on the bill pay website we will have another large influx of autopay cus
 - E-Bill Customers
 - Current month: 215
 - Prior Month: 211 (+4)
- Facility Rentals
 - In August 2025, we had the following:
 - 1 renter in the Auditorium, totaling \$2,285
 - We have a renter for the Auditorium that has been consistently hosting Jazzercise classes for many years and they are not reflected in these figures. I want these notes to reflect unique rental activity rather than regular classes
 - 3 renters in the Community Center, totaling \$1,830
 - 1 renter in the Historic Grammar School, totaling \$125
 - We have 3 renters in the Grammar School that have been long-term renters that host classes for yoga and dance. They are not included in these figures since they are always renting rooms in the Grammar School and are very consistent, and I want these notes to reflect unique rental activity rather than regular classes

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001 - GeneralFund							
Department: 000 - NonDepartmental							
001-000-40061	PERSUnfunded-NonDepartment	303,211.00	302,744.00	0.00	302,744.00	467.00	0.15%
001-000-70000	SecuredPropertytaxes	-725,000.00	0.00	0.00	0.00	-725,000.00	-100.00%
001-000-70001	UnsecuredPropertytaxes	-15,000.00	0.00	0.00	0.00	-15,000.00	-100.00%
001-000-70002	PropTax-CurrSupple(Co	-17,000.00	0.00	0.00	0.00	-17,000.00	-100.00%
001-000-70003	PropertyTaxinLieuofM	-326,000.00	0.00	0.00	0.00	-326,000.00	-100.00%
001-000-70008	DELINQUENTSUPPLEMENTAL	-2,100.00	0.00	0.00	0.00	-2,100.00	-100.00%
001-000-70100	UtilityUserstax	0.00	-83.44	-90.73	-174.17	174.17	0.00%
001-000-70300	TransientLodgingTaxes	-316,854.00	-22,722.59	-27,938.28	-50,660.87	-266,193.13	-84.01%
001-000-70400	Tax-Gen'lRetailSales	-484,654.00	-44,574.78	0.00	-44,574.78	-440,079.22	-90.80%
001-000-70410	SalesTax-PublicSafety	-16,000.00	-1,055.35	-1,351.42	-2,406.77	-13,593.23	-84.96%
001-000-70420	Measure P Sales Tax	-484,654.00	-34,710.51	0.00	-34,710.51	-449,943.49	-92.84%
001-000-71000	Tax,Franchise-Republic Waste	-69,987.00	-5,981.85	-11,480.34	-17,462.19	-52,524.81	-75.05%
001-000-71100	Tax,Franchise-Comcast	-27,000.00	0.00	0.00	0.00	-27,000.00	-100.00%
001-000-71200	Tax,Franchise-PG&E	-68,000.00	0.00	0.00	0.00	-68,000.00	-100.00%
001-000-71300	Tax,Transfer-RealProp	-20,000.00	0.00	-2,717.28	-2,717.28	-17,282.72	-86.41%
001-000-72000	License-Business	-55,000.00	-22,100.00	-170.00	-22,270.00	-32,730.00	-59.51%
001-000-72105	Permit-Encroachments	-6,000.00	-1,454.75	-1,275.25	-2,730.00	-3,270.00	-54.50%
001-000-72110	Permit-Banner	-150.00	-50.00	-50.00	-100.00	-50.00	-33.33%
001-000-72115	Permit-GarageSale	-50.00	0.00	0.00	0.00	-50.00	-100.00%
001-000-72120	Permit/Licenses-Other	-2,300.00	0.00	-485.00	-485.00	-1,815.00	-78.91%
001-000-72125	SignPermits	-1,000.00	0.00	0.00	0.00	-1,000.00	-100.00%
001-000-72200	PlanningFees	-67,000.00	-286.00	-8,191.40	-8,477.40	-58,522.60	-87.35%
001-000-72205	ZoningApplicationFees	-150.00	0.00	0.00	0.00	-150.00	-100.00%
001-000-72210	Subdivisionfees	-5,500.00	0.00	0.00	0.00	-5,500.00	-100.00%
001-000-72215	Variance&ConditionalUs	-37,000.00	-175.00	-2,190.50	-2,365.50	-34,634.50	-93.61%
001-000-72220	SitePlans	-37,000.00	0.00	-300.50	-300.50	-36,699.50	-99.19%
001-000-72225	BuildingPermitFees	-120,000.00	-2,808.73	-5,005.15	-7,813.88	-112,186.12	-93.49%
001-000-73000	VehicleCodeFines	-5,000.00	-242.32	-426.25	-668.57	-4,331.43	-86.63%
001-000-74120	LeaseRevenue-CingularWi	-41,000.00	-6,235.00	-6,390.22	-12,625.22	-28,374.78	-69.21%
001-000-74200	Fees-PDServices	-350.00	0.00	-75.40	-75.40	-274.60	-78.46%
001-000-74215	PoliceReport	-500.00	-30.00	-30.00	-60.00	-440.00	-88.00%
001-000-74225	CONCEALEDWEAPON	-400.00	0.00	0.00	0.00	-400.00	-100.00%
001-000-74230	P.D.&Legalrestitution	-1,200.00	0.00	0.00	0.00	-1,200.00	-100.00%
001-000-74235	SpecialPoliceServices	-1,800.00	0.00	-100.00	-100.00	-1,700.00	-94.44%
001-000-74400	CemeteryRevenues	-1,000.00	0.00	0.00	0.00	-1,000.00	-100.00%
001-000-74415	HistoricalGrammerSchool	-17,000.00	-300.00	-900.00	-1,200.00	-15,800.00	-92.94%

Detail vs Budget Report

Date Range: 08/01/2025 to 08/31/2025
Section 13, Item I. 5

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001-000-74425	Cribbs/SnackUtilities	-300.00	0.00	0.00	0.00	-300.00	-100.00%
001-000-74430	Fees-CommunityCtrUtil	-2,400.00	-175.00	-775.00	-950.00	-1,450.00	-60.42%
001-000-74435	Fees-CommunityCenter	-6,000.00	-600.00	-1,885.00	-2,485.00	-3,515.00	-58.58%
001-000-74440	Fees-AuditoriumUse	-8,000.00	0.00	-1,975.00	-1,975.00	-6,025.00	-75.31%
001-000-74445	Fees-AuditoriumUtilitie	-2,450.00	0.00	-600.00	-600.00	-1,850.00	-75.51%
001-000-74450	Fees-JazzerciseRentalIn	-10,350.00	-900.00	-870.00	-1,770.00	-8,580.00	-82.90%
001-000-75000	InterestEarnings	-25,000.00	-26,525.77	-6,792.46	-33,318.23	8,318.23	33.27%
001-000-75125	HomeownersPropertyTaxR	-5,250.00	0.00	0.00	0.00	-5,250.00	-100.00%
001-000-75200	StateCopsGrant	-165,000.00	0.00	0.00	0.00	-165,000.00	-100.00%
001-000-77135	Income-Donations,Priva	-1,500.00	0.00	-364.00	-364.00	-1,136.00	-75.73%
000 - NonDepartmental Totals:		-2,894,688.00	131,732.91	-82,429.18	49,303.73	-2,943,991.73	
Department: 001 - NonDepartmental1							
001-001-75200	Rents,Royalties&Commis	-3,900.00	-395.00	-290.00	-685.00	-3,215.00	-82.44%
001 - NonDepartmental1 Totals:		-3,900.00	-395.00	-290.00	-685.00	-3,215.00	-82.44%
Department: 101 - CityCouncil							
001-101-40005	Part-TimeWages-CityCouncil	0.00	453.60	0.00	453.60	-453.60	0.00%
001-101-40006	Sal/Wages-Elect-CityCouncil	15,120.00	0.00	1,260.00	1,260.00	13,860.00	91.67%
001-101-40050	FICA-CityCouncil	940.00	28.12	78.12	106.24	833.76	88.70%
001-101-40051	Medicare-CityCouncil	220.00	6.58	18.27	24.85	195.15	88.70%
001-101-40055	SUI-CityCouncil	250.00	8.45	0.00	8.45	241.55	96.62%
001-101-42015	Gen.Supplies-CityCouncil	150.00	0.00	0.00	0.00	150.00	100.00%
001-101-42756	Membership/Dues-CityCouncil	2,150.00	0.00	0.00	0.00	2,150.00	100.00%
101 - CityCouncil Totals:		18,830.00	496.75	1,356.39	1,853.14	16,976.86	90.16%
Department: 102 - CityClerk							
001-102-40000	Salaries-CityClerk	39,975.00	2,987.24	3,627.00	6,614.24	33,360.76	83.45%
001-102-40015	VacationPayout-CityClerk	1,500.00	0.00	0.00	0.00	1,500.00	100.00%
001-102-40050	FICA-CityClerk	2,478.00	185.21	224.88	410.09	2,067.91	83.45%
001-102-40051	Medicare-CityClerk	580.00	43.32	52.59	95.91	484.09	83.46%
001-102-40055	SUI-CityClerk	126.00	0.00	0.00	0.00	126.00	100.00%
001-102-40060	PERS-CityClerk	3,182.00	237.79	288.72	526.51	2,655.49	83.45%
001-102-40065	Health/LifeIns-CityClerk	14,939.00	1,170.19	2,515.72	3,685.91	11,253.09	75.33%
001-102-40070	WorkersComp.-CityClerk	3,612.00	0.00	941.00	941.00	2,671.00	73.95%
001-102-42015	Gen.Supplies-CityClerk	600.00	0.00	11.95	11.95	588.05	98.01%
001-102-42445	MUNICODEWEB-CityClerk	4,200.00	0.00	0.00	0.00	4,200.00	100.00%
001-102-42760	Travel,Conf,Trg-CityClerk	900.00	0.00	0.00	0.00	900.00	100.00%
001-102-42805	WaterUtilities-CityClerk	480.00	0.00	0.00	0.00	480.00	100.00%
001-102-42810	PG&EUtilities-CityClerk	720.00	0.00	6.82	6.82	713.18	99.05%
001-102-43650	Contracts-Other-CityClerk	600.00	0.00	0.00	0.00	600.00	100.00%
102 - CityClerk Totals:		73,892.00	4,623.75	7,668.68	12,292.43	61,599.57	83.36%
Department: 103 - CityTreasurer							
001-103-40005	Sal/Wages-Elect-CityTreasurer	2,250.00	67.50	187.50	255.00	1,995.00	88.67%
001-103-40050	FICA-CityTreasurer	140.00	4.19	11.62	15.81	124.19	88.71%

Detail vs Budget Report

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001-103-40051	Medicare-CityTreasurer	33.00	0.98	2.72	3.70	29.30	88.79%
001-103-40055	SUI-CityTreasurer	47.00	0.00	0.00	0.00	47.00	100.00%
103 - CityTreasurer Totals:		2,470.00	72.67	201.84	274.51	2,195.49	88.89%
Department: 104 - CityManager							
001-104-40000	Salaries-CityManager	89,976.00	8,173.15	11,413.17	19,586.32	70,389.68	78.23%
001-104-40015	VacationPayout-CityManager	3,325.00	0.00	0.00	0.00	3,325.00	100.00%
001-104-40050	FICA-CITYMANAGER	5,579.00	493.92	701.35	1,195.27	4,383.73	78.58%
001-104-40051	Medicare-CITYMANAGER	1,305.00	114.55	164.02	278.57	1,026.43	78.65%
001-104-40055	SUI-CITYMANAGER	147.00	10.98	9.79	20.77	126.23	85.87%
001-104-40060	PERS-CITYMANAGER	6,091.00	568.62	865.06	1,433.68	4,657.32	76.46%
001-104-40065	Health/LifeIns-CITYMANAGER	17,429.00	2,390.31	3,860.01	6,250.32	11,178.68	64.14%
001-104-40070	WorkersComp.-CITYMANAGER	4,214.00	0.00	1,098.00	1,098.00	3,116.00	73.94%
001-104-42015	Gen.Supplies-CityManager	350.00	0.00	0.00	0.00	350.00	100.00%
001-104-42760	Travel,Conf,Trg-CityManager	875.00	0.00	0.00	0.00	875.00	100.00%
001-104-42805	WaterUtilities-CityManager	208.00	0.00	0.00	0.00	208.00	100.00%
001-104-42810	PG&EUtilities-CityManager	420.00	0.00	4.01	4.01	415.99	99.05%
001-104-42995	CONTINGENCY-CityManager	7,000.00	0.00	0.00	0.00	7,000.00	100.00%
001-104-43600	ProfServices-CityManager	2,625.00	0.00	0.00	0.00	2,625.00	100.00%
104 - CityManager Totals:		139,544.00	11,751.53	18,115.41	29,866.94	109,677.06	78.60%
Department: 105 - Finance							
001-105-40000	Salaries-Finance	78,186.00	6,200.08	7,367.25	13,567.33	64,618.67	82.65%
001-105-40015	VACATIONPAYOUT-Finance	1,860.00	0.00	0.00	0.00	1,860.00	100.00%
001-105-40050	FICA-Finance	4,848.00	370.54	428.99	799.53	4,048.47	83.51%
001-105-40051	Medicare-Finance	1,134.00	85.15	100.34	185.49	948.51	83.64%
001-105-40055	SUI-Finance	307.00	10.35	9.21	19.56	287.44	93.63%
001-105-40060	PERS-Finance	4,868.00	363.55	423.21	786.76	4,081.24	83.84%
001-105-40065	Health/LifeIns-Finance	18,183.00	2,143.69	6,215.59	8,359.28	9,823.72	54.03%
001-105-40070	WorkersComp.-Finance	8,792.00	0.00	2,572.00	2,572.00	6,220.00	70.75%
001-105-42015	Gen.Supplies-Finance	9,129.00	0.00	200.10	200.10	8,928.90	97.81%
001-105-42435	NetworkSvcsCo-Finance	20,083.00	0.00	446.25	446.25	19,636.75	97.78%
001-105-42760	Travel,Conf,Trg-Finance	548.00	0.00	0.00	0.00	548.00	100.00%
001-105-42805	WaterUtilities-Finance	219.00	0.00	0.00	0.00	219.00	100.00%
001-105-42810	PG&EUtilities-Finance	2,373.00	0.00	325.99	325.99	2,047.01	86.26%
001-105-42955	PayChex&Bank-Finance	2,921.00	370.02	0.00	370.02	2,550.98	87.33%
001-105-43100	Audit&Acctg-Finance	14,788.00	0.00	0.00	0.00	14,788.00	100.00%
001-105-43600	ProfServices-Finance	1,826.00	0.00	0.00	0.00	1,826.00	100.00%
001-105-43650	Contracts-Other-Finance	730.00	0.00	0.00	0.00	730.00	100.00%
001-105-69400	O&MEquipment-Finance	1,826.00	0.00	0.00	0.00	1,826.00	100.00%
105 - Finance Totals:		172,621.00	9,543.38	18,088.93	27,632.31	144,988.69	83.99%
Department: 106 - Police							
001-106-40000	Salaries-PoliceDept	485,700.00	23,281.53	40,255.69	63,537.22	422,162.78	86.92%
001-106-40006	Overtime-PoliceDept	40,000.00	4,505.82	6,281.74	10,787.56	29,212.44	73.03%
001-106-40015	VacationPayout-PoliceDept	14,243.00	2,810.40	0.00	2,810.40	11,432.60	80.27%

Detail vs Budget Report

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001-106-40050	FICA-PoliceDept	30,981.00	1,897.07	3,160.03	5,057.10	25,923.90	83.68%
001-106-40051	Medicare-PoliceDept	7,246.00	443.69	739.02	1,182.71	6,063.29	83.68%
001-106-40055	SUI-PoliceDept	1,260.00	2.62	17.84	20.46	1,239.54	98.38%
001-106-40060	PERS-PoliceDept	85,542.00	3,738.37	5,853.35	9,591.72	75,950.28	88.79%
001-106-40065	Health/LifeIns-PoliceDept	113,880.00	7,397.96	5,593.11	12,991.07	100,888.93	88.59%
001-106-40070	WorkersComp.-PoliceDept	36,117.00	0.00	9,408.00	9,408.00	26,709.00	73.95%
001-106-42015	Gen.Supplies-PoliceDept	2,000.00	0.00	139.53	139.53	1,860.47	93.02%
001-106-42020	FUEL-PoliceDept	27,000.00	0.00	2,185.95	2,185.95	24,814.05	91.90%
001-106-42045	SpecialDepart-PoliceDept	1,750.00	0.00	471.08	471.08	1,278.92	73.08%
001-106-42095	Clothing-PoliceDept	2,000.00	0.00	4,430.80	4,430.80	-2,430.80	-121.54%
001-106-42096	SafetyEquip-PoliceDept	5,000.00	0.00	0.00	0.00	5,000.00	100.00%
001-106-42435	NetworkSvcsCo-PoliceDept	6,000.00	0.00	0.00	0.00	6,000.00	100.00%
001-106-42710	Communications-PoliceDept	5,000.00	0.00	64.03	64.03	4,935.97	98.72%
001-106-42760	Travel,Conf,Trg-PoliceDept	5,000.00	0.00	130.00	130.00	4,870.00	97.40%
001-106-42805	WaterUtilities-PoliceDept	500.00	0.00	0.00	0.00	500.00	100.00%
001-106-42810	PG&EUtilities-PoliceDept	7,000.00	0.00	639.20	639.20	6,360.80	90.87%
001-106-42850	VehicleMaintna-PoliceDept	18,000.00	0.00	239.29	239.29	17,760.71	98.67%
001-106-42930	AnimalControl-PoliceDept	38,000.00	0.00	0.00	0.00	38,000.00	100.00%
001-106-42935	Misc-Bookings-PoliceDept	150.00	0.00	0.00	0.00	150.00	100.00%
001-106-42940	Misc-Court/Invs-PoliceDept	100.00	0.00	0.00	0.00	100.00	100.00%
001-106-43700	Dispatching-PoliceDept	175,000.00	0.00	0.00	0.00	175,000.00	100.00%
106 - Police Totals:		1,107,469.00	44,077.46	79,608.66	123,686.12	983,782.88	88.83%
Department: 109 - Planning							
001-109-40005	Sal/Wages-Elect-Planning	6,750.00	202.50	562.50	765.00	5,985.00	88.67%
001-109-40050	FICA-Planning	425.00	12.56	34.86	47.42	377.58	88.84%
001-109-40051	Medicare-Planning	100.00	2.93	8.15	11.08	88.92	88.92%
001-109-40055	SUI-Planning	130.00	3.73	0.00	3.73	126.27	97.13%
001-109-42015	Gen.Supplies-Planning	200.00	0.00	0.00	0.00	200.00	100.00%
001-109-42510	LAFCOExpense-Planning	6,000.00	5,732.00	0.00	5,732.00	268.00	4.47%
001-109-42750	PHNOTICES-Planning	3,000.00	0.00	0.00	0.00	3,000.00	100.00%
001-109-43450	Planner-Planning	30,000.00	0.00	0.00	0.00	30,000.00	100.00%
001-109-43650	Contracts-Other-Planning	7,996.00	0.00	0.00	0.00	7,996.00	100.00%
109 - Planning Totals:		54,601.00	5,953.72	605.51	6,559.23	48,041.77	87.99%
Department: 110 - Building							
001-110-42300	E&PReimbEngr.-BuildingDEPT	2,500.00	0.00	0.00	0.00	2,500.00	100.00%
001-110-43250	Engineering-BuildingRegula	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
001-110-43300	PlanChk&Insp-BuildingDEPT	42,000.00	0.00	0.00	0.00	42,000.00	100.00%
110 - Building Totals:		46,500.00	0.00	0.00	0.00	46,500.00	100.00%
Department: 111 - Engineering							
001-111-42300	E&PReimbEngr.-Engineering	80,000.00	0.00	0.00	0.00	80,000.00	100.00%
001-111-43250	Engineering-Engineering	60,000.00	0.00	0.00	0.00	60,000.00	100.00%
001-111-43300	PlanChk&Insp-Engineering	4,000.00	0.00	0.00	0.00	4,000.00	100.00%

Detail vs Budget Report

Date Range: 08/01/2025 - 08/31/2025 Section 13, Item 1. 5

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
111 - Engineering Totals:		144,000.00	0.00	0.00	0.00	144,000.00	100.00%
Department: 113 - Parks&Recreation							
001-113-40000	Salaries-Parks&Recreat	130,807.00	9,168.94	5,554.90	14,723.84	116,083.16	88.74%
001-113-40006	Overtime-Parks&Recreat	0.00	0.00	30.74	30.74	-30.74	0.00%
001-113-40015	VacationPayout-Parks&Recreat	4,458.00	0.00	0.00	0.00	4,458.00	100.00%
001-113-40050	FICA-Parks&Recreat	7,912.00	567.73	305.42	873.15	7,038.85	88.96%
001-113-40051	Medicare-Parks&Recreat	1,850.00	129.66	71.77	201.43	1,648.57	89.11%
001-113-40055	SUI-Parks&Recreat	370.00	0.00	0.00	0.00	370.00	100.00%
001-113-40060	PERS-Parks&Recreat	15,557.00	573.04	449.02	1,022.06	14,534.94	93.43%
001-113-40065	Health/LifeIns-Parks&Recreat	37,556.00	3,884.39	3,022.74	6,907.13	30,648.87	81.61%
001-113-40070	WorkersComp.-Parks&Recreat	10,593.00	0.00	2,760.00	2,760.00	7,833.00	73.95%
001-113-42015	Gen.Supplies-Parks&Recreat	580.00	0.00	0.00	0.00	580.00	100.00%
001-113-42020	FUEL-Parks&Recreat	7,000.00	0.00	725.08	725.08	6,274.92	89.64%
001-113-42030	Repair/Maint-Parks&Recreat	27,000.00	0.00	3,948.19	3,948.19	23,051.81	85.38%
001-113-42057	Beautification-Parks&Recreat	6,000.00	0.00	0.00	0.00	6,000.00	100.00%
001-113-42095	Clothing-Parks&Recreat	750.00	453.75	0.00	453.75	296.25	39.50%
001-113-42205	Lease-PrkgLot-Parks&Recreat	47,000.00	3,790.46	3,850.46	7,640.92	39,359.08	83.74%
001-113-42400	Signs-Parks & Recreat	250.00	0.00	0.00	0.00	250.00	100.00%
001-113-42410	WeedControl-Parks&Recreat	5,000.00	0.00	0.00	0.00	5,000.00	100.00%
001-113-42415	Restrooms-Parks&Recreat	500.00	0.00	0.00	0.00	500.00	100.00%
001-113-42425	Taxes/Fees/Lics-Parks&Recreat	500.00	0.00	0.00	0.00	500.00	100.00%
001-113-42435	NetworkSvcsCo-Parks&Recreat	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
001-113-42805	WaterUtilities-Parks&Recreat	26,000.00	0.00	0.00	0.00	26,000.00	100.00%
001-113-42810	PG&EUtilities-Parks&Recreat	42,000.00	0.00	4,662.53	4,662.53	37,337.47	88.90%
001-113-42850	VehicleMaintna-Parks&Recreat	4,000.00	0.00	418.64	418.64	3,581.36	89.53%
001-113-42860	O&MBlg/Structu-Parks&Recreat	5,000.00	0.00	601.17	601.17	4,398.83	87.98%
001-113-42865	Janitorial-Parks&Recreat	6,500.00	-3,093.40	0.00	-3,093.40	9,593.40	147.59%
001-113-43650	Contracts-Other-Parks&Recreat	19,500.00	0.00	0.00	0.00	19,500.00	100.00%
001-113-44000	SmallEquipment-Parks&Recreat	2,500.00	0.00	0.00	0.00	2,500.00	100.00%
113 - Parks&Recreation Totals:		411,183.00	15,474.57	26,400.66	41,875.23	369,307.77	89.82%
Department: 114 - SwimmingPool							
001-114-40000	Salaries-SwimmingPool	0.00	384.52	0.00	384.52	-384.52	0.00%
001-114-40050	FICA-SwimmingPool	0.00	23.84	0.00	23.84	-23.84	0.00%
001-114-40051	Medicare-SwimmingPool	0.00	5.58	0.00	5.58	-5.58	0.00%
001-114-40060	PERS-SwimmingPool	0.00	53.10	0.00	53.10	-53.10	0.00%
001-114-40065	HealthBenefits-SwimmingPool	0.00	140.42	127.40	267.82	-267.82	0.00%
001-114-42015	Gen.Supplies-SwimmingPool	250.00	0.00	0.00	0.00	250.00	100.00%
001-114-42025	Supplies-Chem-SwimmingPool	6,000.00	0.00	0.00	0.00	6,000.00	100.00%
001-114-42425	Taxes/Fees/Lics-SwimmingPool	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
001-114-42860	O&MBlg/Structu-SwimmingPool	4,000.00	0.00	0.00	0.00	4,000.00	100.00%
001-114-43650	Contracts-Other-SwimmingPool	40,500.00	0.00	0.00	0.00	40,500.00	100.00%
114 - SwimmingPool Totals:		51,750.00	607.46	127.40	734.86	51,015.14	98.58%
Department: 115 - Marketing							

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001-115-42055	CommunityProm-Promotions	7,500.00	325.00	500.00	825.00	6,675.00	89.00%
001-115-42436	InternetServic-Promotions	8,600.00	0.00	0.00	0.00	8,600.00	100.00%
001-115-42745	Advertising-Promotions	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
001-115-42756	Membership/Dues-Promotions	125.00	0.00	0.00	0.00	125.00	100.00%
115 - Marketing Totals:		17,225.00	325.00	500.00	825.00	16,400.00	95.21%
Department: 140 - Cemetery							
001-140-40065	EmployeeBenefi-Cemetery	0.00	118.19	33.21	151.40	-151.40	0.00%
140 - Cemetery Totals:		0.00	118.19	33.21	151.40	-151.40	0.00%
Department: 172 - MonteVerdeMuseum							
001-172-40000	Salaries-MonteVerdeMuse	0.00	107.91	0.00	107.91	-107.91	0.00%
001-172-40050	FICA-MonteVerdeMuse	0.00	6.67	0.00	6.67	-6.67	0.00%
001-172-40051	Medicare-MonteVerdeMuse	0.00	1.57	0.00	1.57	-1.57	0.00%
001-172-42810	PG&EUtilities-MonteVerdeMuse	0.00	0.00	114.75	114.75	-114.75	0.00%
172 - MonteVerdeMuseum Totals:		0.00	116.15	114.75	230.90	-230.90	0.00%
Department: 610 - CentralServices							
001-610-40065	Health/LifeIns-CentralServies	1,700.00	0.00	0.00	0.00	1,700.00	100.00%
001-610-42015	Gen.Supplies-CentralServices	800.00	0.00	0.00	0.00	800.00	100.00%
001-610-42030	Repair/Maint-CentralServices	400.00	0.00	0.00	0.00	400.00	100.00%
001-610-42031	EquipmtMaint.-CentralServices	400.00	0.00	0.00	0.00	400.00	100.00%
001-610-42435	NetworkSvcsCo-CentralServices	12,000.00	0.00	0.00	0.00	12,000.00	100.00%
001-610-42436	InternetServic-CentralServices	4,000.00	0.00	1,284.98	1,284.98	2,715.02	67.88%
001-610-42710	Communications-CentralServices	2,000.00	0.00	176.64	176.64	1,823.36	91.17%
001-610-42755	RiskManagement-CentralServices	214,000.00	0.00	134,882.00	134,882.00	79,118.00	36.97%
001-610-42756	Membership/Dues-CentralServices	1,000.00	0.00	80.00	80.00	920.00	92.00%
610 - CentralServices Totals:		236,300.00	0.00	136,423.62	136,423.62	99,876.38	42.27%
Department: 613 - CityAttorney							
001-613-43350	Speciallegal-LEGALSERVICES	27,500.00	3,750.00	0.00	3,750.00	23,750.00	86.36%
613 - CityAttorney Totals:		27,500.00	3,750.00	0.00	3,750.00	23,750.00	86.36%
001 - GeneralFund Totals:		-394,703.00	228,248.54	206,525.88	434,774.42	-829,477.42	
003 - Streets/Sidewal							
Department: 000 - NonDepartmental							
003-000-75100	VehicleLicenseFee	-5,000.00	0.00	0.00	0.00	-5,000.00	-100.00%
003-000-75320	2107HighwayUserTax	-46,500.00	-4,007.21	-3,961.80	-7,969.01	-38,530.99	-82.86%
003-000-75321	2105HighwayUserTax	-16,500.00	-1,431.26	-1,305.49	-2,736.75	-13,763.25	-83.41%
003-000-75322	2106HighwayUserTax	-16,500.00	-1,476.53	-1,420.22	-2,896.75	-13,603.25	-82.44%
003-000-75323	2107-5HighwayUserTax	-1,000.00	0.00	-1,000.00	-1,000.00	0.00	0.00%
003-000-75325	RoadMaintenance&Rehabi	-71,000.00	-6,047.15	-6,667.58	-12,714.73	-58,285.27	-82.09%
000 - NonDepartmental Totals:		-156,500.00	-12,962.15	-14,355.09	-27,317.24	-129,182.76	-82.54%
Department: 104 - CityManager							
003-104-40000	Salaries-CITYMANAGER	12,854.00	701.94	0.00	701.94	12,152.06	94.54%
003-104-40015	VACATIONPAYOUT-CITYMANAGER	475.00	0.00	0.00	0.00	475.00	100.00%

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003-104-40050	FICA-CityManager	797.00	43.52	0.00	43.52	753.48	94.54%
003-104-40051	Medicare-CITYMANAGER	186.00	10.18	0.00	10.18	175.82	94.53%
003-104-40055	SUI-CityManager	21.00	0.00	0.00	0.00	21.00	100.00%
003-104-40060	PERS-CITYMANAGER	870.00	55.87	0.00	55.87	814.13	93.58%
003-104-40065	EmployeeBenefi-CityManager	2,490.00	93.61	70.21	163.82	2,326.18	93.42%
003-104-40070	WorkersComp.-CITYMANAGER	602.00	0.00	157.00	157.00	445.00	73.92%
003-104-42015	Gen.Supplies-CITYMANAGER	50.00	0.00	0.00	0.00	50.00	100.00%
003-104-42760	Travel,Conf,Trg-CityManager	125.00	0.00	0.00	0.00	125.00	100.00%
003-104-42805	WaterUtilities-CityManager	30.00	0.00	0.00	0.00	30.00	100.00%
003-104-42810	PG&EUtilities-CityManager	60.00	0.00	0.80	0.80	59.20	98.67%
003-104-42995	CONTINGENCY-CityManager	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
003-104-43600	ProfServices-CityManager	375.00	0.00	0.00	0.00	375.00	100.00%
104 - CityManager Totals:		19,935.00	905.12	228.01	1,133.13	18,801.87	94.32%
Department: 105 - Finance							
003-105-40000	Salaries-Finance	13,327.00	562.19	937.10	1,499.29	11,827.71	88.75%
003-105-40015	VACATIONPAYOUT-Finance	317.00	0.00	0.00	0.00	317.00	100.00%
003-105-40050	FICA-Finance	826.00	34.86	58.10	92.96	733.04	88.75%
003-105-40051	Medicare-Finance	193.00	8.15	13.59	21.74	171.26	88.74%
003-105-40055	SUI-Finance	52.00	2.59	0.00	2.59	49.41	95.02%
003-105-40060	PERS-Finance	830.00	44.75	74.60	119.35	710.65	85.62%
003-105-40065	EmployeeBenefi-Finance	3,099.00	214.81	504.32	719.13	2,379.87	76.79%
003-105-40070	WorkersComp.-Finance	1,499.00	0.00	376.00	376.00	1,123.00	74.92%
003-105-42015	Gen.Supplies-Finance	1,556.00	0.00	24.71	24.71	1,531.29	98.41%
003-105-42435	NetworkSvcsCo-Finance	3,423.00	0.00	78.75	78.75	3,344.25	97.70%
003-105-42760	Travel,Conf,Trg-Finance	93.00	0.00	0.00	0.00	93.00	100.00%
003-105-42805	WaterUtilities-Finance	37.00	0.00	0.00	0.00	37.00	100.00%
003-105-42810	PG&EUtilities-Finance	405.00	0.00	57.53	57.53	347.47	85.80%
003-105-42955	PayChex&Bank-Finance	498.00	38.28	0.00	38.28	459.72	92.31%
003-105-43100	Audit&Acctg-Finance	2,521.00	0.00	0.00	0.00	2,521.00	100.00%
003-105-43600	ProfServices-Finance	311.00	0.00	0.00	0.00	311.00	100.00%
003-105-43650	Contracts-Other-Finance	124.00	0.00	0.00	0.00	124.00	100.00%
003-105-69400	O&MEquipment-Finance	311.00	0.00	0.00	0.00	311.00	100.00%
105 - Finance Totals:		29,422.00	905.63	2,124.70	3,030.33	26,391.67	89.70%
Department: 112 - Streets/Roads							
003-112-40000	Salaries-Streets/Roads	59,862.00	3,979.92	4,628.84	8,608.76	51,253.24	85.62%
003-112-40006	Overtime-Streets/Roads	0.00	0.00	30.74	30.74	-30.74	0.00%
003-112-40015	VACATIONPAYOUT-Streets/Roads	2,091.00	0.00	0.00	0.00	2,091.00	100.00%
003-112-40050	FICA-Streets/Roads	3,711.00	260.39	261.14	521.53	3,189.47	85.95%
003-112-40051	Medicare-Streets/Roads	868.00	60.90	61.32	122.22	745.78	85.92%
003-112-40055	SUI-Streets/Roads	173.00	0.00	0.00	0.00	173.00	100.00%
003-112-40060	PERS-Streets/Roads	7,297.00	478.03	457.17	935.20	6,361.80	87.18%
003-112-40065	Health/LifeIns-Streets/Roads	17,617.00	2,142.07	2,486.79	4,628.86	12,988.14	73.73%
003-112-40070	WorkersComp.-Streets/Roads	4,969.00	0.00	1,294.00	1,294.00	3,675.00	73.96%

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003-112-42015	Gen.Supplies-Streets/Roads	1,500.00	0.00	0.00	0.00	1,500.00	100.00%
003-112-42020	FUEL-Streets/Roads	5,000.00	0.00	484.81	484.81	4,515.19	90.30%
003-112-42030	Repair/Maint-Streets/Roads	0.00	0.00	92.56	92.56	-92.56	0.00%
003-112-42095	Clothing-Streets/Roads	750.00	220.00	0.00	220.00	530.00	70.67%
003-112-42200	Patching-Streets/Roads	7,500.00	0.00	0.00	0.00	7,500.00	100.00%
003-112-42400	Signs-Streets/Roads	250.00	0.00	0.00	0.00	250.00	100.00%
003-112-42405	FloodControl-Streets/Roads	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
003-112-42410	WeedControl-Streets/Roads	4,000.00	0.00	0.00	0.00	4,000.00	100.00%
003-112-42800	PublicUtility-Streets/Roads	0.00	0.00	60.74	60.74	-60.74	0.00%
003-112-42810	PG&EUilities-Streets/Roads	0.00	0.00	110.85	110.85	-110.85	0.00%
003-112-42815	StreetLights-Streets/Roads	42,000.00	0.00	3,201.89	3,201.89	38,798.11	92.38%
003-112-42850	VehicleMaintna-Streets/Roads	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
003-112-42860	O&MBlg/Structu-Streets/Roads	20,000.00	0.00	0.00	0.00	20,000.00	100.00%
003-112-43650	Contracts-Other-Streets/Roads	0.00	0.00	-1,000.00	-1,000.00	1,000.00	0.00%
003-112-69400	O&MEquipment-Streets/Roads	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
003-112-69600	Improvements-Streets/Roads	42,500.00	0.00	0.00	0.00	42,500.00	100.00%
112 - Streets/Roads Totals:		224,088.00	7,141.31	12,170.85	19,312.16	204,775.84	91.38%
003 - Streets/Sidewal Totals:		116,945.00	-4,010.09	168.47	-3,841.62	120,786.62	
004 - CrestviewLgt/D							
Department: 000 - NonDepartmental							
004-000-74330	StreetLightingCharges	-2,650.00	0.00	0.00	0.00	-2,650.00	-100.00%
000 - NonDepartmental Totals:		-2,650.00	0.00	0.00	0.00	-2,650.00	-100.00%
Department: 105 - Finance							
004-105-40000	Salaries-Finance	10,662.00	46.85	228.50	275.35	10,386.65	97.42%
004-105-40015	VacationPayout-Finance	254.00	0.00	0.00	0.00	254.00	100.00%
004-105-40050	FICA-Finance	661.00	2.90	14.16	17.06	643.94	97.42%
004-105-40051	Medicare-Finance	155.00	0.68	3.32	4.00	151.00	97.42%
004-105-40055	SUI-Finance	42.00	2.59	0.00	2.59	39.41	93.83%
004-105-40060	PERS-Finance	664.00	3.72	18.19	21.91	642.09	96.70%
004-105-40065	EmployeeBenefi-Finance	2,479.00	0.00	73.43	73.43	2,405.57	97.04%
004-105-40070	WorkersComp.-Finance	1,199.00	0.00	0.00	0.00	1,199.00	100.00%
004-105-42015	Gen.Supplies-Finance	1,245.00	0.00	0.00	0.00	1,245.00	100.00%
004-105-42435	NetworkSvcsCo-Finance	2,739.00	0.00	0.00	0.00	2,739.00	100.00%
004-105-42760	Travel,Conf,Trg-Finance	75.00	0.00	0.00	0.00	75.00	100.00%
004-105-42805	WaterUtilities-Finance	30.00	0.00	0.00	0.00	30.00	100.00%
004-105-42810	PG&EUilities-Finance	324.00	0.00	0.00	0.00	324.00	100.00%
004-105-42955	PayChex&Bank-Finance	398.00	0.00	0.00	0.00	398.00	100.00%
004-105-43100	Audit&Acctg-Finance	2,017.00	0.00	0.00	0.00	2,017.00	100.00%
004-105-43600	ProfServices-Finance	249.00	0.00	0.00	0.00	249.00	100.00%
004-105-43650	Contracts-Other-Finance	100.00	0.00	0.00	0.00	100.00	100.00%
004-105-69400	O&MEquipment-Finance	249.00	0.00	0.00	0.00	249.00	100.00%
105 - Finance Totals:		23,542.00	56.74	337.60	394.34	23,147.66	98.32%

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
Department: 145 - CrestViewLgt							
004-145-42815	StreetLights-CrestViewLgt	0.00	0.00	125.88	125.88	-125.88	0.00%
145 - CrestViewLgt Totals:		0.00	0.00	125.88	125.88	-125.88	0.00%
004 - CrestviewLgt/D Totals:		20,892.00	56.74	463.48	520.22	20,371.78	
010 - SewerM&O							
Department: 000 - NonDepartmental							
010-000-74500	SewerServiceCharges	-2,967,587.00	-250,173.79	-197,668.45	-447,842.24	-2,519,744.76	-84.91%
010-000-74505	SepticDumpingFee	-50,000.00	-4,591.19	-4,345.70	-8,936.89	-41,063.11	-82.13%
010-000-74510	ContractSewerRevAWA&	-223,120.00	-23,104.33	-23,104.33	-46,208.66	-176,911.34	-79.29%
010-000-75000	InterestEarnings	-16,000.00	0.00	0.00	0.00	-16,000.00	-100.00%
010-000-77115	EffluentDisposal	-156,068.00	-19,124.25	-14,462.61	-33,586.86	-122,481.14	-78.48%
010-000-77130	LateCharges	-40,000.00	0.00	0.00	0.00	-40,000.00	-100.00%
010-000-78999	OperatingTransfersIn	-830,000.00	0.00	0.00	0.00	-830,000.00	-100.00%
000 - NonDepartmental Totals:		-4,282,775.00	-296,993.56	-239,581.09	-536,574.65	-3,746,200.35	-87.47%
Department: 001 - NonDepartmental1							
010-001-74500	SewerSvcChrgesAmadorC	-48,871.00	0.00	0.00	0.00	-48,871.00	-100.00%
001 - NonDepartmental1 Totals:		-48,871.00	0.00	0.00	0.00	-48,871.00	-100.00%
Department: 102 - CityClerk							
010-102-40000	Salaries-CityClerk	16,656.00	351.44	983.13	1,334.57	15,321.43	91.99%
010-102-40015	VacationPayout-CityClerk	625.00	0.00	0.00	0.00	625.00	100.00%
010-102-40050	FICA-CityClerk	1,033.00	21.79	60.95	82.74	950.26	91.99%
010-102-40051	Medicare-CityClerk	242.00	5.10	14.26	19.36	222.64	92.00%
010-102-40055	SUI-CityClerk	53.00	0.00	0.00	0.00	53.00	100.00%
010-102-40060	PERS-CityClerk	1,326.00	27.98	78.26	106.24	1,219.76	91.99%
010-102-40065	Health/LifeIns-CityClerk	6,225.00	450.72	701.32	1,152.04	5,072.96	81.49%
010-102-40070	WorkersComp.-CityClerk	1,505.00	0.00	392.00	392.00	1,113.00	73.95%
010-102-42015	Gen.Supplies-CityClerk	250.00	0.00	0.00	0.00	250.00	100.00%
010-102-42445	MUNICODEWEB-CityClerk	1,750.00	0.00	0.00	0.00	1,750.00	100.00%
010-102-42760	Travel,Conf,Trg-CityClerk	375.00	0.00	0.00	0.00	375.00	100.00%
010-102-42805	WaterUtilities-CityClerk	200.00	0.00	0.00	0.00	200.00	100.00%
010-102-42810	PG&EUtilities-CityClerk	300.00	0.00	0.80	0.80	299.20	99.73%
010-102-43650	City Clerk - Contracts	250.00	0.00	0.00	0.00	250.00	100.00%
102 - CityClerk Totals:		30,790.00	857.03	2,230.72	3,087.75	27,702.25	89.97%
Department: 104 - CityManager							
010-104-40000	Salaries-CITYMANAGER	89,976.00	3,576.77	4,867.54	8,444.31	81,531.69	90.61%
010-104-40015	VacationPayout-CityManager	3,325.00	0.00	0.00	0.00	3,325.00	100.00%
010-104-40050	FICA-CityManager	5,579.00	208.95	295.82	504.77	5,074.23	90.95%
010-104-40051	Medicare-CITYMANAGER	1,305.00	49.83	69.19	119.02	1,185.98	90.88%
010-104-40055	SUI-CityManager	147.00	10.97	0.00	10.97	136.03	92.54%
010-104-40060	PERS-CITYMANAGER	6,091.00	278.74	379.10	657.84	5,433.16	89.20%
010-104-40065	Health/LifeIns-CITYMANAGER	17,429.00	1,531.92	1,672.25	3,204.17	14,224.83	81.62%
010-104-40070	WorkersComp.-CityManager	4,214.00	0.00	1,098.00	1,098.00	3,116.00	73.94%

Detail vs Budget Report

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
010-104-42015	Gen.Supplies-CityManager	350.00	0.00	0.00	0.00	350.00	100.00%
010-104-42760	Travel,Conf,Trg-CityManager	875.00	0.00	0.00	0.00	875.00	100.00%
010-104-42805	WaterUtilities-CityManager	208.00	0.00	0.00	0.00	208.00	100.00%
010-104-42810	PG&EUtilities-CityManager	420.00	0.00	1.61	1.61	418.39	99.62%
010-104-42995	CONTINGENCY-CityManager	7,000.00	0.00	0.00	0.00	7,000.00	100.00%
010-104-43600	ProfServices-CityManager	2,625.00	0.00	0.00	0.00	2,625.00	100.00%
104 - CityManager Totals:		139,544.00	5,657.18	8,383.51	14,040.69	125,503.31	89.94%
Department: 105 - Finance							
010-105-40000	Salaries-Finance	87,071.00	3,338.27	5,216.34	8,554.61	78,516.39	90.18%
010-105-40015	VacationPayout-Finance	2,071.00	0.00	0.00	0.00	2,071.00	100.00%
010-105-40050	FICA-Finance	5,398.00	193.10	310.43	503.53	4,894.47	90.67%
010-105-40051	Medicare-Finance	1,263.00	48.40	72.61	121.01	1,141.99	90.42%
010-105-40055	SUI-Finance	342.00	7.77	6.14	13.91	328.09	95.93%
010-105-40060	PERS-Finance	5,421.00	154.19	315.65	469.84	4,951.16	91.33%
010-105-40065	Health/LifeIns-Finance	20,249.00	1,230.85	3,368.04	4,598.89	15,650.11	77.29%
010-105-40070	WorkersComp.-Finance	9,791.00	0.00	2,572.00	2,572.00	7,219.00	73.73%
010-105-42015	Gen.Supplies-Finance	10,166.00	0.00	87.87	87.87	10,078.13	99.14%
010-105-42435	NetworkSvcsCo-Finance	22,365.00	0.00	280.00	280.00	22,085.00	98.75%
010-105-42450	MOMonlinefees-Finance	11,000.00	0.00	0.00	0.00	11,000.00	100.00%
010-105-42760	Travel,Conf,Trg-Finance	610.00	0.00	0.00	0.00	610.00	100.00%
010-105-42805	WaterUtilities-Finance	244.00	0.00	0.00	0.00	244.00	100.00%
010-105-42810	PG&EUtilities-Finance	2,643.00	0.00	204.54	204.54	2,438.46	92.26%
010-105-42955	PayChex&Bank-Finance	3,253.00	229.67	0.00	229.67	3,023.33	92.94%
010-105-43100	Audit&Acctg-Finance	16,469.00	0.00	0.00	0.00	16,469.00	100.00%
010-105-43600	ProfServices-Finance	2,033.00	0.00	0.00	0.00	2,033.00	100.00%
010-105-43650	Contracts-Other-Finance	813.00	0.00	0.00	0.00	813.00	100.00%
010-105-69400	O&MEquipment-Finance	2,033.00	0.00	0.00	0.00	2,033.00	100.00%
105 - Finance Totals:		203,235.00	5,202.25	12,433.62	17,635.87	185,599.13	91.32%
Department: 151 - SewerTreatment							
010-151-40000	Salaries-SewerTreatment	111,421.00	6,527.06	9,757.52	16,284.58	95,136.42	85.38%
010-151-40006	Overtime-SewerTreatment	10,000.00	348.96	430.29	779.25	9,220.75	92.21%
010-151-40015	VacationPayout-SewerTreatment	3,892.00	0.00	0.00	0.00	3,892.00	100.00%
010-151-40050	FICA-SewerTreatment	6,908.00	425.67	603.91	1,029.58	5,878.42	85.10%
010-151-40051	Medicare-SewerTreatment	1,616.00	100.99	141.42	242.41	1,373.59	85.00%
010-151-40055	SUI-SewerTreatment	323.00	0.00	0.00	0.00	323.00	100.00%
010-151-40060	PERS-SewerTreatment	13,583.00	819.93	1,313.77	2,133.70	11,449.30	84.29%
010-151-40061	PERSUnfunded-SewerTreatment	66,423.00	66,423.00	0.00	66,423.00	0.00	0.00%
010-151-40065	Health/LifeIns-SewerTreatment	32,790.00	2,304.79	5,814.59	8,119.38	24,670.62	75.24%
010-151-40070	WorkersComp.-SewerTreatment	9,249.00	0.00	2,409.00	2,409.00	6,840.00	73.95%
010-151-42015	Supplies-Lab-SewerTreatment	9,500.00	0.00	0.00	0.00	9,500.00	100.00%
010-151-42020	FUEL-SewerTreatment	6,000.00	0.00	338.35	338.35	5,661.65	94.36%
010-151-42025	Supplies-Chem-SewerTreatment	115,000.00	0.00	7,733.24	7,733.24	107,266.76	93.28%
010-151-42031	EquipmtMaint.-SewerTreatment	36,000.00	0.00	0.00	0.00	36,000.00	100.00%

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
010-151-42045	Sludge-SewerTreatment	60,000.00	0.00	0.00	0.00	60,000.00	100.00%
010-151-42095	Clothing-SewerTreatment	750.00	453.75	0.00	453.75	296.25	39.50%
010-151-42215	Rentals-Mach/Eq-SewerTreatment	15,000.00	0.00	0.00	0.00	15,000.00	100.00%
010-151-42425	Taxes/Fees/Lics-SewerTreatment	37,000.00	0.00	0.00	0.00	37,000.00	100.00%
010-151-42435	NetworkSvcsCo-SewerTreatment	3,000.00	0.00	0.00	0.00	3,000.00	100.00%
010-151-42436	InternetServic-SewerTreatment	1,000.00	143.90	186.35	330.25	669.75	66.98%
010-151-42710	Communications-SewerTreatment	500.00	0.00	31.65	31.65	468.35	93.67%
010-151-42756	Membership/Dues-SewerTreatment	900.00	0.00	0.00	0.00	900.00	100.00%
010-151-42760	Travel,Conf,Trg-SewerTreatment	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
010-151-42805	WaterUtilities-SewerTreatment	12,000.00	0.00	0.00	0.00	12,000.00	100.00%
010-151-42810	PG&EUtilities-SewerTreatment	36,000.00	0.00	4,103.71	4,103.71	31,896.29	88.60%
010-151-42830	O&M-SewerPlt-SewerTreatment	25,000.00	35.46	3,462.59	3,498.05	21,501.95	86.01%
010-151-42850	VehicleMaintna-SewerTreatment	5,500.00	0.00	0.00	0.00	5,500.00	100.00%
010-151-43250	Engineering-SewerTreatment	50,000.00	0.00	0.00	0.00	50,000.00	100.00%
010-151-43650	Contracts-Other-SewerTreatment	0.00	0.00	5,338.50	5,338.50	-5,338.50	0.00%
010-151-45100	PrincipalPymt-SewerTreatment	26,000.00	0.00	0.00	0.00	26,000.00	100.00%
010-151-45200	InterestExpens-SewerTreatment	18,300.00	0.00	0.00	0.00	18,300.00	100.00%
010-151-69600	Improvements-SewerTreatment	110,000.00	0.00	0.00	0.00	110,000.00	100.00%
010-151-69701	Machinery-&-SewerTreatment	10,000.00	0.00	625.00	625.00	9,375.00	93.75%
151 - SewerTreatment Totals:		834,655.00	77,583.51	42,289.89	119,873.40	714,781.60	85.64%
Department: 152 - SewerCollection							
010-152-40000	Salaries-SewerCollectio	101,208.00	3,351.61	9,996.60	13,348.21	87,859.79	86.81%
010-152-40006	Overtime-SewerCollectio	0.00	0.00	723.56	723.56	-723.56	0.00%
010-152-40015	VacationPayout-SewerCollectio	3,535.00	0.00	0.00	0.00	3,535.00	100.00%
010-152-40050	FICA-SewerCollectio	6,275.00	217.66	632.05	849.71	5,425.29	86.46%
010-152-40051	Medicare-SewerCollectio	1,468.00	50.90	148.02	198.92	1,269.08	86.45%
010-152-40055	SUI-SewerCollectio	293.00	0.00	0.00	0.00	293.00	100.00%
010-152-40060	PERS-SewerCollectio	12,338.00	349.43	1,138.99	1,488.42	10,849.58	87.94%
010-152-40061	PERSUnfunded-SewerCollectio	66,423.00	66,423.00	0.00	66,423.00	0.00	0.00%
010-152-40065	Health/LifeIns-SewerCollectio	29,784.00	1,160.97	4,491.12	5,652.09	24,131.91	81.02%
010-152-40070	WorkersComp.-SewerCollectio	8,401.00	0.00	2,189.00	2,189.00	6,212.00	73.94%
010-152-42015	Gen.Supplies-SewerCollectio	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
010-152-42095	Clothing-SewerCollectio	750.00	247.50	0.00	247.50	502.50	67.00%
010-152-42425	Taxes/Fees/Lics-SewerCollectio	4,500.00	0.00	0.00	0.00	4,500.00	100.00%
010-152-42455	ComputerMaint.-SewerCollectio	8,000.00	0.00	0.00	0.00	8,000.00	100.00%
010-152-42850	VehicleMaintna-SewerCollectio	2,500.00	0.00	0.00	0.00	2,500.00	100.00%
010-152-42860	O&MBlg/Structu-SewerCollectio	3,000.00	0.00	0.00	0.00	3,000.00	100.00%
010-152-43250	Engineering-SewerCollectio	16,000.00	0.00	0.00	0.00	16,000.00	100.00%
010-152-69400	O&MEquipment-SewerCollectio	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
010-152-69600	Improvements-SewerCollectio	776,631.00	0.00	161,670.05	161,670.05	614,960.95	79.18%
152 - SewerCollection Totals:		1,045,106.00	71,801.07	180,989.39	252,790.46	792,315.54	75.81%
Department: 610 - CentralServices							
010-610-40065	Health/LifeIns-CentralServies	1,275.00	0.00	0.00	0.00	1,275.00	100.00%

Detail vs Budget Report

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
010-610-42015	Gen.Supplies-CentralServices	600.00	0.00	0.00	0.00	600.00	100.00%
010-610-42031	EquipmtMaint.-CentralServices	300.00	0.00	0.00	0.00	300.00	100.00%
010-610-42435	NetworkSvcsCo-CentralServices	9,000.00	0.00	909.00	909.00	8,091.00	89.90%
010-610-42436	InternetServic-CentralServices	3,000.00	0.00	375.98	375.98	2,624.02	87.47%
010-610-42710	Communications-CentralServices	1,500.00	0.00	0.00	0.00	1,500.00	100.00%
010-610-42755	RiskManagement-CentralServices	160,500.00	0.00	101,162.00	101,162.00	59,338.00	36.97%
010-610-42756	Membership/Dues-CentralServices	750.00	0.00	0.00	0.00	750.00	100.00%
010-610-69800	ComputerHardwr-CentralServices	300.00	0.00	0.00	0.00	300.00	100.00%
610 - CentralServices Totals:		177,225.00	0.00	102,446.98	102,446.98	74,778.02	42.19%
Department: 613 - CityAttorney							
010-613-43350	Speciallegal-LEGALSERVICES	5,500.00	0.00	0.00	0.00	5,500.00	100.00%
613 - CityAttorney Totals:		5,500.00	0.00	0.00	0.00	5,500.00	100.00%
010 - SewerM&O Totals:		-1,895,591.00	-135,892.52	109,193.02	-26,699.50	-1,868,891.50	
011 - SewerWWTP							
Department: 000 - NonDepartmental							
011-000-75000	InterestEarnings	-7,000.00	0.00	0.00	0.00	-7,000.00	-100.00%
011-000-77115	SewerConnectionCharges	0.00	-12,500.00	-6,250.00	-18,750.00	18,750.00	0.00%
000 - NonDepartmental Totals:		-7,000.00	-12,500.00	-6,250.00	-18,750.00	11,750.00	167.86%
011 - SewerWWTP Totals:		-7,000.00	-12,500.00	-6,250.00	-18,750.00	11,750.00	167.86%
012 - SewerLineRep.							
Department: 000 - NonDepartmental							
012-000-75000	InterestEarnings	-7,000.00	0.00	0.00	0.00	-7,000.00	-100.00%
000 - NonDepartmental Totals:		-7,000.00	0.00	0.00	0.00	-7,000.00	-100.00%
012 - SewerLineRep. Totals:		-7,000.00	0.00	0.00	0.00	-7,000.00	-100.00%
014 - SewerCapRes							
Department: 000 - NonDepartmental							
014-000-75000	InterestEarnings	-11,000.00	0.00	0.00	0.00	-11,000.00	-100.00%
000 - NonDepartmental Totals:		-11,000.00	0.00	0.00	0.00	-11,000.00	-100.00%
014 - SewerCapRes Totals:		-11,000.00	0.00	0.00	0.00	-11,000.00	-100.00%
042 - AB1600							
Department: 000 - NonDepartmental							
042-000-74345	GENERALDEVELOPERIMPACT	-7,720.00	0.00	0.00	0.00	-7,720.00	-100.00%
042-000-75000	Income-InterestEarning	-1,000.00	0.00	0.00	0.00	-1,000.00	-100.00%
000 - NonDepartmental Totals:		-8,720.00	0.00	0.00	0.00	-8,720.00	-100.00%
Department: 106 - Police							
042-106-69701	Machinery-&-PoliceDept	47,031.00	0.00	0.00	0.00	47,031.00	100.00%
106 - Police Totals:		47,031.00	0.00	0.00	0.00	47,031.00	100.00%
Department: 113 - Parks&Recreation							
042-113-69701	Machinery-&-Parks&Recreat	25,360.00	0.00	0.00	0.00	25,360.00	100.00%
113 - Parks&Recreation Totals:		25,360.00	0.00	0.00	0.00	25,360.00	100.00%

Detail vs Budget Report

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
042 - AB1600 Totals:		63,671.00	0.00	0.00	0.00	63,671.00	
059 - BuildingFacili							
Department: 105 - Finance							
059-105-42015	Gen.Supplies-Finance	0.00	0.00	100.49	100.49	-100.49	0.00%
105 - Finance Totals:		0.00	0.00	100.49	100.49	-100.49	0.00%
Department: 113 - Parks&Recreation							
059-113-42810	PG&EUtilities-Parks&Recreat	0.00	0.00	1,646.64	1,646.64	-1,646.64	0.00%
113 - Parks&Recreation Totals:		0.00	0.00	1,646.64	1,646.64	-1,646.64	0.00%
059 - BuildingFacili Totals:		0.00	0.00	1,747.13	1,747.13	-1,747.13	0.00%
073 - ParkImpactFee							
Department: 000 - NonDepartmental							
073-000-74360	PARKSREGIONALIMPACTFEE	-13,701.00	0.00	0.00	0.00	-13,701.00	-100.00%
073-000-75120	Grants - Local, Other	0.00	-112,500.00	0.00	-112,500.00	112,500.00	0.00%
000 - NonDepartmental Totals:		-13,701.00	-112,500.00	0.00	-112,500.00	98,799.00	721.11%
Department: 113 - Parks&Recreation							
073-113-69600	Improvements-Parks&Recreat	172,000.00	0.00	0.00	0.00	172,000.00	100.00%
113 - Parks&Recreation Totals:		172,000.00	0.00	0.00	0.00	172,000.00	100.00%
073 - ParkImpactFee Totals:		158,299.00	-112,500.00	0.00	-112,500.00	270,799.00	
080 - EffluentDisp.							
Department: 102 - CityClerk							
080-102-40000	Salaries-CityClerk	9,994.00	175.72	589.87	765.59	9,228.41	92.34%
080-102-40015	VacationPayout-CityClerk	375.00	0.00	0.00	0.00	375.00	100.00%
080-102-40050	FICA-CityClerk	620.00	10.89	36.57	47.46	572.54	92.35%
080-102-40051	Medicare-CityClerk	145.00	2.55	8.55	11.10	133.90	92.34%
080-102-40055	SUI-CityClerk	32.00	0.00	0.00	0.00	32.00	100.00%
080-102-40060	PERS-CityClerk	796.00	13.99	46.94	60.93	735.07	92.35%
080-102-40065	EmployeeBenefi-CityClerk	3,735.00	91.29	302.19	393.48	3,341.52	89.47%
080-102-40070	WorkersComp.-CityClerk	903.00	0.00	235.00	235.00	668.00	73.98%
080-102-42015	Gen.Supplies-CityClerk	150.00	0.00	0.00	0.00	150.00	100.00%
080-102-42445	MuniCodeWeb-CityClerk	1,050.00	0.00	0.00	0.00	1,050.00	100.00%
080-102-42760	City Clerk - Travel/Conferences/Training	225.00	0.00	0.00	0.00	225.00	100.00%
080-102-42805	WaterUtilities-CityClerk	120.00	0.00	0.00	0.00	120.00	100.00%
080-102-42810	PG&EUtilities-CityClerk	180.00	0.00	0.40	0.40	179.60	99.78%
080-102-43650	City Clerk - Contract Services	150.00	0.00	0.00	0.00	150.00	100.00%
102 - CityClerk Totals:		18,475.00	294.44	1,219.52	1,513.96	16,961.04	91.81%
Department: 104 - CityManager							
080-104-40000	Salaries-CityManager	64,269.00	1,871.18	3,923.19	5,794.37	58,474.63	90.98%
080-104-40015	VacationPayout-CityManager	2,375.00	0.00	0.00	0.00	2,375.00	100.00%
080-104-40050	FICA-CityManager	3,985.00	116.01	239.03	355.04	3,629.96	91.09%
080-104-40051	Medicare-CityManager	932.00	27.13	55.90	83.03	848.97	91.09%
080-104-40055	SUI-CityManager	105.00	0.00	0.00	0.00	105.00	100.00%

Detail vs Budget Report

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Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
080-104-40060	PERS-CityManager	4,351.00	148.94	306.32	455.26	3,895.74	89.54%
080-104-40065	EmployeeBenefi-CityManager	12,449.00	852.00	1,258.17	2,110.17	10,338.83	83.05%
080-104-40070	WorkersComp.-CityManager	3,010.00	0.00	784.00	784.00	2,226.00	73.95%
080-104-42015	Gen.Supplies-CityManager	250.00	0.00	0.00	0.00	250.00	100.00%
080-104-42760	Travel,Conf,Trg-CITYMANAGER	625.00	0.00	0.00	0.00	625.00	100.00%
080-104-42805	WaterUtilities-CityManager	149.00	0.00	0.00	0.00	149.00	100.00%
080-104-42810	PG&EUtilities-CityManager	300.00	0.00	1.61	1.61	298.39	99.46%
080-104-42995	CONTINGENCY-CityManager	5,000.00	0.00	0.00	0.00	5,000.00	100.00%
080-104-43600	ProfServices-CityManager	1,875.00	0.00	0.00	0.00	1,875.00	100.00%
104 - CityManager Totals:		99,675.00	3,015.26	6,568.22	9,583.48	90,091.52	90.39%
Department: 105 - Finance							
080-105-40000	Salaries-Finance	24,877.00	468.50	225.06	693.56	24,183.44	97.21%
080-105-40015	VACATIONPAYOUT-Finance	592.00	0.00	0.00	0.00	592.00	100.00%
080-105-40050	FICA-Finance	1,542.00	29.04	13.94	42.98	1,499.02	97.21%
080-105-40051	Medicare-Finance	361.00	6.80	3.25	10.05	350.95	97.22%
080-105-40055	SUI-Finance	98.00	2.59	0.00	2.59	95.41	97.36%
080-105-40060	PERS-Finance	1,549.00	37.29	17.91	55.20	1,493.80	96.44%
080-105-40065	EmployeeBenefi-Finance	5,785.00	226.43	275.52	501.95	5,283.05	91.32%
080-105-40070	WorkersComp.-Finance	2,797.00	0.00	753.00	753.00	2,044.00	73.08%
080-105-42015	Gen.Supplies-Finance	2,905.00	0.00	24.06	24.06	2,880.94	99.17%
080-105-42435	NetworkSvcsCo-Finance	6,390.00	0.00	70.00	70.00	6,320.00	98.90%
080-105-42760	Travel,Conf,Trg-Finance	174.00	0.00	0.00	0.00	174.00	100.00%
080-105-42805	WaterUtilities-Finance	70.00	0.00	0.00	0.00	70.00	100.00%
080-105-42810	PG&EUtilities-Finance	755.00	0.00	51.14	51.14	703.86	93.23%
080-105-42955	PayChex&Bank-Finance	929.00	0.00	0.00	0.00	929.00	100.00%
080-105-43100	Audit&Acctg-Finance	4,705.00	0.00	0.00	0.00	4,705.00	100.00%
080-105-43600	ProfServices-Finance	581.00	0.00	0.00	0.00	581.00	100.00%
080-105-43650	Contracts-Other-Finance	232.00	0.00	0.00	0.00	232.00	100.00%
080-105-69400	O&MEquipment-Finance	581.00	0.00	0.00	0.00	581.00	100.00%
105 - Finance Totals:		54,923.00	770.65	1,433.88	2,204.53	52,718.47	95.99%
Department: 160 - Effluent							
080-160-40000	Salaries-SewerARSA	107,519.00	1,900.32	10,075.11	11,975.43	95,543.57	88.86%
080-160-40006	Overtime-SewerARSA	10,000.00	5,008.18	846.48	5,854.66	4,145.34	41.45%
080-160-40015	VacationPayout-Effluent	3,756.00	0.00	0.00	0.00	3,756.00	100.00%
080-160-40050	FICA-SewerARSA	6,666.00	418.34	643.82	1,062.16	5,603.84	84.07%
080-160-40051	Medicare-SewerARSA	1,559.00	97.84	150.59	248.43	1,310.57	84.06%
080-160-40055	SUI-SewerARSA	311.00	0.00	0.00	0.00	311.00	100.00%
080-160-40060	PERS-SewerARSA	13,107.00	868.48	1,479.37	2,347.85	10,759.15	82.09%
080-160-40061	PERSUnfunded-Effluent	62,733.00	0.00	0.00	0.00	62,733.00	100.00%
080-160-40065	Health/LifeIns-SewerARSA	31,641.00	2,133.44	5,772.58	7,906.02	23,734.98	75.01%
080-160-40070	WorkersComp.-SewerARSA	8,925.00	0.00	2,325.00	2,325.00	6,600.00	73.95%
080-160-42016	Gen.Supplies-SewerARSA	1,600.00	0.00	0.00	0.00	1,600.00	100.00%
080-160-42020	FUEL-SewerARSA	12,000.00	0.00	0.00	0.00	12,000.00	100.00%

Detail vs Budget Report

Account	Name	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
080-160-42030	Repair/Maint-SewerARSA	15,000.00	0.00	151.88	151.88	14,848.12	98.99%
080-160-42405	FloodControl-SewerARSA	1,000.00	0.00	0.00	0.00	1,000.00	100.00%
080-160-42425	Taxes/Fees/Lics-SewerARSA	67,000.00	0.00	0.00	0.00	67,000.00	100.00%
080-160-42850	VehicleMaintna-SewerARSA	5,000.00	0.00	0.00	0.00	5,000.00	100.00%
080-160-42860	O&MBlg/Structu-SewerARSA	2,000.00	0.00	0.00	0.00	2,000.00	100.00%
080-160-42900	ARSA-SewerARSA	50,000.00	0.00	0.00	0.00	50,000.00	100.00%
080-160-43250	Engineering-SewerARSA	80,000.00	0.00	0.00	0.00	80,000.00	100.00%
080-160-43350	Speciallegal-SewerARSA	15,000.00	0.00	0.00	0.00	15,000.00	100.00%
080-160-69400	O&MEquipment-SewerARSA	35,000.00	0.00	0.00	0.00	35,000.00	100.00%
080-160-69600	Improvements-SewerARSA	825,000.00	0.00	0.00	0.00	825,000.00	100.00%
160 - Effluent Totals:		1,354,817.00	10,426.60	21,444.83	31,871.43	1,322,945.57	97.65%
Department: 610 - CentralServices							
080-610-40065	EmployeeBenefi-CentralServies	1,275.00	0.00	0.00	0.00	1,275.00	100.00%
080-610-42015	Gen.Supplies-CentralServies	600.00	0.00	0.00	0.00	600.00	100.00%
080-610-42031	EquipmtMaint.-CentralServies	300.00	0.00	0.00	0.00	300.00	100.00%
080-610-42435	NetworkSvcsCo-CentralServies	9,000.00	0.00	0.00	0.00	9,000.00	100.00%
080-610-42436	InternetServic-CentralServies	3,000.00	0.00	0.00	0.00	3,000.00	100.00%
080-610-42710	Communications-CentralServies	1,500.00	0.00	0.00	0.00	1,500.00	100.00%
080-610-42755	RiskManagement-CentralServies	160,500.00	0.00	101,161.00	101,161.00	59,339.00	36.97%
080-610-42756	Membership/Dues-CentralServies	750.00	0.00	0.00	0.00	750.00	100.00%
080-610-69800	ComputerHardwr-CentralServies	300.00	0.00	0.00	0.00	300.00	100.00%
610 - CentralServices Totals:		177,225.00	0.00	101,161.00	101,161.00	76,064.00	42.92%
Department: 613 - CityAttorney							
080-613-43350	Legal-CityAttorney	27,500.00	0.00	0.00	0.00	27,500.00	100.00%
613 - CityAttorney Totals:		27,500.00	0.00	0.00	0.00	27,500.00	100.00%
080 - EffluentDisp. Totals:		1,732,615.00	14,506.95	131,827.45	146,334.40	1,586,280.60	91.55%
Report Total:		-222,872.00	-22,090.38	443,675.43	421,585.05	-644,457.05	

Fund Summary

Fund	Fiscal Budget	Beginning Balance	Total Activity	Ending Balance	Budget Remaining	% Remaining
001 - GeneralFund	-394,703.00	228,248.54	206,525.88	434,774.42	-829,477.42	
003 - Streets/Sidewal	116,945.00	-4,010.09	168.47	-3,841.62	120,786.62	
004 - CrestviewLgt/D	20,892.00	56.74	463.48	520.22	20,371.78	
010 - SewerM&O	-1,895,591.00	-135,892.52	109,193.02	-26,699.50	-1,868,891.50	
011 - SewerWWTP	-7,000.00	-12,500.00	-6,250.00	-18,750.00	11,750.00	167.86%
012 - SewerLineRep.	-7,000.00	0.00	0.00	0.00	-7,000.00	-100.00%
014 - SewerCapRes	-11,000.00	0.00	0.00	0.00	-11,000.00	-100.00%
042 - AB1600	63,671.00	0.00	0.00	0.00	63,671.00	
059 - BuildingFacili	0.00	0.00	1,747.13	1,747.13	-1,747.13	0.00%
073 - ParkImpactFee	158,299.00	-112,500.00	0.00	-112,500.00	270,799.00	
080 - EffluentDisp.	1,732,615.00	14,506.95	131,827.45	146,334.40	1,586,280.60	91.55%
Report Total:	-222,872.00	-22,090.38	443,675.43	421,585.05	-644,457.05	



Expense Approval Report

By Vendor Name

Payment Dates 8/1/2025 - 8/31/2025

Vendor Name	Payment Date	Description (Item)	Amount
Vendor: ABC03 - ABC AUTO GLASS, INC. DBA			
ABC AUTO GLASS, INC. DBA	08/15/2025	Windshield	442.09
Vendor ABC03 - ABC AUTO GLASS, INC. DBA Total:			442.09
Vendor: ABS01 - ABSO TECHNOLOGIES			
ABSO TECHNOLOGIES	08/15/2025	IT	909.00
ABSO TECHNOLOGIES	08/15/2025	IT	909.00
Vendor ABS01 - ABSO TECHNOLOGIES Total:			1,818.00
Vendor: ACC03 - ACC BUSINESS			
ACC BUSINESS	08/15/2025	Internet	375.98
ACC BUSINESS	08/15/2025	Internet	375.98
Vendor ACC03 - ACC BUSINESS Total:			751.96
Vendor: AMA08 - Amador Co Sheriff's Dept			
Amador Co Sheriff's Dept	08/15/2025	Mobile Data Service	429.85
Amador Co Sheriff's Dept	08/15/2025	Dispatch Fourth Quarter 24/...	37,201.75
Vendor AMA08 - Amador Co Sheriff's Dept Total:			37,631.60
Vendor: AME15 - AMERICAN FIDELITY ASSURAN			
AMERICAN FIDELITY ASSURAN	08/15/2025	GF City Clerk	43.20
AMERICAN FIDELITY ASSURAN	08/15/2025	Police	651.61
AMERICAN FIDELITY ASSURAN	08/15/2025	Parks & Rec	149.20
AMERICAN FIDELITY ASSURAN	08/15/2025	Streets	71.61
AMERICAN FIDELITY ASSURAN	08/15/2025	WTPP City Clerk	18.00
AMERICAN FIDELITY ASSURAN	08/15/2025	Treatment Plant	131.29
AMERICAN FIDELITY ASSURAN	08/15/2025	Collections	119.36
AMERICAN FIDELITY ASSURAN	08/15/2025	Effluent/Clerk	10.80
AMERICAN FIDELITY ASSURAN	08/15/2025	Effluent	125.32
Vendor AME15 - AMERICAN FIDELITY ASSURAN Total:			1,320.39
Vendor: AME14 - AMERICAN FIDELITY HEALTH			
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	268.74
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	397.91
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	36.81
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	199.50
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	8.00
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	287.48
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	89.58
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	159.16
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	310.06

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Vendor Name	Payment Date	Description (Item)	Amount
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	88.40
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	81.66
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	159.16
AMERICAN FIDELITY HEALTH	08/15/2025	HSA Premiums August 2025	210.00
Vendor AME14 - AMERICAN FIDELITY HEALTH Total:			2,296.46
Vendor: QUA02 - AQUALITY WATER MANAGEMENT			
AQUALITY WATER MANAGE...	08/15/2025	Water Management	5,338.50
Vendor QUA02 - AQUALITY WATER MANAGEMENT Total:			5,338.50
Vendor: AT&T2 - AT&T CALNET 3			
AT&T CALNET 3	08/15/2025	Phone Service	31.65
AT&T CALNET 3	08/15/2025	Phone Services	64.03
Vendor AT&T2 - AT&T CALNET 3 Total:			95.68
Vendor: BLU04 - BlueTriton Brands Inc			
BlueTriton Brands Inc	08/15/2025	Drinking Water	31.54
BlueTriton Brands Inc	08/15/2025	Drinking Water	61.84
BlueTriton Brands Inc	08/15/2025	Drinking Water	5.57
BlueTriton Brands Inc	08/15/2025	Drinking Water	19.79
BlueTriton Brands Inc	08/15/2025	Drinking Water	4.93
Vendor BLU04 - BlueTriton Brands Inc Total:			123.67
Vendor: JAC01 - Brusatori Enterprises Inc			
Brusatori Enterprises Inc	08/15/2025	Auto Maintenance/Service	141.60
Brusatori Enterprises Inc	08/15/2025	Evidence Tow	425.00
Brusatori Enterprises Inc	08/15/2025	Auto Repairs/Services	97.69
Vendor JAC01 - Brusatori Enterprises Inc Total:			664.29
Vendor: CAL34 - CALAVERAS ENTERPRISE & SI			
CALAVERAS ENTERPRISE & SI	08/15/2025	Classified Ad	176.64
Vendor CAL34 - CALAVERAS ENTERPRISE & SI Total:			176.64
Vendor: CAL39 - CALIFORNIA CONSULTING, IN			
CALIFORNIA CONSULTING, IN	08/15/2025	Grant Writing Services	600.00
Vendor CAL39 - CALIFORNIA CONSULTING, IN Total:			600.00
Vendor: CEN02 - Central S.J.Valley RiskMg			
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	941.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	1,098.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,572.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	9,408.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,760.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	134,882.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	157.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	376.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	1,294.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	392.00

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Vendor Name	Payment Date	Description (Item)	Amount
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	1,098.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,572.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,409.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,189.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	101,162.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	235.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	784.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	753.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	2,325.00
Central S.J.Valley RiskMg	08/15/2025	Workers Comp	101,161.00
Vendor CEN02 - Central S.J.Valley RiskMg Total:			368,568.00
Vendor: CAR16 - CHRISTIAN CARDONA			
CHRISTIAN CARDONA	08/15/2025	Monthly Social Media	500.00
Vendor CAR16 - CHRISTIAN CARDONA Total:			500.00
Vendor: COT01 - COLE HUBER LLP			
COLE HUBER LLP	08/15/2025	Balance Due	527.84
COLE HUBER LLP	08/15/2025	Balance Due	527.83
COLE HUBER LLP	08/15/2025	Balance Due	1,120.00
COLE HUBER LLP	08/15/2025	Balance Due	1,120.00
Vendor COT01 - COLE HUBER LLP Total:			3,295.67
Vendor: COM16 - COMCAST BUSINESS			
COMCAST BUSINESS	08/15/2025	Business Internet	186.35
Vendor COM16 - COMCAST BUSINESS Total:			186.35
Vendor: COR01 - Corbin Willits Systems, I			
Corbin Willits Systems, I	08/15/2025	Financial Software	446.25
Corbin Willits Systems, I	08/15/2025	Financial Software	78.75
Corbin Willits Systems, I	08/15/2025	Financial Software	280.00
Corbin Willits Systems, I	08/15/2025	Financial Software	70.00
Vendor COR01 - Corbin Willits Systems, I Total:			875.00
Vendor: DEP11 - Dept of Transportation			
Dept of Transportation	08/15/2025	Signals/Lighting	1,388.34
Vendor DEP11 - Dept of Transportation Total:			1,388.34
Vendor: FER02 - FERGUSON ENTER,INC.#686			
FERGUSON ENTER,INC.#686	08/15/2025	Plumbing Supplies	35.46
Vendor FER02 - FERGUSON ENTER,INC.#686 Total:			35.46
Vendor: GEO03 - GEOCON CONSULTANTS, INC			
GEOCON CONSULTANTS, INC	08/15/2025	Geotechnical Investigation	625.00
Vendor GEO03 - GEOCON CONSULTANTS, INC Total:			625.00
Vendor: HAU02 - HAUGE BRUECK ASSOCIATES,			
HAUGE BRUECK ASSOCIATES,	08/15/2025	Planner	3,440.00
HAUGE BRUECK ASSOCIATES,	08/15/2025	Sutter Creek Ranch (Gold Ru...	50.00

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Vendor Name	Payment Date	Description (Item)	Amount
HAUGE BRUECK ASSOCIATES,	08/15/2025	Panner Creek Trafalgar Inc P...	216.00
HAUGE BRUECK ASSOCIATES,	08/15/2025	130 Lincoln- Price P167	80.00
HAUGE BRUECK ASSOCIATES,	08/15/2025	90 Badger St Galle P171	16.00
HAUGE BRUECK ASSOCIATES,	08/15/2025	110 Gold Dust Trail P176	160.00
Vendor HAU02 - HAUGE BRUECK ASSOCIATES, Total:			3,962.00
Vendor: HAV01 - HAVENS, MATTHEW A.			
HAVENS, MATTHEW A.	08/15/2025	Harness Headlight Bulb	22.52
Vendor HAV01 - HAVENS, MATTHEW A. Total:			22.52
Vendor: BOI02 - Heidi A Boitano			
Heidi A Boitano	08/15/2025	Parking Lot Lease	2,915.46
Vendor BOI02 - Heidi A Boitano Total:			2,915.46
Vendor: HUN04 - HUNT & SONS, INC			
HUNT & SONS, INC	08/15/2025	Fuel	1,006.48
HUNT & SONS, INC	08/15/2025	Fuel	363.42
HUNT & SONS, INC	08/15/2025	Fuel	303.37
HUNT & SONS, INC	08/15/2025	Fuel	123.58
HUNT & SONS, INC	08/15/2025	Fuel	1,179.47
HUNT & SONS, INC	08/15/2025	Fuel	361.66
HUNT & SONS, INC	08/15/2025	Fuel	181.44
HUNT & SONS, INC	08/15/2025	Fuel	214.77
Vendor HUN04 - HUNT & SONS, INC Total:			3,734.19
Vendor: ITA01 - ITALIAN BENEVOLENT SOCIET			
ITALIAN BENEVOLENT SOCIET	08/15/2025	Refund	3,531.82
Vendor ITA01 - ITALIAN BENEVOLENT SOCIET Total:			3,531.82
Vendor: OCO01 - James O'Connell			
James O'Connell	08/15/2025	Gas Reimbursement	46.08
Vendor OCO01 - James O'Connell Total:			46.08
Vendor: KEE01 - KEENAN & ASSOCIATES/PACE			
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	2,633.70
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	627.72
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	772.30
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	2,464.21
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	-3,150.00
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	502.18
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	552.55
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	20.32
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	241.71
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	290.05
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	103.47
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	25.11
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	70.21
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	203.19

Expense Approval Report

Vendor Name	Payment Date	Description (Item)	Amount
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	241.71
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	433.90
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	167.39
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	351.05
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	1,122.85
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	1,221.53
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	322.27
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	632.69
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	41.85
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	210.63
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	203.19
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	161.14
KEENAN & ASSOCIATES/PACE	08/15/2025	August 2025 Medical Premi...	1,740.49
Vendor KEE01 - KEENAN & ASSOCIATES/PACE Total:			12,207.41
Vendor: LED01 - Ledger Dispatch			
Ledger Dispatch	08/15/2025	Subscription	80.00
Vendor LED01 - Ledger Dispatch Total:			80.00
Vendor: LES02 - LESLIE'S POOL SUPPLIES, I			
LESLIE'S POOL SUPPLIES, I	08/15/2025	Chemicals	8,664.78
Vendor LES02 - LESLIE'S POOL SUPPLIES, I Total:			8,664.78
Vendor: LOW01 - LOWE'S BUSINESS ACCOUNT			
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	68.07
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	440.06
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	2,458.41
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	20.45
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	1,029.27
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	216.83
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	92.56
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	68.08
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	1,141.23
LOWE'S BUSINESS ACCOUNT	08/15/2025	Maintenance Supplies	151.88
Vendor LOW01 - LOWE'S BUSINESS ACCOUNT Total:			5,686.84
Vendor: MCM02 - MCMASTER-CARR SUPPLY CO			
MCMASTER-CARR SUPPLY CO	08/15/2025	Maintenance Supplies	450.04
MCMASTER-CARR SUPPLY CO	08/15/2025	Maintenance Supplies	1,871.32
Vendor MCM02 - MCMASTER-CARR SUPPLY CO Total:			2,321.36
Vendor: MID05 - MidAmerica Admin & Retire			
MidAmerica Admin & Retire	08/15/2025	Admin Fee	225.00
Vendor MID05 - MidAmerica Admin & Retire Total:			225.00
Vendor: MUT01 - MUTUAL OF OMAHA			
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	63.25
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	220.40

Expense Approval Report

Payment Date

Section 13, Item J.

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Vendor Name	Payment Date	Description (Item)	Amount
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	33.95
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	38.53
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	5.19
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	35.93
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	28.75
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	73.50
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	36.66
MUTUAL OF OMAHA	08/15/2025	LTD/STD Premiums	85.96

Vendor MUT01 - MUTUAL OF OMAHA Total: 622.12**Vendor: NAP01 - NAPA AUTO PARTS**

NAPA AUTO PARTS	08/15/2025	Maintenance Supplies	179.29

Vendor NAP01 - NAPA AUTO PARTS Total: 179.29**Vendor: PAC02 - PG&E (Electric,Gas)**

PG&E (Electric,Gas)	08/15/2025	4295 City Clerk	6.82
PG&E (Electric,Gas)	08/15/2025	4295 Admin Building	4.01
PG&E (Electric,Gas)	08/15/2025	4459 Finance Dept	325.99
PG&E (Electric,Gas)	08/15/2025	4459 Police	639.20
PG&E (Electric,Gas)	08/15/2025	8213 Community Building	1,519.94
PG&E (Electric,Gas)	08/15/2025	4459 Auditorium & City Hall	2,982.92
PG&E (Electric,Gas)	08/15/2025	7813 Public Restrooms	97.11
PG&E (Electric,Gas)	08/15/2025	8299 Little League Park	48.98
PG&E (Electric,Gas)	08/15/2025	5624 Community Building Gas	13.58
PG&E (Electric,Gas)	08/15/2025	0220 Monteverde Store	114.75
PG&E (Electric,Gas)	08/15/2025	4295 Admin Building	0.80
PG&E (Electric,Gas)	08/15/2025	4459 Finance DEpt	57.53
PG&E (Electric,Gas)	08/15/2025	1466 Flag Pole	34.98
PG&E (Electric,Gas)	08/15/2025	4585 Hwy 104/Bowers Dr	75.87
PG&E (Electric,Gas)	08/15/2025	4295 City Clerk	0.80
PG&E (Electric,Gas)	08/15/2025	4295 Admin Building	1.61
PG&E (Electric,Gas)	08/15/2025	4459 Finance Dept	204.54
PG&E (Electric,Gas)	08/15/2025	1605 Lift Station	81.86
PG&E (Electric,Gas)	08/15/2025	1290 WWTP Outside Lights	10.47
PG&E (Electric,Gas)	08/15/2025	7712 WWTP Office	415.93
PG&E (Electric,Gas)	08/15/2025	6648 WWTP	3,595.45
PG&E (Electric,Gas)	08/15/2025	9590 Historical Grammer Sc...	1,646.64
PG&E (Electric,Gas)	08/15/2025	4295 City Clerk	0.40
PG&E (Electric,Gas)	08/15/2025	4295 Admin Building	1.61
PG&E (Electric,Gas)	08/15/2025	4459 Finance Dept	51.14

Vendor PAC02 - PG&E (Electric,Gas) Total: 11,932.93**Vendor: PAC01 - PG&E (Lighting District)**

PG&E (Lighting District)	08/15/2025	6305 Valley View/Bowers	60.74
PG&E (Lighting District)	08/15/2025	4283 Plaza Lighting	148.66
PG&E (Lighting District)	08/15/2025	9269 Main St	2,323.51

Expense Approval Report

Vendor Name	Payment Date	Description (Item)	Amount
PG&E (Lighting District)	08/15/2025	9669 Sutter Crest & Manor	404.26
PG&E (Lighting District)	08/15/2025	8388 Church St	151.81
PG&E (Lighting District)	08/15/2025	5017 Sierra West Business	173.65
PG&E (Lighting District)	08/15/2025	2944 Crestview Estates	125.88
Vendor PAC01 - PG&E (Lighting District) Total:			3,388.51
Vendor: PRI08 - PRINCIPAL LIFE INS. COMPA			
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	41.54
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	79.93
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	136.58
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	270.05
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	90.05
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	86.50
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	0.52
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	34.05
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	28.37
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	10.74
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	8.10
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	28.37
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	144.45
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	10.39
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	53.29
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	78.94
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	37.83
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	155.10
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	98.95
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	174.08
PRINCIPAL LIFE INS. COMPA	08/15/2025	Dental & Vision Premiums	37.83
Vendor PRI08 - PRINCIPAL LIFE INS. COMPA Total:			1,605.66
Vendor: SEI01 - SEIU Local 1021			
SEIU Local 1021	08/15/2025	July 2025 Union Dues	333.09
Vendor SEI01 - SEIU Local 1021 Total:			333.09
Vendor: SIG01 - SIGNAL SERVICE			
SIGNAL SERVICE	08/15/2025	Alarm Monitoring	601.17
Vendor SIG01 - SIGNAL SERVICE Total:			601.17
Vendor: SOR02 - Soracco, Inc			
Soracco, Inc	08/15/2025	Misc Sewer Replacement Pro...	161,670.05
Vendor SOR02 - Soracco, Inc Total:			161,670.05
Vendor: THA02 - THATCHER COMPANY - LB1106			
THATCHER COMPANY - LB11...	08/15/2025	2025250104084	3,869.28
THATCHER COMPANY - LB11...	08/15/2025	2025250103868	3,863.96
Vendor THA02 - THATCHER COMPANY - LB1106 Total:			7,733.24

Expense Approval Report

Vendor Name	Payment Date	Description (Item)	Amount
Vendor: TIR01 - TireHub, LLC			
TireHub, LLC	08/15/2025	Tires	891.82
Vendor TIR01 - TireHub, LLC Total:			891.82
Vendor: TRA04 - TRANSUNION RISK & ALTERNA			
TRANSUNION RISK & ALTER...	08/15/2025	Person Search	75.00
Vendor TRA04 - TRANSUNION RISK & ALTERNA Total:			75.00
Vendor: VIO01 - VIOLICH/SORACCO			
VIOLICH/SORACCO	08/15/2025	Monthly Parking Lot Lease	885.00
Vendor VIO01 - VIOLICH/SORACCO Total:			885.00
Vendor: WEL06 - WELLS FARGO FINANCIAL LEA			
WELLS FARGO FINANCIAL LEA	08/15/2025	Copier Lease	100.49
WELLS FARGO FINANCIAL LEA	08/15/2025	Copier Lease	19.14
WELLS FARGO FINANCIAL LEA	08/15/2025	Copier Lease	26.32
WELLS FARGO FINANCIAL LEA	08/15/2025	Copier Lease	74.17
WELLS FARGO FINANCIAL LEA	08/15/2025	Copier Lease	19.13
Vendor WEL06 - WELLS FARGO FINANCIAL LEA Total:			239.25
Grand Total:			660,287.69

Fund Summary

Fund	Payment Amount
001 - GeneralFund	238,009.08
003 - Streets/Sidewal	8,844.83
004 - CrestviewLgt/D	125.88
010 - SewerM&O	302,843.23
059 - BuildingFacili	1,747.13
080 - EffluentDisp.	108,717.54
Grand Total:	660,287.69

Account Summary

Account Number	Account Name	Payment Amount
001-000-20480	P/R-MedicalHealthPay.	2,633.70
001-000-20490	P/R-S.C.EmployeesAsso	333.09
001-000-72220	SitePlans	3,531.82
001-102-40065	Health/LifeIns-CityClerk	981.20
001-102-40070	WorkersComp.-CityClerk	941.00
001-102-42810	PG&EUutilities-CityClerk	6.82
001-104-40065	Health/LifeIns-CITYMAN...	1,313.39
001-104-40070	WorkersComp.-CITYMA...	1,098.00
001-104-42810	PG&EUutilities-CityMana...	4.01
001-105-40065	Health/LifeIns-Finance	2,600.79
001-105-40070	WorkersComp.-Finance	2,572.00
001-105-42015	Gen.Supplies-Finance	200.10
001-105-42435	NetworkSvcCo-Finance	446.25
001-105-42810	PG&EUutilities-Finance	325.99
001-106-40065	Health/LifeIns-PoliceDept	-2,007.94
001-106-40070	WorkersComp.-PoliceDe...	9,408.00
001-106-42015	Gen.Supplies-PoliceDept	136.84
001-106-42020	FUEL-PoliceDept	2,185.95
001-106-42045	SpecialDepart-PoliceDept	471.08
001-106-42710	Communications-Police...	493.88
001-106-42810	PG&EUutilities-PoliceDept	639.20
001-106-42850	VehicleMaintna-PoliceD...	1,131.11
001-106-43700	Dispatching-PoliceDept	37,201.75
001-109-43450	Planner-Planning	3,440.00
001-111-42300	E&PReimbEngr.-Engineer..	522.00
001-113-40000	Salaries-Parks&Recreat	538.99
001-113-40060	PERS-Parks&Recreat	90.05
001-113-40065	Health/LifeIns-Parks&Re...	1,675.25
001-113-40070	WorkersComp.-Parks&R...	2,760.00
001-113-42020	FUEL-Parks&Recreat	725.08

Account Summary

Account Number	Account Name	Payment Amount
001-113-42030	Repair/Maint-Parks&Rec...	3,948.19
001-113-42205	Lease-Prkglot-Parks&Rec...	3,800.46
001-113-42810	PG&EUilities-Parks&Rec...	4,662.53
001-113-42850	VehicleMaintna-Parks&...	860.73
001-113-42860	O&MBlg/Structu-Parks&...	601.17
001-114-40065	HealthBenefits-Swimmin...	127.40
001-114-42025	Supplies-Chem-Swimmi...	8,664.78
001-115-42055	CommunityProm-Promot..	500.00
001-140-40065	EmployeeBenefi-Cemete...	33.21
001-172-42810	PG&EUilities-MonteVer...	114.75
001-610-40065	Health/LifeIns-CentralSe...	225.00
001-610-42436	InternetServic-CentralSe...	1,284.98
001-610-42710	Communications-Centra...	176.64
001-610-42755	RiskManagement-Centra...	134,882.00
001-610-42756	Membership/Dues-Cent...	80.00
001-613-43350	Speciallegal-LEGALSERVI...	1,647.84
003-104-40065	EmployeeBenefi-CityMa...	70.21
003-104-40070	WorkersComp.-CITYMA...	157.00
003-104-42810	PG&EUilities-CityMana...	0.80
003-105-40065	EmployeeBenefi-Finance	203.19
003-105-40070	WorkersComp.-Finance	376.00
003-105-42015	Gen.Supplies-Finance	24.71
003-105-42435	NetworkSvcsCo-Finance	78.75
003-105-42810	PG&EUilities-Finance	57.53
003-112-40000	Salaries-Streets/Roads	241.71
003-112-40065	Health/LifeIns-Streets/R...	1,001.74
003-112-40070	WorkersComp.-Streets/...	1,294.00
003-112-42020	FUEL-Streets/Roads	484.81
003-112-42030	Repair/Maint-Streets/Ro...	92.56
003-112-42800	PublicUtility-Streets/Roa...	60.74
003-112-42810	PG&EUilities-Streets/Ro...	110.85
003-112-42815	StreetLights-Streets/Roa...	4,590.23
004-145-42815	StreetLights-CrestViewLgt	125.88
010-102-40065	Health/LifeIns-CityClerk	285.36
010-102-40070	WorkersComp.-CityClerk	392.00
010-102-42810	PG&EUilities-CityClerk	0.80
010-104-40065	Health/LifeIns-CITYMAN...	592.25
010-104-40070	WorkersComp.-CityMan...	1,098.00
010-104-42810	PG&EUilities-CityMana...	1.61
010-104-43600	ProfServices-CityManager	600.00
010-105-40065	Health/LifeIns-Finance	1,201.79
010-105-40070	WorkersComp.-Finance	2,572.00

Account Summary

Account Number	Account Name	Payment Amount
010-105-42015	Gen.Supplies-Finance	87.87
010-105-42435	NetworkSvcsCo-Finance	280.00
010-105-42810	PG&EUutilities-Finance	204.54
010-151-40000	Salaries-SewerTreatment	37.83
010-151-40065	Health/LifeIns-SewerTre...	2,213.75
010-151-40070	WorkersComp.-SewerTr...	2,409.00
010-151-42020	FUEL-SewerTreatment	338.35
010-151-42025	Supplies-Chem-SewerTr...	7,733.24
010-151-42436	InternetServic-SewerTre...	186.35
010-151-42710	Communications-SewerT...	31.65
010-151-42810	PG&EUutilities-SewerTrea...	4,103.71
010-151-42830	O&M-SewerPlt-SewerTr...	3,498.05
010-151-43650	Contracts-Other-SewerT...	5,338.50
010-151-69701	Machinery&-SewerTrea...	625.00
010-152-40000	Salaries-SewerCollectio	88.40
010-152-40065	Health/LifeIns-SewerColl...	969.32
010-152-40070	WorkersComp.-SewerCol...	2,189.00
010-152-69600	Improvements-SewerCol...	161,670.05
010-610-42435	NetworkSvcsCo-CentralS...	909.00
010-610-42436	InternetServic-CentralSe...	375.98
010-610-42755	RiskManagement-Centra...	101,162.00
010-613-43350	Speciallegal-LEGALSERVI...	1,647.83
059-105-42015	Gen.Supplies-Finance	100.49
059-113-42810	PG&EUutilities-Parks&Rec...	1,646.64
080-102-40065	EmployeeBenefi-CityClerk	52.65
080-102-40070	WorkersComp.-CityClerk	235.00
080-102-42810	PG&EUutilities-CityClerk	0.40
080-104-40065	EmployeeBenefi-CityMa...	369.79
080-104-40070	WorkersComp.-CityMan...	784.00
080-104-42810	PG&EUutilities-CityMana...	1.61
080-105-40065	EmployeeBenefi-Finance	203.19
080-105-40070	WorkersComp.-Finance	753.00
080-105-42015	Gen.Supplies-Finance	24.06
080-105-42435	NetworkSvcsCo-Finance	70.00
080-105-42810	PG&EUutilities-Finance	51.14
080-160-40060	PERS-SewerARSA	161.14
080-160-40065	Health/LifeIns-SewerAR...	2,373.68
080-160-40070	WorkersComp.-SewerAR...	2,325.00
080-160-42030	Repair/Maint-SewerARSA	151.88
080-610-42755	RiskManagement-Centra...	101,161.00
Grand Total:		660,287.69

Project Account Summary

Project Account Key	Payment Amount
None	660,287.69
Grand Total:	660,287.69



Pooled Cash Report

Section 13, Item K.

For the Period Ending 8/31/2025

ACCOUNT #	ACCOUNT NAME	BEGINNING BALANCE	CURRENT ACTIVITY	CURRENT BALANCE
CLAIM ON CASH				
001-000-10001	General Fund - Claim On Cash	577758.9	-219782.82	357976.08
003-000-10001	Streets - Claim On Cash	53185.67	-1556.81	51628.86
004-000-10001	Crestview LD - Claim On Cash	77.56	-463.48	-385.92
007-000-10001	Cemetery - Claim On Cash	-191.9	0	-191.9
009-000-10001	HMGP Hazard Mitigation - Claim On Cash	1266.49	0	1266.49
010-000-10001	Sewer Operating - Claim On Cash	3103285.9	-68644.51	3034641.39
011-000-10001	Sewer WWTP Capital Reserve - Claim On Cash	148047.96	6250	154297.96
012-000-10001	Sewer Collections Capital Reserve - Claim On Cash	631375.17	0	631375.17
014-000-10001	Sewer Capital Reserve - Claim On Cash	1022647.25	0	1022647.25
015-000-10001	Sewer Debt Service - Claim On Cash	0.43	0	0.43
017-000-10001	Monteverde Store - Claim On Cash	167.29	0	167.29
019-000-10001	Knights Foundry - Claim On Cash	2982.12	0	2982.12
023-000-10001	General Fixed Assets - Claim On Cash	-563168	0	-563168
024-000-10001	Long Term Debt - Claim On Cash	-22410	0	-22410
026-000-10001	COSC Com Fac - Claim On Cash	991.22	0	991.22
028-000-10001	Public Safety Wellness Grant - Claim On Cash	12431.15	0	12431.15
029-000-10001	Swimming Pool - Claim On Cash	-36346.79	0	-36346.79
030-000-10001	TM - Crest/Gopher - Claim On Cash	-77709.52	0	-77709.52
031-000-10001	TM - Sutter Hill - Claim on Cash	84615.18	0	84615.18
032-000-10001	TM - Crestview - Claim On Cash	-21917.55	0	-21917.55
033-000-10001	TM - Sutter Ione - Claim On Cash	-38262.17	0	-38262.17
034-000-10001	TM - Hwy 49/Bypass - Claim On Cash	63131.43	0	63131.43
035-000-10001	General Traffic Mitigation - Claim On Cash	251823.35	0	251823.35
036-000-10001	Regional Traffic Mitigation - Claim On Cash	1835.93	0	1835.93
037-000-10001	Parking in Lieu - Claim On Cash	67930.91	0	67930.91
038-000-10001	Fire Service - Claim On Cash	41719.9	0	41719.9
039-000-10001	General Fund Operating Reserve - Claim On Cash	387226.51	0	387226.51
042-000-10001	AB1600 Impact Fees - Claim On Cash	156172.27	0	156172.27
047-000-10001	Grants - Claim On Cash	56471.58	0	56471.58
048-000-10001	COVID-19 - Claim On Cash	1248.41	0	1248.41
050-000-10001	COPS Fast Prog - Claim On Cash	2753.6	0	2753.6
055-000-10001	SC Bridge Replacement - Claim On Cash	-253806	0	-253806
057-000-10001	CA HOME Grant - Claim On Cash	191965.32	0	191965.32
059-000-10001	Building Facilities - Claim On Cash	4875.06	-1747.13	3127.93
060-000-10001	Bypass Mitigation - Claim On Cash	91.72	0	91.72
073-000-10001	Park Impact Fees - Claim On Cash	224650.15	0	224650.15
080-000-10001	Effluent Disposal/ARSA - Claim On Cash	-902667.5	-131827.45	-1034494.95
081-000-10001	Visitor Center - Claim On Cash	-0.13	0	-0.13
086-000-10001	General Fund Capital Reserve - Claim On Cash	75006.17	0	75006.17
087-000-10001	Refuse - Claim On Cash	3490.33	0	3490.33
088-000-10001	City Council - Claim On Cash	21400.09	0	21400.09
089-000-10001	Capital Improvement Plan - Claim On Cash	85539.62	0	85539.62
091-000-10001	Road Capital Improvement Plan - Claim On Cash	-483270.11	0	-483270.11
092-000-10001	Pension & Insurance Reserve - Claim On Cash	141931.47	0	141931.47
093-000-10001	Vehicle Capital Reserve - Claim On Cash	18290.17	0	18290.17
094-000-10001	Vacation Cashout Reserve - Claim On Cash	51636.64	0	51636.64
095-000-10001	General Operating Reserve - Claim On Cash	250880.54	0	250880.54
096-000-10001	General Capital Reserve - Claim On Cash	51695.52	0	51695.52
TOTAL		5390849.31	-417772.2	4973077.11