



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting - Tuesday, October 23, 2018 Veterans Memorial Hall - 6:00 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

CLOSED SESSION REPORT

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATIONS

- Chamber of Commerce Quarterly Presentation
- Morro Bay in Bloom Presentation of Outstanding Achievement Award for Landscaped Areas

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and city of residence for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE SEPTEMBER 25, 2018 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE OCTOBER 15, 2018 CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 ADOPT RESOLUTION NO. 85-18 RESCINDING RESOLUTION NO. 33-15 IN ITS ENTIRETY AND ADOPTING THE GENERAL FUND EMERGENCY RESERVE POLICY, INTERNAL SERVICE FUNDS RESERVE POLICY, HARBOR ACCUMULATION FUND RESERVE POLICY AND MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT RESERVE POLICY; (FINANCE)

RECOMMENDATION: City Council adopt Resolution No. 85-18.

A-4 ADOPTION OF ORDINANCE NO. 617 AMENDING SECTION 3.08.130 OF THE MORRO BAY MUNICIPAL CODE RELATING TO AUTHORITY TO SELL SURPLUS SUPPLIES AND EQUIPMENT; (FINANCE)

RECOMMENDATION: City Council waive reading of Ordinance No. 617 in its entirety and adopt Ordinance No. 617, by number and title only, amending Section 3.08.130 of the Morro Municipal Code (MBMC) relating to authority to sell surplus supplies and equipment.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 APPROVAL OF CONTRACT WITH FILANC/BLACK & VEATCH FOR DESIGN AND CONSTRUCTION OF THE NEW WATER RECLAMATION FACILITY; (PUBLIC WORKS)

RECOMMENDATION: City Council award a contract to the Filanc/Black & Veatch team for design and construction of the new water reclamation facility (WRF) and authorize the Mayor to execute an agreement in the amount of \$67,234,512.

C-2 CONSIDERATION AND APPROVAL OF TBID ACCUMULATION FUND SUPPORT FOR HOSTING AMGEN TOUR OF CALIFORNIA STAGE FINISH IN MORRO BAY; (CITY MANAGER/TOURISM MANAGER)

RECOMMENDATION: City Council approve hosting the of the 2019 Amgen "Tour of California" Highway 1 stage finish in Morro Bay and approve use of between \$55,000 to \$65,000 in TBID Accumulation Funds to support the associated hosting costs.

C-3 ADOPTION OF RESOLUTION NO. 86-18 APPROVING AMENDMENT #4 TO THE NEW MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND BOATYARD LLC FOR LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO, AND COMMONLY KNOWN AS "THE BOATYARD," AND AMENDMENT #2 TO THE NEW MASTER LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND FAIR SKY PROPERTIES LLC FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO, AND COMMONLY KNOWN AS "OTTER ROCK CAFÉ"; (HARBOR)

RECOMMENDATION: City Council adopt Resolution No. 86-18.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, November 13, 2018 at 6:00 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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PRESENT:	Jamie Irons Robert Davis John Headding Matt Makowetski Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
ABSENT:	Scott Collins	City Manager
STAFF:	Jennifer Callaway Christopher Neumeyer Dana Swanson Eric Endersby	Finance Director/Acting City Manager Assistant City Attorney City Clerk Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Irons called the meeting to order at 4:30 p.m. with all members present.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

<https://youtu.be/VcUBtQryvRo?t=35>

Mayor Irons opened public comment for items on the agenda.

Joan Solu, Morro Bay, suggested the proposed Tourism Business Improvement District (TBID) reserve of 20-25% was too conservative and recommended it be capped at no more than 10%. She provided copies of Morro Bay Municipal Code Section 3.60.030 which directs authorized TBID expenditures and stated infrastructure improvements would not be an appropriate use of those funds.

The public comment period was closed.

SPECIAL MEETING AGENDA ITEMS:

I. ADOPTION OF RESOLUTION NO. 78-18 RESCINDING RESOLUTION NO. 33-15 IN ITS ENTIRETY AND ADOPTING THE GENERAL FUND EMERGENCY RESERVE AND INTERNAL SERVICE FUNDS RESERVE AND PROVIDE FEEDBACK REGARDING THE HARBOR ACCUMULATION FUND RESERVE POLICY AND MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT RESERVE POLICY

<https://youtu.be/VcUBtQryvRo?t=317>

Finance Director Callaway presented the staff report and noted a correction was needed on page 17 of the agenda packet regarding Enterprise Equipment Replacement funds. The minimum level and target level funding should refer to the *respective enterprise* fund fleet, not *general* fund fleet.

General Fund Emergency Reserve Policy

Council Member McPherson recommended language on the bottom of page 11 of the agenda packet be edited to clarify staff will bring forward recommendations for Council direction regarding use of excess funds. The Council agreed with the proposed change.

The Council expressed some concern about the proposed minimum and target levels for the Compensated Absences Reserve and asked staff to reconsider the recommendation for further discussion.

It was agreed staff would modify the General Fund Emergency Reserve and Internal Service Funds Reserve policies, as directed, for adoption at a future meeting.

Staff presented the draft Harbor Enterprise and TBID Reserve Policies and noted those would be presented to each of the advisory boards for comment followed by Council approval at the second meeting in October.

**II. RECEIVE REPORT AND PROVIDE FEEDBACK ON THE FISCAL EMERGENCY PLAN
ECONOMIC TRIGGERS**

<https://youtu.be/VcUBtQryvRo?t=4054>

Ms. Callaway presented the report and responded to Council inquiries. The Council appreciated the information laid out and requested staff provide examples for each of the economic triggers.

No formal action was taken by the City Council.

ADJOURN

The meeting adjourned at 5:47 p.m.

Recorded by:

Dana Swanson,
City Clerk

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AGENDA NO: A-3

MEETING DATE: October 23, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: October 12, 2018

FROM: Jennifer Callaway, Finance Director

SUBJECT: Adopt Resolution No. 85-18 Rescinding Resolution No. 33-15 in its entirety and adopting the General Fund Emergency Reserve Policy, Internal Service Funds Reserve Policy, Harbor Accumulation Fund Reserve Policy and Morro Bay Tourism Business Improvement District Reserve Policy

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 85-18, rescinding all previous General Fund Emergency Reserve Fund resolutions, establishing the General Fund Emergency Reserve Policy, Internal Services Reserve Fund Policy, the Harbor Accumulation Fund Reserve Policy and the Morro Bay Tourism Business Improvement District Reserve Policy.

BACKGROUND

At the July 10, 2018, City Council meeting, the Council requested the development of a fiscal emergency plan be added to future Council items. In addition, the Council previously requested financial policies be added to a future Council agenda for review and discussion. On August 28, 2018, staff brought forward an action plan outlining the process to complete both a fiscal resiliency plan and formation of Accounting Policies and Procedures. Council approved staff's recommended plan and, as such, staff has proceeded with discussion of fiscal emergency plan and economic triggers to be identified in that plan.

On September 25, 2018, Council received draft policies of the proposed General Fund Emergency Reserve Fund Policy, Internal Services Reserve Fund Policy, Harbor Accumulation Fund Reserve Policy and the Morro Bay Tourism Business Improvement District Reserve Policy. At that time Council provided direction to staff regarding edits to the General Fund Emergency Reserve Fund Policy and Internal Services Reserve Fund Policy. Those edits are incorporated into Exhibits A and Exhibits B of Attachment 1 as redlined versions. Also, during the September 25, 2018, Council meeting, Council received the draft Harbor Accumulation Fund Reserve Policy and Morro Bay Tourism Business Improvement District Reserve Policy with the direction to provide both the Harbor Advisory Board (HAB) and Morro Bay Tourism Business Improvement District Board (TBID), the opportunity to review and comment on the draft policies prior to Council adoption. Direction was provided to return with all four draft reserve policies for Council consideration and approval in October.

DISCUSSION

General Fund Emergency Reserve Fund

The City Council conducted a budget workshop on May 20, 2015, and during that meeting, the City Manager presented previously-shown information from the Management Partners' 2015 financial forecast that predicted a deficit in 2017, and dips in the General Fund Emergency Reserve Fund

Prepared By: JC

Dept Review: _____

City Manager Review: SC

City Attorney Review: JWP

(GFERF) to accommodate the decline and recovery of the Fund. The City Council requested a Resolution to redefine the GFERF, allowing deficit spending during the forecasted recession.

On June 1, 2015, the City Council adopted Resolution No. 33-15, establishing the General Fund Emergency Reserve Fund (GFERF).

GFOA recommends a reserve with a minimum fund balance of 17% be maintained for the majority of funds. A 17% General Fund unassigned fund balance is marginally adequate and is not properly preparing the City for major financial impact such as the dramatic increase in employee costs. Another global financial crisis can quickly consume a 17% General Fund balance (approximately two-months' worth of regular operating revenues or expenditures). In determining the appropriate reserve level, GFOA recommends an agency consider a variety of factors such as: 1) the predictability of revenues and the volatility of expenditures; 2) perceived exposure to significant one-time outlays; 3) potential drain upon resources from other funds, as well as, the availability of resources in other funds; 4) potential impact on an entity's bond ratings and corresponding increased cost of borrowed funds; and 5) commitments and assignments.

Members of the California Society of Municipal Finance Officers (CSMFO) often conduct surveys among its 2,000 members, which represent over 300 agencies. The City of Orange conducted a reserve survey in early 2018 and provided a summary of the 17 agencies that responded to the survey for the General Fund and Internal Service Funds. For the General Fund, the various agencies have a reserve range of 5% minimum to 60% maximum, with 20% being the most common level. Agencies define reserves differently, using terms such as economic uncertainties, emergency/disaster, catastrophic or contingency.

Given the City is heavily dependent on economic sensitive revenue sources, such as Transient Occupancy Tax and Sales Tax, staff recommends a higher reserve level be maintained to help augment the General Fund during economic downturns. With that guiding principle, staff recommends the GFERF policy be simplified and defined as minimum and target funding levels at 25% to 28% level of annual, on-going operating expenditures, excluding transfers. That is consistent with the Water and Sewer Reserve Policies previously adopted by Council and the proposed reserve policies for the Harbor and Tourism funds that are discussed later in this report.

A draft GFERF policy is provided as Exhibit A to Attachment 1 to this staff report for Council consideration and feedback. Adoption of Resolution No. 85-18 would rescind Resolution No. 33-15 establishing the GFERF and adopt the proposed new GFER policy and Internal Service Funds Reserve Policy.

Internal Service Fund Reserve Policy

Internal Service Funds (ISF) are established to provide centralized cost centers for shared expenses and services in order to efficiently track costs and manage resources. Costs are then allocated back to the operational programs based on usage to more accurately determine cost of services.

The City Council received a draft of the proposed internal service funds reserve policy on September 25, 2018, and asked staff to evaluate the Compensated Absences threshold further to ensure appropriate funding levels would be maintained. Based on that feedback, the proposed policy, included as Exhibit B to Attachment 1, includes language indicating a compensated absence reserve fund will be maintained separately for the General Fund, Harbor Fund, Water Fund and Sewer Funds (similarly to how equipment replacement funds are maintained separately for the enterprise funds). For each of those compensated absence funds, the minimum target funding

level was raised to thirty percent (30%) from the previously suggested twenty-five percent (25%) and the target funding level was raised to thirty-five percent (35%) from the previously suggested thirty-three (33%) percent.

The proposed metrics included in the draft policy are generally modeled after those utilized by the City of La Palma. The City of Garden Grove hired Revenue & Cost Specialists, LLC to review that city's ISF Reserves and make conservative recommendations on funding levels. Revenue Cost Specialists reviewed the City of La Palma's reserve policies as part of that study. The chart below summarizes the reserve levels established by the comparison cities and those proposed in the draft internal service policy provided as Exhibit B to Attachment 1.

Summary of Recommended Fund Balance Levels				
Internal Service Fund	City of Saratoga	City of La Palma	City of Garden Grove	Proposed City of Morro Bay
Information Technology	No Recommendation	100% of replacement value of IT Network	50% of replacement cost	\$100,000 to \$150,000
Vehicle/Equipment Replacement	No Recommendation	33% of Replacement Value	50% of replacement cost	20% to 33% of replacement value
Facility Maintenance	No Recommendation	50% of rolling 6-year average of expenses	N/A	\$50,000 to \$75,000
Compensated Absences	33% of outstanding liability	100% of outstanding liability	100% of outstanding liability	25% to 33% of outstanding Liability

By establishing reserve levels, the City will be obligated to charge each department for its ISF operations, compelling the City to increase the amounts charged to departments for ISF activities. In light of other looming financial concerns and constrains, most notably with forecasted CalPERS increases, that will place an additional burden on an already constrained budget; however, it is a recommended best practice to ensure the fiscal health and stability of the City.

Based on the minimum and target funding levels proposed in the draft policy, if approved by Council, then staff would work to identify funding shortfalls and propose a plan to bring the ISFs up to the minimum fund levels within a three-year period, as prescribed within the policy. At this point, staff's assessment is the facilities and vehicle replacement reserves are underfunded; however, staff will bring refined year-end figures back with the mid-year budget update once the FY 2017/18 is closed. At this time, staff would also propose a funding strategy to ensure all of the ISFs are reaching the recommended minimum funding levels.

Harbor Accumulation Fund Reserve Policy

In June 2018, the Council adopted a reserve policy for the water and sewer funds. At that time, staff mentioned a Harbor Accumulation Fund Reserve Policy would be brought forward for future consideration and discussion. As such, staff has prepared the attached draft Harbor Accumulation Fund Reserve Policy (Exhibit C). The Policy establishes the minimum reserve level at fifteen percent of on-going annual expenditures with a target funding level of twenty-five percent of on-going annual expenditures. Based on the adopted Fiscal Year (FY) 2018/19 budget, the minimum reserve level (15% of on-going expenditures) would be approximately \$250,000 with a target reserve level of approximately \$417,000. With the close out of FY 2017/18 staff will evaluate the fund balance and report back to Council with the mid-year budget update on funding level in the reserve and comparison to the reserve policy minimum and target levels. If the accumulation reserve fund level falls short of the minimum level, then staff will present a plan to return cash accumulation reserves to their minimal target levels within three years as per the proposed policy. Given the current Harbor capital asset needs and funding challenges to meet those needs, staff anticipate an equal challenge in maintaining any Harbor Accumulation Fund reserve balance.

The draft policy was presented to the Council for feedback and direction on September 25, 2018, and shared with the Harbor Advisory Board (HAB) for input on October 4, 2018. HAB generally agreed a policy was a good idea, however shared in concern in how to achieve the minimum and/or target funding levels. Specifically, HAB provided the following comments:

1. Create revenue first, and cut services last as the primary budget balancing tool.
2. Develop a 3-5 year revenue-enhancement plan.
3. Ensure the percentage vs. time ratio to achieve the minimum 15% is the right one – is 5% per year for 3 years achievable given the current state of capital needs? Is 15% realistic to start with? Maybe start at 10% instead, and work up to 15% then 25%
4. Might be wise to wait until the South T-Pier loan is paid off and \$134K/year is available before starting any serious reserve balance building?

Based on that feedback no changes were made to the Harbor Accumulation Fund Reserve Policy.

Morro Bay Tourism Business Improvement District Fund Reserve Policy

The Tourism Business Improvement District (TBID) was originally mostly operated by the Tourism Board with the City monitoring cash and paying the District's bills. In 2013, the City separated TBID into a 501(c)(6) and a business manager was hired to operate the new entity. In June 2016, the City resumed administrative control over the TBID, merging Tourism under the City's management.

The City-managed TBID Fund was designed to be self-supporting, with revenue generating from hotel stays primarily funding the activities of the fund and previously defined General Fund contributions (\$60,000 minimum funding plus 20% of TOT receipts above \$3 Million). Due to variances in revenues and expenditures, the TBID Fund experienced excess revenues over expenditures over several years, but most significantly in FY 2015/16 resulting in fund balance of approximately \$280,000.

Again, as tourism activities generate significant revenues for the City, staff recommends an accumulation fund reserve be established and has developed a draft Morro Bay Tourism Business Improvement District Fund Accumulation Reserve Policy for Council consideration and direction, which is provided as Attachment 3. Staff proposes a minimum of twenty percent of on-going annual expenditures be maintained in the newly established accumulation reserve fund with a target funding level of twenty-five percent of on-going annual expenditures. Based on the adopted FY 2018/19 TBID Budget, minimum reserve funding level would be approximately \$195,000 with the target reserve funding level of approximately \$244,000.

There is currently sufficient fund balance in the TBID Fund (Fund 007) to meet the target funding reserve level of \$244,000. Staff would report back to the Council with the mid-year budget update on FY 2017/18 actual year-end balances as with the Harbor Accumulation Reserve and other Reserve Funds.

Council received public comment regarding the draft MB TBID reserve policy on September 25, 2018 and in response to that public comment, staff added language to clarify the Tourism Accumulation Fund can only be used for tourist related events and activities and any recommended uses of moneys in the reserve would be presented to the Tourism Board and Council for consideration and recommendation. The proposed policy is included as Exhibit D of Attachment 1.

The draft TBID policy was presented to the Tourism Board on October 18, 2018. The Board was in agreement a policy should exist and generally supported the minimum and target funding range of twenty to twenty-five percent of on-going annual expenditures. The Board also recommended

reference to Morro Bay Municipal Code (MBMC) section 3.60.030 Tourism Business Improvement District Law Authorized Uses, be included in the policy with specific reference to the following authorized uses in accordance with the MBMC:

- A. The general promotion of tourism within the TBID is to include costs as specified in the business plan to be adopted annually;
- B. The marketing of conference, group, and film business that benefits local tourism and the local hotel industry in the TBID; and
- C. The marketing of the TBID to the industry in order to benefit local tourism and the local hotel industry in the TBID.

Staff concurs with that recommendation and incorporated respective language into the draft policy as provided as Exhibit D to Attachment 1.

Also, the Tourism Board recommended language be incorporated into the policy to address what would happen to the reserve fund if the tourism district were disbanded. Language has not been added into the draft policy to support this recommendation. The proposed policy is a reserve policy and is not the appropriate time to address what could happen if the TBID were ever discontinued.

CONCLUSION

Having clearly defined financial policies that reflect the City's values will serve as the foundation for decision-making in tough fiscal times and will aid in preserving the City's long-term fiscal health and vitality. Staff recommends Council review the proposed policies and adopt Resolution No. 85-18.

ATTACHMENTS

1. Resolution No. 85-18
 - a. Exhibit A – General Fund Emergency Reserve Policy
 - b. Exhibit B – Internal Services Fund Reserve Policy
 - c. Exhibit C - Harbor Accumulation Fund Reserve Policy
 - d. Exhibit D - Morro Bay Tourism Business Improvement District Fund Reserve Policy

RESOLUTION NO. 85-18

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
RESCINDING RESOLUTION NO. 33-15 IN ENTIRETY, AND ESTABLISHING A GENERAL FUND
EMERGENCY RESERVE POLICY, INTERNAL SERVICE FUNDS RESERVE POLICY, HARBOR
ACCUMULATION FUND RESERVE POLICY AND MORRO BAY TOURISM BUSINESS
IMPROVEMENT DISTRICT FUND RESERVE POLICY**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, on June 28, 1993, the Morro Bay City Council adopted Resolution No. 55-93, which adopted the Fiscal Year 1993-94 Budget and Appropriations Limit; and

WHEREAS, Section 5 of Resolution No. 55-93 states *“A reserve for emergencies of \$800,000 shall be established out of the City’s General Fund. This amount will be reported in the General Fund’s Equity section of the balance sheet. The City Administrator must receive prior approval from the City Council for any use of these reserve funds;”* and

WHEREAS, with this Resolution, the Morro Bay City Council is rescinding Section 5 of Resolution No. 55-93; and

WHEREAS, on May 24, 2010, the Morro Bay City Council adopted Resolution No. 27-10, which established the parameters for use of the General Fund (Accumulation) Reserve; and

WHEREAS, with this Resolution, the Morro Bay City Council is rescinding Resolution No. 27-10 in its entirety; and

WHEREAS, on June 28, 2011, the Morro Bay City Council adopted Resolution No. 42-11, which amended the parameters of Resolution No. 27-10; and

WHEREAS, on June 9, 2015, the Morro Bay City Council adopted Resolution No. 33-15, which rescinded Resolution No. 42-11 in its entirety; and

WHEREAS, with this Resolution, the Morro Bay City Council is rescinding Resolution No. 33-15 in its entirety; and

WHEREAS, staff recommends the City Council adopt the proposed General Fund Emergency Reserve Policy, which demonstrates the City’s commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards; and

WHEREAS, staff recommends the City Council adopt the proposed Internal Service Funds Reserve Policy, which demonstrates the City’s commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards; and

WHEREAS, staff recommends the City Council adopt the proposed Harbor Accumulation Fund Reserve Policy, which demonstrates the City’s commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards; and

WHEREAS, staff recommends the City Council adopt the proposed Morro Bay Tourism Business Improvement District Fund Reserve Policy, which demonstrates the City's commitment to fiscal responsibility and prudent management and is consistent with Government Accounting Standards.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California:

1. Section 5 of Resolution No. 55-93 and Resolution Nos. 27-10, 42-11 and 33-15 in their entirety are hereby rescinded; and
2. the "General Fund Emergency Reserve Policy," as set forth in Exhibit A, attached hereto and incorporated herein, is hereby approved; and
3. the "Internal Service Funds Reserve Policy," as set forth in Exhibit B, attached hereto and incorporated herein, is hereby approved.
4. the "Harbor Accumulation Fund Reserve Policy," as set forth in Exhibit C, attached hereto and incorporated herein, is hereby approved.
5. the "Morro Bay Tourism Business Improvement District Fund Reserve Policy," as set forth in Exhibit D, attached hereto and incorporated herein, is hereby approved.

PASSED AND ADOPTED, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 23th day of October 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk



COUNCIL POLICY

GENERAL FUND EMERGENCY RESERVE POLICY

Policy Statement

The City of Morro Bay (City) is a full-service city, providing essential services to over 10,000 residents related to public safety, planning, building, public works and recreation. In addition, the City has a vibrant tourism industry, attracting thousands of visitors annually, all of whom utilize City services in some fashion. As such, it is prudent for the City to establish and maintain reserve funds to mitigate a variety of emergency situations and ensure that core, essential services are maintained. The City first established a General Fund Emergency Reserve in 1993, which has since been modified four times by Council resolution, the most recently being in 2015 per Resolution 33-15. The City Council of the City has been proactive in setting aside emergency reserves and recognizing the need to utilize reserves during recessionary periods.

The City Council sets legislative financial management policies, as recommended by staff and advisory committees. This General Fund Emergency Reserve Policy (Policy) is designed to establish guidelines to ensure fiscal stability of the City and provide guidance to staff in the financial management of City operations.

Purpose

A properly designed reserve policy is not only a financial best practice, but also sends a positive signal to ratepayers, investors, regulatory, and credit rating agencies the City is committed to maintaining the long-run fiscal strength of the City. Strong and transparent financial policies, including maintaining prudent reserves for emergencies, working capital, and capital improvements, are consistent with Government Accounting Standards and are important to the City as they help to:

- Maintain the short-term and long-term financial health of the City
- Maintain stable user fees for customers and help ensure manageable rate increases
- Fund unanticipated expenditure contingencies, including emergencies
- Ensure funds exist for system and infrastructure improvements
- Ensure cash exists for the timely payment of bills
- Act as a significant positive credit factor in bond ratings

After the City's financial records are finalized and audited, with legal obligations and liability reserves funded, revenues in excess of expenditures are closed out to the General Fund Emergency Reserve. A base amount, both minimum and target levels, are established by Council with adoption of this policy. Staff shall bring forward a recommendation for Council consideration to provide direction on use of funds above the target levels.

Anything above the target funding level in the General Fund Emergency Reserve will be distributed in the following order:

Allocated to Internal Service Funds to meet or maintain target funding levels, if short falls exist.
Allocated to a CalPERS paydown Fund, up to 50% of the remaining available funds to allocate.
Allocated to per Council direction during the mid-year budget update and annual budget adoption process.

Definitions

The General Fund Emergency Reserve (“GFER”) is classified as an “Unrestricted-Undesignated Reserve,” representing funding that is being set aside to provide temporary financing for budget stabilization caused by fiscal downturns, unanticipated extraordinary expenditures related to a natural disaster or calamity, or from an unexpected liability or funding decrease created by a legislative action. Those moneys may be used for any lawful purpose, as approved by the City Council, and have not been designated for specific capital and operating needs. The following Unrestricted-Undesignated Reserve Policy addresses the level, use and replenishment of those types of unrestricted cash. The GFER will be accounted for within the General Fund.

Unrestricted-Undesignated Reserve Policy

The General Fund will have sufficient Unrestricted-Undesignated cash accumulated to maintain or improve its credit ratings, ensure operating and maintenance costs will be paid in a timely manner, pay debt service obligations, invest in needed capital improvements and equipment replacement and other uses on a timely basis. In addition, the GFER will maintain sufficient cash accumulation to minimize impacts from economic downturns, departmental expenditure freezes due to market volatility, other economic impacts on demands, contingencies, and regulatory changes.

This GFER Policy outlines minimum and target funding levels.

Minimum Level: Equal to twenty-five percent of annual on-going operating expenditures (excluding transfers out) based on the most recent adopted budget.

Target Level: Equal to twenty-eight percent of annual on-going operating expenditures (excluding transfers out) based on the most recent adopted budget.

Example:

FY 2018/19 General Fund Expenditures (on-going annual expenditures, excluding transfers)	\$13,704,544
Target Level 28%:	<u> x 0.28</u>
Target Cash Accumulation	\$ 3,837,272

In calculating the minimum target funding level, one-time expenditures and transfers out are not considered in the base for determining the operating expenditures. The minimum target funding level is intended to ensure sufficient resources to pay budgeted operating and maintenance expenses, recognizing the timing differences between payment of expenditures and receipt of revenues. It also provides a source of funding to allow the City to operate during short term fluctuations in revenues and/or expenditures.

Withdrawal & Replenishment of Accumulation Reserves

The City will treat the minimum levels as practical reserve floors and allow reserves to increase or decrease within the minimum and target levels, as approved by City Council during the annual budget process.

To the extent cash in the GFER is above the target levels, the Council has the flexibility to direct staff to utilize those available funds to fund internal service funds to target levels, fund other one-time operating needs, capital projects (reducing the need for future debt), or pay down liabilities in accordance with this policy as defined in the purpose statement above.

Reserve levels below the minimum target reserves would leave the City exposed to operational risks. The City may only draw down the reserve levels with Council approval and the City

Manager, in conjunction with the Finance Department, will implement plans to return cash accumulation reserves to their minimum target levels within three years and subject to approval by City Council.

Reporting and Oversight

GFER levels will be monitored during the fiscal year and reported in the quarterly financial reports, as provided by the Finance Department. GFER minimum and target levels will be analyzed annually by the Finance Department and an over/under reserve determination shall be made in conjunction with year-end financial results. Those results will be reported to the City Council as part of the year-end financial report presentation. If GFER levels need adjustment due to new risk factors or changes in the industry, then that information will be brought to the City Council as part of the year-end report or sooner, as determined by the City Manager and Finance Department.

This Policy will be reviewed during the City's annual budget process, and updated, if needed, as a result of material changes in the risk exposures or new conditions that required changes in this Policy.



COUNCIL POLICY

INTERNAL SERVICE FUNDS RESERVES POLICY

Policy Statement

Internal Service Funds are established to provide centralized cost centers for shared expenses and services in order to efficiently track costs and manage resources. Costs are then allocated back to the operational programs based on usage to more accurately determine cost of services.

The City of Morro Bay's internal service funds include eight internal service/support funds: Information Technology, facility maintenance, vehicle replacement, capital replacement, compensable leave, and three equipment replacement funds, one each for the water, sewer and harbor enterprise funds. In addition, the City of Morro Bay (City) has one insurance internal service fund, Risk Management, which includes worker's compensation.

As each fund is accounted for as a separate entity, operational revenues less expenditures result in either a positive or negative fund balance at any given point in time – Internal Service Funds are similar to the separate checking and savings accounts a person may use for different purposes. At year end, each fund's net balance is represented at the "Fund Balance Reserve."

The City Council sets legislative financial management policies, as recommended by staff and advisory committees. This Internal Service Fund Reserves Policy (Policy) is designed to establish guidelines to ensure fiscal stability for the City, accumulating funds and maintaining adequate reserves to repair and replace infrastructure, equipment and/or insurance needs that may be either planned or unexpected, and provides guidance to staff in the financial management of the City.

Purpose

A properly designed reserve policy is not only a financial best practice, but also sends a positive signal to constituents, investors, regulatory, and credit rating agencies that the City is committed to maintaining the long-run fiscal strength. Strong and transparent financial policies, including maintaining prudent reserves for emergencies, working capital, and capital improvements, are consistent with Government Accounting Standards and are important to the City as they help to:

- Maintain the short-term and long-term financial health of the City
- Fund unanticipated expenditure contingencies
- Ensure funds exist for unexpected and planned infrastructure, equipment and insurance needs
- Ensure cash exists for the timely payment of bills
- Act as a significant positive credit factor in bond ratings

The intent of the Internal Service Funds Reserves is twofold:

1. To ensure sufficient resources exist in each internal service fund to pay for annual ongoing expenses while maintaining a reasonable reserve to fund replacement purchases (i.e. annual vehicle replacement); and,
2. Establish a fund balance level for each fund that is reasonable and prevents the over-accumulation of resources beyond what is needed for normal operating needs plus any amount required for emergency or contingency needs. hold appropriate levels of reserves

to support cash flow needs and minimize interfund loans, as well as maintain a reasonable fund balance for contingency purposes.

Therefore, this policy will enumerate minimum fund balance levels for each Internal Service Fund based on specific fund-type metrics. This Policy will also address the, use, and replenishment of those types of unrestricted reserves. The Internal Service Funds Reserves will be accounted for within individual and specific funds designated for each reserve.

Information Technology Services Fund

Information Technology Services provide for the delivery of technology-based services throughout the City's operations, including maintenance of the City's information systems and infrastructure, program implementation, internet, landline, and wireless communications systems, cloud-based technology, and support of all existing information technology as well as new technology initiatives. For technology oversight, security, and efficiency, information technology costs are managed collectively and funded through a charge-back to the various funds and departments. At year end, unspent funding flows into Unrestricted Net Position. Accumulated funds are held in the Information Technology Services Fund for working capital cash flow. Requests for use of the reserve are approved by Council through budget adoption or by a Council approved budget adjustment Resolution during the year.

This Information Technology Services Fund outlines minimum and target funding levels.

Minimum Level: \$100,000

Target Level: \$150,000

The target reserve level should allow for periodic upgrades and enhancements to the City's collection of information and communications technology, while also providing sufficient funds to meet annual operating costs.

Vehicle Replacement and Enterprise Fund Equipment Replacement Funds

The Vehicle and Equipment Maintenance program provides for the maintenance, and servicing of the City's fleet and major equipment to ensure all vehicles and equipment comply with manufacturer's recommendations and safety requirements. The Vehicle Replacement Fund is for all General Fund-owned equipment such as the City's Police, Fire, Public Works, Recreation and pooled vehicles. The City has three equipment maintenance funds, one each for the enterprise funds of water, sewer and harbor. Each individual enterprise fund supports their own equipment maintenance fund and those funds are restricted to the specific enterprise activity.

To fund the program, vehicle & equipment replacement costs transfers into the funds are accounted for through the budget process. The enterprise fund operating revenue funds account for the enterprise fund equipment replacement funds while the General Fund is the primary funding source for the Vehicle Replacement Fund.

Accumulated funds will be held in the Vehicle and Equipment Replacement Funds for working capital cash flow. At year end, unspent funding flows into Unrestricted Net Position. Requests for use of the reserve are approved by Council through budget adoption or by a Council approved budget adjustment resolution during the year.

The Vehicle Replacement Fund, to be funded by the General Fund, minimum and target funding levels are as follows:

Minimum Level: Equal to twenty percent of the replacement value of the general fund fleet.

Target Level: Equal to thirty-three percent of the replacement value of the general fund fleet.

The Enterprise Equipment Replacement Funds, to be funded by the specific enterprise fund, minimum and target funding levels are as follows:

Minimum Level: Equal to twenty percent of the replacement value of the [general respective enterprise](#) fund fleet.

Target Level: Equal to thirty-three percent of the replacement value of the [general respective enterprise](#) fund fleet.

The replacement value shall be calculated based on the most recently updated Vehicle Insurance Coverage list, or other internal tracking list developed by staff. The target reserve level will provide sufficient funds should there be a need for a one-time, larger than normal expenditure related to fleet services. State and Federal reimbursements for use of City-owned equipment, i.e. for fire strike-team support, shall be placed in the appropriate vehicle or equipment replacement fund to support future maintenance or replacement of those vehicles.

Facility Maintenance Fund

The Facility Maintenance Fund provides for maintenance and non-major repairs and building improvement services for all City-owned facilities that are not part of an enterprise fund (*i.e.* water, sewer or harbor). Additionally, the fund supports the maintenance and repair needs of the tenants of City-leased buildings and properties as defined in the lease agreements. The program's funding has primarily been derived from rental income from City-owned leased facilities; however, the City is transitioning to funding the program through charge backs to departments based on building space usage.

Accumulated net operations are held in the Facility Maintenance Fund for working capital cash flow. At year end, unspent funding flows into Unrestricted Net Position. Requests for use of the reserve are approved by Council through budget adoption or by a Council approved budget adjustment resolution during the year.

The Facility Maintenance Fund, to be funded by the General Fund, minimum and target funding levels are as follows:

Minimum Level: \$50,000

Target Level: \$75,000

Given the age of the City's facilities, increased maintenance needs are anticipated. The target funding level of \$75,000 represents a reasonable contingency for unanticipated maintenance issues which do not rise to the capital project level.

Compensated Absences Reserve

Under the Unassigned Fund Balance classification, the Compensated Absences Reserve is established to smooth expenditure fluctuations resulting from the payout of accrued leave to employees at service separation and distribution payouts.

Use of the reserve occurs when total annual compensated absences payouts exceed budgeted salary funds. Large payouts decrease the compensated absences liability at year-end, thereby supporting the practice of utilizing the reserve as needed. Year-end reconciling allocations to and from the reserve are approved through Council's budget resolution adoption each fiscal year, with the liability and resulting reserve amounts determined as part of the year-end close process. [It is](#)

the City's policy to maintain Compensated Absences Reserve funds for the General Fund, Harbor Fund, Water Fund, and Sewer Fund. Each fund shall be maintained separately within the minimum and target levels defined below.

The Compensated Absences Reserve minimum and target funding levels are defined as follows:

Minimum Level: Equal to ~~twenty-five~~thirty percent of the compensated absences liability that is established at year-end.

Target Level: Equal to ~~thirty-three~~five percent of the compensated absences liability that is established at year-end.

City staff will report to Council on Fund Reserve levels in comparison to the minimum and target funding levels defined by this policy during the annual budget adoption process. Reserve funding in excess of one-third (thirty-three percent) of the liability will be available for the Council to allocate during the budget process.

Withdrawal & Replenishment of Accumulation Reserves

The City will treat the minimum levels as practical reserve floors and allow reserves to increase or decrease within the minimum and target levels, as approved by City Council during the annual budget process.

To the extent moneys in any of the above funds are above the target levels, the Council has the flexibility to direct staff to utilize those available funds to pay for other capital needs, other one-time expenditures, or pay down liabilities as long as the funds legally support that purpose.

Reserve levels below the minimum target reserves would leave the City exposed to operational risks. If the City draws down the reserves below the minimum targeted level, then the City Manager, in conjunction with the Finance Department, will implement plans to return cash accumulation reserves to their minimum target levels within three years and subject to approval by City Council.

Reporting and Oversight

The Internal Service Funds Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports, as provided by the Finance Department. Internal Service Fund Reserves minimum and target levels will be analyzed annually by the Finance Department and an over/under reserve determination shall be made in conjunction with year-end financial results. Those results will be reported to the City Council as part of the year-end financial report presentation and annual budget adoption process. If Internal Service Fund Reserves levels need adjustment due to new risk factors or changes in the industry, then information will be brought to the City Council as part of the year-end report or sooner, as determined by the Finance Department.

This Policy will be reviewed during the City's annual budget process, and updated, if needed, as a result of material changes in the risk exposures or new conditions that required changes in this Policy.



COUNCIL POLICY

HARBOR ACCUMULATION FUND RESERVE POLICY

Policy Statement

The City of Morro Bay (City) Harbor Department is responsible for the management of the City's Tidelands Trust stewardship of the State-granted tidelands in Morro Bay, providing for waterfront property and lease management, public service, public safety, and municipal code enforcement on the waterfront, waters and beaches of Morro Bay. The Harbor Department is also responsible for the Harbor facilities maintenance, repair, capital improvement and replacement.

The City Council sets legislative financial management policies, as recommended by staff and advisory committees. This Harbor Accumulation Fund Reserve Policy ("Policy") is designed to establish guidelines to ensure fiscal stability of the Harbor Fund and provide guidance to staff in the financial management of the Harbor Department.

Purpose

A properly designed reserve policy is not only a financial best practice, but also sends a positive signal to ratepayers, investors, regulatory, and credit rating agencies the City is committed to maintaining the long-run fiscal strength of the Harbor Department. Strong and transparent financial policies, including maintaining prudent reserves for emergencies, rate stability, working capital, and capital improvements, are consistent with Government Accounting Standards and are important to the Harbor Department as they help to:

- Maintain the short-term and long-term financial health of the Harbor Department
- Maintain stable user fees for customers and help ensure manageable rate increases
- Fund unanticipated expenditure contingencies, including emergencies
- Ensure funds exist for system and infrastructure improvements
- Ensure cash exists for the timely payment of bills
- Act as a significant positive credit factor in bond ratings

Definitions

The Harbor Accumulation Fund Reserve will be classified as an "Unrestricted-Undesignated Reserve." Those moneys may be used for any lawful purpose, as approved by the City Council, and have not been designated for specific capital and operating needs. The following Unrestricted-Undesignated Reserve Policy addresses the level, use and replenishment of those types of unrestricted cash. The Harbor Accumulation Fund Reserve will be accounted for within fund balances held in the Harbor Accumulation Fund.

Unrestricted-Undesignated Reserve Policy

The Harbor Department will have sufficient Unrestricted-Undesignated cash accumulated to maintain or improve its credit ratings, ensure operating and maintenance costs will be paid in a timely manner, pay debt service obligations, invest in needed capital improvements and equipment replacement and other uses on a timely basis. In addition, the Harbor Accumulation Fund Reserve will maintain sufficient cash accumulation to minimize user fee increases and departmental

expenditure freezes due to market volatility, economic impacts on demands, contingencies, and regulatory changes.

This Harbor Accumulation Fund Reserve Policy outlines minimum and target funding levels.

Minimum Level: Equal to fifteen percent of annual on-going operating and maintenance expenses based on the most recent adopted budget.

Target Level: Equal to twenty five percent of annual on-going operating and maintenance expenses based on the most recent adopted budget.

Example:

FY 2018/19 Harbor Operating Fund Total Expenditures (on-going annual expenditures)	\$1,666,706
Target Level 25%:	<u> x0.25</u>
Target Cash Accumulation	\$ 416,677

In calculating the minimum target funding level, one-time expenditures are not considered in the base for determining the operating expenditures. The minimum target funding level is intended to ensure sufficient resources to pay budgeted operating and maintenance expenses, recognizing the timing differences between payment of expenditures and receipt of revenues. It also provides a source of funding to allow the Harbor Department to operate during short-term fluctuations in revenues and expenditures.

Withdrawal & Replenishment of Accumulation Reserves

The Harbor Department will treat the minimum levels as practical reserve floors and allow reserves to increase or decrease within the minimum and target levels, as approved by City Council during the annual budget process.

To the extent cash in the Harbor Accumulation Fund Reserve is above the target levels, the Council has the flexibility to direct staff to utilize those available funds to pay for capital projects (reducing the need for future debt), or pay down liabilities related to the Trust lands.

Reserve levels below the minimum target reserves would leave the Harbor Department exposed to operational risks. If the City Council authorizes the reserves to fall below the minimum targeted level, then the Harbor Department, in conjunction with the Finance Department will implement plans to return cash accumulation reserves to their minimum target levels within three years and subject to approval by City Council.

Reporting and Oversight

Harbor Accumulation Fund Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports, as provided by the Finance Department. The Harbor Accumulation Fund Reserve minimum and target levels will be analyzed annually by the Harbor Department and an over/under reserve determination shall be made in conjunction with year-end financial results. Those results will be reported to the City Council as part of the year-end financial report presentation. If Harbor Accumulation Fund Reserve levels need adjustment due to new risk factors or changes in the industry, then that information will be brought to the City Council as part of the year-end report or sooner, as determined by the Finance Department, in consultation with the Harbor Department.

This Policy will be reviewed during the City’s annual budget process, and updated, if needed, as a result of material changes in the risk exposures or new conditions that required changes in this Policy.



COUNCIL POLICY

MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT FUND ACCUMULATION RESERVE POLICY

Policy Statement

The City of Morro Bay (MB) Tourism Business Improvement District (TBID) was merged under the City's management in June 2016 to carry out tourism operations and marketing. With Transient Occupancy Tax being leading revenue generator for the City's general fund, the City of Morro Bay relies heavily on tourism and tourist driven activity and events. Therefore, it is in the City's best interest to reserve monies to continue funding tourist related activities during economic downturns when revenues generated into the TBID would likely decline.

The City Council sets legislative financial management policies, as recommended by staff and advisory committees. This TBID Accumulation Reserve Policy ("Policy") is designed to establish guidelines to ensure fiscal stability of the MB TBID Fund and provide guidance to staff in the financial management of the Tourism Department.

Purpose

A properly designed reserve policy is not only a financial best practice, but also sends a positive signal to ratepayers, investors, regulatory, and credit rating agencies the City is committed to maintaining the long-run fiscal strength of the Tourism Department. Strong and transparent financial policies, including maintaining prudent reserves for emergencies, working capital, and capital improvements, are consistent with Government Accounting Standards and are important to the Tourism Department as they help to:

- Maintain the short-term and long-term financial health of the Tourism Department
- Fund unanticipated expenditure contingencies
- Ensure funds exist for tourism promotion
- Ensure cash exists for the timely payment of bills
- Act as a significant positive credit factor in bond ratings

Definitions

The MB TBID Fund Accumulation Reserve will be classified as an Unrestricted-Undesignated Reserve. Those reserves may be used for any lawful purpose, as approved by the City Council, and have not been designated for specific operating needs. The following Unrestricted-Undesignated Reserve Policy addresses the level, use, and replenishment of those types of unrestricted reserves. The MB TBID Fund Accumulation Reserve will be accounted for within fund balance of a newly created MB TBID Accumulation Fund.

Unrestricted-Undesignated Reserve Policy

The Tourism Department will have sufficient Unrestricted-Undesignated cash accumulated to ensure operating and maintenance costs will be paid in a timely manner, invest in any capital improvements and equipment replacement, continuously promote tourism and tourism events within the City of Morro bay, and other uses on a timely basis. Cash held in the accumulation reserve may only be used for tourist related activities, events or projects, in accordance with section 3.60.030 of the Morro Bay Municipal Code which includes the following:

- A. “The general promotion of tourism within the district is to include costs as specified in the business plan to be adopted annually;
- B. The marketing of conference, group, and film business that benefits local tourism and the local hotel industry in the district; and
- C. The marketing of the district to the travel industry in order to benefit local tourism and the local hotel industry in the district.

The MB TBID Accumulation Fund will maintain sufficient cash accumulation to minimize departmental expenditure freezes due to market volatility, economic impacts on demands, and contingencies.

This Accumulation Reserve Policy outlines minimum and target funding levels.

Minimum Level: Equal to twenty percent of annual on-going operating and maintenance expenses based on the most recent adopted budget.

Target Level: Equal to twenty five percent of annual on-going operating and maintenance expenses based on the most recent adopted budget.

Example:

FY 2018/19 MB TBID Operating Fund Total Expenditures	\$ 997,135
Less: Accumulation Fund Transfer	<u>- 21,653</u>
Total on-going annual expenditures	\$ 975,482
Target Level 25%:	<u>x0.25</u>
Target Cash Accumulation	\$ 243,871

In calculating the minimum and target funding levels, one-time expenditures are not considered in the base for determining the operating expenditures. The minimum target funding level is intended to ensure sufficient resources to pay budgeted operating and maintenance expenses, recognizing the timing differences between payment of expenditures and receipt of revenues. It also provides a source of funding to allow the Tourism Department to operate during short term fluctuations in revenues and/or expenditures.

Withdrawal & Replenishment of Accumulation Reserves

The Tourism Department will treat the minimum levels as practical reserve floors and allow reserves to increase or decrease within the minimum and target levels, as approved by the City Council during the annual budget process.

To the extent Unrestricted-Undesignated Accumulation Reserves are above the target levels, the MB TBID Board and Council has the flexibility to direct staff to utilize those available funds to pay for tourist related events or needs, or pay down liabilities.

Reserve levels below the minimum target reserves would leave the Tourism Department exposed to operational risks. If the Tourism Department draws down the reserves below the minimum targeted level, then the Tourism Department, in conjunction with the Finance Department will implement plans to return cash accumulation reserves to their minimum target levels within three years and subject to approval by City Council.

All recommended use of reserve cash will be presented to the MB TBID Board for consideration and input prior to being presented to the City Council. Proposed used of funds may originate at the staff level, MB TBID Board levels or City Council level, however in no circumstance will use of cash within the resreve fund be authorized prior to both the City Council and MB TBID Board having an opportunity to provide input and a recommendation on the use of rserve funds.

Reporting and Oversight

MB TBID Fund Accumulation Reserve Levels will be monitored during the fiscal year and reported in the quarterly financial reports, as provided by the Finance Department. Accumulation Reserve minimum and target levels will be analyzed annually by the Tourism Department and an over/under reserve determination shall be made in conjunction with year-end financial results. Those results will be reported to the TBID Board and City Council as part of the year-end financial report presentation. If Unrestricted-Undesignated Accumulation Reserve levels need adjustment due to new risk factors or changes in the industry, that information will be brought to the TBID Board and City Council as part of the year-end report or sooner, as determined by the Finance Department, in conjunction with the Tourism Department as needed.

This Policy will be reviewed during the City's annual budget process, and updated, if needed, as a result of material changes in the risk exposures or new conditions that required changes in this Policy.

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AGENDA NO: A-4

MEETING DATE: October 23, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 17, 2018
FROM: Jennifer Callaway, Finance Director
SUBJECT: Adoption of Ordinance No. 617 Amending Section 3.08.130 of the Morro Bay Municipal Code relating to Authority to Sell Surplus Supplies and Equipment

RECOMMENDATION

Staff recommends the City Council waive reading of Ordinance No. 617 in its entirety and adopt Ordinance No. 617, by number and title only, amending Section 3.08.130 of the Morro Municipal Code (MBMC) relating to authority to sell surplus supplies and equipment.

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

There is no fiscal impact associated with this action.

BACKGROUND/DISCUSSION

For many years the City's surplus supplies and equipment have been disposed of by sale through auctions arranged by staff and without Council approval. It was recently determined, MBMC section 3.08.130 only allows the City's Purchasing Agency (Finance Director) to trade in or exchange those supplies and equipment for need supplies and equipment. To confirm the City's long-time practice of staff selling surplus supplies and equipment, an amendment to that Section is proposed. The amendment will add the underlined language in the attached Ordinance No. 617, which was introduced for first reading at the October 9, 2018, City Council meeting and will take effect 30 days after adoption.

CONCLUSION

Staff recommends the City Council adopt Ordinance No. 617, by reading the number and title only.

ATTACHMENT

1. Ordinance No. 617

Prepared By: JC/DS

Dept Review: _____

City Manager Review: SC

City Attorney Review: JWP

ORDINANCE NO. 617

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AMENDING SECTION 3.08.130 OF THE MORRO BAY MUNICIPAL CODE
RELATING TO SALE OF SURPLUS CITY SUPPLIES AND EQUIPMENT**

**THE CITY COUNCIL
City of Morro Bay, California**

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:

SECTION 1: Section 3.08.130 of the Morro Bay Municipal Code is hereby amended to read as follows:

3.08.130 - Surplus supplies and equipment.

All using agencies shall submit to the purchasing agent, at such times and in such forms as he shall prescribe, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The purchasing agent shall have authority to sell, by auction or other means to ensure the city receives proper value, or exchange for or trade in on new supplies and equipment, all supplies and equipment, which cannot be used by the any agency or which have become unsuitable for city-use.

SECTION 2. This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting the of the City Council of Morro Bay, held on the 9th day of October 2018, by motion of Council Member Headding, seconded by Council Member Davis.

PASSED AND ADOPTED on the 23rd day of October 2018, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney



AGENDA NO: C-1
MEETING DATE: October 23, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** October 18, 2018
FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Eric Casares, PE - WRF Program Manager
SUBJECT: Approval of Contract with Filanc/Black & Veatch for Design and Construction of the New Water Reclamation Facility

RECOMMENDATION

Staff recommends the City Council award a contract to the Filanc/Black & Veatch team for design and construction of the new water reclamation facility (WRF) and authorize the Mayor to execute an agreement in the amount of \$67,234,512.

FISCAL IMPACT

Filanc/Black & Veatch will complete all work under the contract and be compensated for their actual costs plus their overhead and profit (cost plus basis) up to the guaranteed not to exceed cost of \$67,234,512. While staff does not anticipate costs exceeding the maximum contract amount; should that occur, prior authorization by the Council in the form of a contract amendment would be required. Based on the WRF Surcharges approved by the City Council via Resolution No. 71-18, the City has a reserve for the overall WRF project in the amount of \$9.5 Million. That reserve is built into the WRF Surcharges that were approved on September 11, 2018, by City Council via Resolution No. 71-18.

BACKGROUND/DISCUSSION

The full WRF Program will include several components or projects; including the construction of a new Water Reclamation Facility (WRF) with advanced treatment at the South Bay Boulevard site, which was selected as the preferred site for planning and permitting at the September 26, 2017, City Council meeting. The other components of the WRF Program include a lift station and pipeline to transport wastewater from the City’s collection system to the new WRF, and the pipeline and injection wells need to inject purified water into the Lower Morro Valley Groundwater Basin. The latter two components will be delivered using the design-bid-build process.

In order to expedite the project schedule and gain cost assurance at an earlier stage in the WRF project, the City made the decision to deliver the onsite facilities for the WRF Program using a fixed price design-build procurement model. That procurement utilized a two-stage process consisting of a request for qualifications (RFQ) followed by a request for proposals (RFP). On October 27, 2017, the City issued the RFQ, and received statements of qualifications (SOQs) from the following four teams on December 07, 2017:

- AECOM/W.M. Lyles
- Filanc/Black & Veatch
- Sundt/Parsons
- Kiewit/Tetra Tech

Prepared By: <u> EC/RL </u>	Dept Review: <u> </u>
City Manager Review: <u> SC </u>	City Attorney Review: <u> JWP </u>
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After the reviewing the four SOQs, the City decided to shortlist all teams and invite them to submit a proposal. The City issued the RFP on January 24, 2018, to the four firms listed above. The RFP requested the following information be included in the proposals:

- Background technical information
- Project scope of work
- Project technical requirements
- Proposal submittal requirements
- Proposal evaluation criteria and selection process

The City received two proposals on May 8, 2018, shortly after the selection of the City's new WRF Program Manager, Carollo Engineers, Inc. (Carollo). Since taking over program management duties, Carollo's top priority has been to evaluate the proposals and help the City select the best team to complete the project and negotiate the most favorable design-build agreement. Proposals were received from the following teams:

- AECOM/W.M. Lyles
- Filanc/Black & Veatch

After the receiving the proposals, the City and Program Manager evaluated them in strict accordance with the RFP. Early in the review process, the City and Program Manager met with members of a WRFCAC Subcommittee, consisting of Paul Donnelly, Valerie Levulett and Steve Shively, and provided them with the technical content of the proposals. The proposals were initially reviewed by this WRFCAC subcommittee, City staff, and the Program Manager for compliance with the RFP and technical accuracy.

Based on the review of the two proposals, both design-build teams were invited to participate in 1.5-hour interviews held at the Fire Station Training Room on June 1, 2018. Following the interviews, the members of the evaluation team met as a group to discuss the proposal review and interviews, and evaluate each against the selection criteria and weights established in the RFP.

As a result of the proposal evaluation and interviews, the team unanimously identified Filanc/Black & Veatch as the preferred proposer. Some of the key differentiators of the selected team included:

- Cohesive and balanced team among design and construction
- Early project completion (approximately 6 months)
- Thoughtful, effective approach to project sequencing
- Conducted thorough due diligence for cost certainty
- Focused on co-location of design-build team in City
- Incorporated City's ideas from one-on-one meetings
- High level of design detail provided
- Better process design for operations
- Better design for short- and long-term flexibility
- Innovative design solution for peak flows

At the June 13, 2018, City Council meeting, the City Council took action and selected the Filanc/Black & Veatch team as the preferred proposer and directed staff to begin negotiations. Since that meeting, the City and Program Manager have been working with the Filanc/Black & Veatch team to clarify aspects of the technical approach and develop agreement terms acceptable to both the design-builder and the City. For example, the City and Program Manager met with key members of the design-build team to discuss the technical elements of the project with the goal of finalizing the scope of work that will become the technical basis of the agreement. That intensive discussion occurred at two workshops

held on August 21 and 22, 2018. In addition to those meetings, City staff, the City Attorney, and Program Manager have had numerous conference calls and meetings to discuss agreement terms. Those negotiations have resulted in no changes between the guaranteed maximum price (GMP) in the Filanc/Black & Veatch proposal of \$67,234,512 included in the agreement attached to this report. That amount is \$28 Million less than the engineer's opinion of probable costs prepared for the [UPDATED SITE COMPARISON REPORT](#), MKN Associates, September 2017 and prior to the Design-Build process.

As the anchor project for the WRF Program, signing a contract with the design-builder for the onsite WRF facilities is a key milestone. Through the procurement process, the City has selected the most qualified design-build team. Through the contract negotiations held over the last several months, the City has developed contract terms that mitigate risk and ensure the City gets a reliable, permittable, and technologically advanced treatment facility capable to producing highly-purified water that will be used to strengthen the community's future potable water supply at the end of the project.

If the City Council chooses to accept staff's recommendations, then the WRF Program will enter into the implementation phase. Over the next six to nine months, City staff and Program Manager will work with the design-build team to further refine the WRF design concept in the Filanc/Black & Veatch team's proposal with the goal of identifying ways to reduce the overall cost of the facility and minimize the financial impact to the City's rate payers.

CONCLUSION

Staff recommends award of the contract for design and construction of the WRF to the Filanc/Black & Veatch team.

ATTACHMENT

1. Proposed agreement with Overland Contracting Inc. (i.e., Black & Veatch) and Filanc Construction Company, Inc.

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Design-Build Agreement

City of Morro Bay, California

Water Reclamation Facility Design-Build Project
_____, 2018

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**CITY OF MORRO BAY
WATER RECLAMATION FACILITY DESIGN-BUILD PROJECT
DESIGN / BUILD AGREEMENT**

THIS DESIGN/BUILD AGREEMENT is entered into on _____, 2018, between the CITY OF MORRO BAY, a general law city and municipal law corporation (City), and OVERLAND CONTRACTING INC., a Delaware corporation, dba KS OVERLAND Contracting, INC. (OCI), and J.R. FILANC CONSTRUCTION COMPANY, INC., a California corporation (JRF), the latter two acting as FBV Morro Bay Joint Venture (collectively, OCI and JRF are referred to as the "Design Build Entity"), located at 1299 Oak Road, #490, Walnut Creek, CA 94597.

RECITALS

- A. The City intends to contract with the Design/Build Entity to design and construct a new Water Reclamation Facility (WRF) (the "Project").
- B. Pursuant to Public Contract Code section 22160 et seq. the City is expressly authorized to design and construct the facility on a Design/Build delivery basis.
- C. The City issued a Request for Qualification on October 27, 2017. Statements of Qualifications were due to the City on December 7, 2017.
- D. The City pre-qualified four Design/Build teams, which were notified on January 24, 2018 of their prequalification.
- E. The City issued a Request for Proposal to the pre-qualified teams on January 24, 2018, (RFP) with instructions to submit their proposals to the City by April 24, 2018.
- F. Final selection interviews were held on June 1, 2018.
- G. Notification of final selection was made on June 8, 2018.
- H. The Design/Build Entity is, OCI and JRF. The Design/Build Entity will enter into a design contract with Black & Veatch Corporation, a Delaware corporation, pursuant to which the Engineer will perform certain design services required by this Agreement.
- I. It is the intent of this Design/Build Agreement that the Design/Build Entity assumes full responsibility for administering, managing, quality control, designing, constructing, and commissioning the Project.
- J. The City and Design/Build Entity wish to memorialize the intent of the parties and the terms upon which Design/Build Entity will undertake the Project.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 – DEFINITIONS

- 1.0 Definitions. The definitions below shall have the same meaning throughout all of the Contract Documents.

- 1.1 Acceptance Testing: The process of demonstrating compliance with Exhibit B over a 14-day period.
- 1.2 Act of God: an Act of God shall include only the occurrences or conditions defined in Public Contract Code Section 7105.
- 1.3 Agreement (Design/Build Agreement): this Design/Build Agreement and all subsequent amendments and modifications to it. Where the term “Agreement,” or “Contract,” is used in the documents, those terms shall refer to this Design/Build Agreement.”
- 1.4 Applicable Laws: all laws, codes, ordinances, rules, and regulations of governmental authorities affecting the Site and the Project.
- 1.5 Authorized Representatives: see Article 4, Paragraph 4.1, the City’s Representative.
- 1.6 Beneficial Occupancy: City’s occupancy or use of any completed or partially completed portion of the Project. See Article 6, Subparagraph 6.11.3, Beneficial Occupancy.
- 1.7 CEQA: the California Environmental Quality Act, (Public Resources Code section 21000 et seq.), and the State CEQA Guidelines 14 CCR 15000 et seq.)
- 1.8 Certificate of Compliance: a certificate issued by the City stating the installation of all life safety materials and equipment is in compliance with building and life safety codes. Such equipment includes, but is not limited to: Fire Alarm and Fire Sprinklers, rated construction assemblies, fire exits, paths of egress, etc.
- 1.9 Certificate of Final Completion: a certificate prepared by the Design/Build Entity and forwarded to the City stating that the Design/Build Entity believes in good faith the Project is complete, including all punch list items, close-out activities and commissioning, and that the Design/Build Entity is entitled to Subparagraph 6.11.7, Final Payment, in accordance with the provisions of Subparagraph 6.11.5, Final Completion.
- 1.10 Change Order: a change to the Design/Build Agreement and/or Contract Documents signed by the Design/Build Entity and the City authorizing a change in the Project, which may also adjust the Guaranteed Not to Exceed Amount and/or the Contract Time, Paragraph 7.1. The Cost Plus with Guaranteed Not to Exceed Amount and Contract Time may be changed only by Change Order.
- 1.11 Change Proposal or Proposed Change Order: a proposal for a Change Order, submitted to the Design/Build Entity by the City, or submitted to the City by the Design/Build Entity on the Design/Build Entity’s own initiative.
- 1.12 City of Morro Bay: the City.
- 1.13 Commissioning: a quality process for achieving, validating, and documenting that the new facilities and its systems are planned, designed, installed, tested and capable of being operable and maintained to perform in conformity with Exhibit B Scope of Work.
- 1.14 Construction Documents: the drawings and specifications prepared and sealed by the Engineer of Record on behalf of the Design/Build Entity for construction of the Project.
- 1.15 Construction Manager: the individual appointed by the City to serve as a point of contact in coordinating the City’s interests.

- 1.16 Contract Documents: this Agreement, including all Addenda, Exhibits, and attachments hereto.
- 1.17 Contract Time: see Paragraph 7.1, Contract Time.
- 1.18 Contractual Completion: the point at which the Performance and Operational Testing Period Project has been completed in accordance with the terms and conditions of the Contract Documents.
- 1.19 Cost Plus: Cost Plus has three components: Cost of the Work, Fee and Overhead Rate, all as more fully set forth in Exhibit C Schedule of Costs.
- 1.20 Cost Plus with Guaranteed Not to Exceed Amount: is the maximum contract amount established by Section 3.2.1 of this Agreement as total compensation to the Design/Build Entity for the design and construction of the Project.
- 1.21 Day(s): calendar day or days, unless otherwise specifically designated as a business day. If a day requiring notice or action falls on a weekend or national or state holiday, then the next non-weekend or non-holiday shall be applicable. (Business day(s) are days other than weekend days or national or California holidays.)
- 1.22 Design/Build Entity: OCI and JRF, acting as FBV Morro Bay Joint Venture, a California contractual joint venture (License No. 947773– Classification A) are able to provide appropriately licensed construction contracting, and furnish through subcontracts, professional architectural and engineering services required hereunder.
- 1.23 Engineer or Designer of Record: Black & Veatch Corporation licensed in the State of California and employed or contracted by the Design/Build Entity to design and prepare construction documents for the Project and to provide construction phase services during the Project.
- 1.24 Final Completion: the point at which the Project has been completed in accordance with the terms and conditions of the Contract Documents, not including the demolition of the City's existing wastewater treatment plant and Performance and Operational Testing Period.
- 1.25 Final Certificate of Occupancy: a formal document issued by the City's Building Official granting unconditional approval to occupy all the habitable structures of the Project.
- 1.26 Float: the amount of time difference between the Design/Build Entity's scheduled critical path method (CPM) early completion date and the Final Completion date as shown in the Project Milestone Schedule, Exhibit A.
- 1.27 Force Majeure Event: any delay in meeting the Project Milestone Dates as set forth in Exhibit A of this Agreement or increases in the Cost of Works due to causes, which (i) are beyond the Design/Build Entity's control, and (ii) result from any war, declared or undeclared, civil war, insurrection, labor trouble causing cessation, slowdown, or interruption of work, strikes, riot, fire, mudslides, storm, flood, volcanic eruption, tsunami, Act of God, as defined herein, explosion, earthquake, embargo, any act or failure to act of any government, delay in transportation, inability to obtain necessary labor supplies or manufacturing facilities (provided they had been timely ordered), allocation regulations or orders affecting the availability of materials, equipment, facilities or completed products (which are essential to the Project and part of the critical path for completion of the Product),

failure to obtain any required license or certificates as result of a failure to act by government, act of the public enemy or terrorism or mass shooting, change in law, unforeseen changed conditions, epidemic, quarantine restriction or failure of any subcontractor (due to causes similar to those within the scope of this clause) to perform its contract obligations.

- 1.28 Indemnified Parties: the City and its officers, officials, employees, attorneys, consultants, agents, subcontractors, successors, and assigns.
- 1.29 Liquidated Damages: the damages for any failure of the Design/Build Entity to achieve Substantial Completion by the date set forth in Exhibit A Project Milestone Schedule, unless such failure is the result of a Force Majeure Event, or as adjusted by contract change order, as more fully described in Paragraph 7.7, Liquidated Damages.
- 1.30 Notice to Proceed: the notice given by the City to the Design/Build Entity stating that the Design/Build Entity is authorized to begin the design and/or the construction of the Project.
- 1.31 Performance and Operation Testing Period: the 7-month period commencing upon achieving Substantial Completion during which the City operates the Project at the direction of the Design/Build Entity to verify the performance guarantees submitted by the Design/Build Entity.
- 1.32 Performance Requirements: the Scope of Work and the Construction Documents.
- 1.33 Substantial Completion: a point in time when the Project is sufficiently complete in accordance with the Construction Documents so that it can be used for its intended purpose, as evidenced by (i) the issuance of one of more Temporary Certificates or a Final Certificate of Occupancy, for all habitable structures of the Project and (ii) successful completion of Acceptance Testing. Substantial Completion does not include the Performance and Operation Testing Period and does not include the demolition of the City's existing waste water plant.
- 1.34 Temporary Certificate of Occupancy: a formal document (i) issued by the City's Building Official granting conditional approval to occupy one or more of the habitable structures of the Project and (ii) but subject to corrections, which must all be satisfactorily completed by the Design/Build Entity, as reasonably acceptable to the City's Building Official, prior to the issuance of the Final Certificate of Occupancy.
- 1.35 Work: all labor, materials, tools, equipment, and services required to be performed or provided by the Design/Build Entity pursuant to the provisions of the Contract Documents, as more fully described in Article 3, Design/Build Entity's Duties and Responsibilities.

ARTICLE 2 – GENERAL PROVISIONS

- 2.1 Scope of Work.
 - 2.1.1 The Design/Build Entity shall be responsible for the performance of all design and construction services, and provide all materials, labor, tools, and equipment necessary to complete the Project described in and reasonably inferable from the Contract Documents.
- 2.2 Execution, Correlation and Intent:

- 2.2.1 This Agreement will not be binding on the City until executed by the City's legal representative.
 - 2.2.2 Execution of this Agreement by Design/Build Entity is a representation the Design/Build Entity understands and accepts the methodology under which the Project is to be performed and has correlated personal observations with requirements of the Contract Documents.
 - 2.2.3 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Project by Design/Build Entity. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Design/Build Entity shall be required to the extent consistent with and reasonably inferable from the Contract Documents.
 - 2.2.4 Organization of the Contract Documents and arrangement of the drawings is not intended to control or guide the division or extent of Project.
 - 2.2.5 Unless otherwise stated in the Contract Documents, words and phrases shall be interpreted consistent with construction and design industry standards.
 - 2.2.6 Work for the Project shall be accomplished in a workmanship-like manner by workers, laborers, or mechanics especially skilled in the class of work required. Any persons the City may deem incompetent or disorderly shall be promptly removed from the Project by the Design/Build Entity upon written notice from the City and shall not be reemployed for the duration of the Project.
 - 2.2.7 As a minimum, work for the Project shall be in compliance with applicable laws, codes and ordinances. Higher levels of performance, material, and or function, may be required or reasonably inferred from the Contract Documents.
- 2.3 Use of the City's Contract Documents.
- 2.3.1 The Contract Documents are for use solely with respect to this Project. They are not to be used on other projects, or for additions to this Project without the specific written consent of the City. The Design/Build Entity is granted limited license to use and reproduce applicable portions of the Contract Documents for use in the execution of the Project. The Design/Build Entity shall not release any information to the public in connection with services performed under this Agreement without advance written permission of the City.
- 2.4 Conflicts in the Contract Documents.
- 2.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. In the event of conflict in the Contract Documents, the precedence shall be as follows:
 - .1 Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.

- .2 This Agreement shall govern over other Contract Documents except for specific modifications stated in amendments to this Agreement and Addenda.
- .3 In case of conflict between the drawings and the written design guidelines and the specifications, the Design/Build Entity shall obtain written clarification from the City as to the governing document. Such request for Clarification shall be submitted via a formal Request for Clarification (RFC) letter.
- .4 In the case of conflict within the Performance Requirements, the following shall govern:
 - .1 Schedules, when identified as such, shall govern over all other portions of the drawings.
 - .2 Specific notes shall govern over all other notes and all other portions of the drawings, except schedules described in the preceding sub clause.
 - .3 Larger scale drawings shall govern over smaller scale drawings.
 - .4 Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - .5 In the case of other conflict within the Performance Requirements, the Design/Build Entity shall obtain written clarification from the City as to the governing document.

2.5 Clarifications and Additional Instructions.

- 2.5.1 Conflicts, omissions, errors, interpretation, or clarification, insufficiency of detail or explanation in the Contract Documents relative to the timely or material execution of the Project shall be immediately brought to the attention of the City in writing and request interpretation, clarification, or furnishing of additional detailed instructions. Such questions shall be resolved and instructions to the Design/Build Entity issued within a reasonable time by the City, whose decision shall be final and conclusive, but subject to the dispute resolution provisions of this Agreement. If the Design/Build Entity proceeds with the Project before receipt of instructions from the City, then the Design/Build Entity shall make adjustments to conform to the City's instructions. In such case, Design/Build Entity shall be solely responsible for any resultant damage, defect, or added cost.
- 2.5.2 The City may furnish additional detailed written instructions to explain the Project more fully, and such instructions shall be a part of the Contract Documents requirements. If additional detailed instructions, in the opinion of the Design/Build Entity, constitute work in excess of the scope of the Project, then the Design/Build Entity shall submit written notice to the City within 10 calendar days following receipt of such instructions, and in any event prior to commencement of the work on it. The City will then consider the notice; and, if in the City's judgment it is justified, the City's instructions will be revised for the extra work authorized.

ARTICLE 3 – DESIGN/BUILD ENTITY’S DUTIES AND RESPONSIBILITIES

3.1 Performance of Work on the Project.

3.1.1 Design/Build Entity shall be responsible for achieving the Occupancy and Final Completion Milestones dates in the Project Milestone Schedule as shown in Exhibit A. The schedule may be modified from time to time pursuant to the provisions of the Contract Documents.

3.2 Design/Build Entity’s Responsibilities:

3.2.1 Design/Build Entity further agrees to design and construct the Project, excluding the demolition of the City’s existing waste water treatment plant, in sole consideration for the City’s payment of the Cost Plus with Guaranteed Not to Exceed Amount of **sixty-seven million, two hundred and thirty-four thousand, five hundred and twelve dollars (USD) (\$67,234,512)**. In the event any or all costs incurred by the Design/Build Entity in the performance of all work required to satisfactorily complete the Project, as required by the Contract Documents, exceed the Guaranteed Not to Exceed Amount, such costs shall be the sole responsibility of the Design/Build Entity and not subject to compensation or reimbursement by the City. The duties and responsibilities include, but are not limited to, the following tasks:

3.2.2 General Responsibilities.

OCI and JRF are jointly and severally liable for each and every obligation of the Design/Build Entity arising out of this Agreement.

Utilize the Management Information System (MIS), Procore, to manage the Project, and provide information to the City’s Project Management Team.

The Management Information System (MIS), shall facilitate documentation and exchange of project information including, but not limited to, Request for Clarifications (RFC’s), Substitutions, Deviations from Scope of Work, Change Orders, Progress Payments, Submittals, Schedule(s), Drawings, etc. Design/Build Entity shall meet with the City’s Project Management Team to determine specific requirements for the implementation of the MIS.

Pursuant to CEQA, a final environmental impact report has been certified, as **has/will be** a final environmental impact statement or other document analyzing environmental impacts per the National Environmental Policy Act. The Design/Build Entity shall comply with all the mitigation measures required by those documents.

The Design/Build Entity is required to deliver to the City any and all design materials. Those materials include, but are not limited to: calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

The Design/Build Entity shall comply with all applicable Federal and State requirements, some of which are specifically described in Exhibit G.

3.2.3 Design Phase Responsibilities - The Design Phase includes the preparation of the design and construction Documents for the Project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing, and electrical engineering and whatever else may be necessary to ensure a full and complete process that meets, at a minimum, the Performance Requirements. These responsibilities shall also include all relevant plan submittals and permitting activities, for permits and approvals required for construction activities related to the Project.

.1 Systems Confirmation Phase.

- .a Following receipt of a Notice to Proceed, the Design/Build Entity shall meet biweekly with City and provide such information as necessary to inform the City of the project design status and obtain City input and approval regarding design issues. The Design/Build Entity shall be responsible for scheduling and coordinating the participation in these meetings, which may be conducted either in person or by telephone conference, as mutually agreed between Design/Build Entity and City. The Design/Build Entity shall proceed to develop System Confirmation documents. These documents shall depict the type and quality of materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Performance Requirements. The System Confirmation documents are considered to be part of and submitted with the schematic design, design development 60%, and construction document submittals. For further details on submittal requirements refer to Exhibit B - Scope of Work.
- .b Conduct ongoing value engineering analyses on selected building components to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analyses shall be performed as needed concurrent with the System Confirmation effort.
- .c Prepare and update detailed estimates of the cost of construction at the 30%, 60% and 90% design phases to substantiate any changes to the Guaranteed Not to Exceed Amount that results from owner requested changes to the Scope.
- .d Monthly prepare and update the detailed construction schedule to confirm project delivery within the stipulated milestones, as defined in the Contract Documents.

.e Participate in the Systems Confirmation Conference (also referred to as a “Basis of Design Workshop”) with the City and its consultants within 30 calendar days after the Notice of Award, prior to the development of the Construction Documents. The Design/Build Entity shall be responsible for scheduling and coordinating the participation in these meetings. The Systems Confirmation Conference is intended to obtain City approval for design approach, equipment selection, and system/building layout prior to detailed design. The deliverables are defined in the appropriate sections of the Contract Documents.

.2 Construction Documents Phase.

.a Prepare Construction Documents for the entire Project in full compliance with all applicable building codes, ordinances, and other regulatory authorities. The Construction Documents shall at a minimum comply with all applicable California State Building Codes, to include but not be limited to, Title 8 (Industrial Relations), Title 17 (Public Health), and Title 24 (Building Standards). Construction Documents will also need to show Best Management Practices for storm water pollution prevention during and after construction of project. The completed Construction Documents are to be delivered to City and shall consist of the following:

Drawings – Provide one reproducible original, and 10 printed full-size copies and 10 half-size copies of all approved construction document drawings. Provide one copy of all approved construction document drawings on compact disks (CD) using:

Computer-Aided Design (CAD) software, using the latest version of AutoCAD.

Specifications – Where articles, materials, and equipment are identified by brand names, at least two names shall be used, and such names shall be followed by the words “or equal”. Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by Public Contract Code Section 3400.

Provide original and 10 printed copies of approved specifications, bound and organized. Provide approved specifications on compact disks for all sections for all work applicable to the Project; in a format complying with the current edition of the Construction Specifications Institute’s “Master Format”; as directed by the City and in accordance with the following:

- 1) Electronic computer software in Microsoft Word, latest version for Windows.

2) All disks provided shall be clearly labeled to indicate files contained and date produced.

.b Upon receipt of the Notice to Proceed, the Design/Build Entity shall instruct the Engineer of Record to commence with design and preparation of 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. The Design/Build Entity shall be responsible to design, prepare construction documents and coordinate all disciplines for the entire project.

Responsibilities also include the design, preparation of construction documents and all coordination necessary to complete Project in accordance with the Scope of Work, all to be provided and installed by the Design/Build Entity. Refer to paragraph 3.2.4, Construction Phase Responsibilities, for further fixtures and equipment requirements. The Project's design shall meet or exceed the design and performance criteria stipulated in the Scope of Work.

.c The City's review of the construction documents shall be conducted in accordance with the approved Design/Build Entity's Baseline Schedule with procedures set forth in Article 7, Schedule. Such review shall not relieve the Design/Build Entity from its responsibilities under this Agreement. Such review shall not be deemed an approval or waiver by the City of any deviation from, or of the Design/Build Entity'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 Design/Build Entity and approved by the City.

.d 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. However, during Project start-up the Design/Build Entity will determine the number of design packages with the City and stipulate the number in the Design/Build Entity's Project Management Plan. The Design/Build Entity's Baseline Schedule shall indicate the times for the City to review the completion of each such portion of the construction documents and a reasonable time for review of same. The minimum review time for major milestone submittals shall not be less than 10 working days.

.e The Design/Build Entity shall submit completed packages of the construction documents, in the quantities required by the City Community Development Department and other applicable

authorities having jurisdiction, at the times indicated on the Design/Build Entity's Baseline Schedule. Review meetings between the Design/Build Entity and the City to review the construction document packages, shall be scheduled and held so as not to delay the Project. After reviewing the construction documents package for conformance to the Contract Documents and applicable codes, in his/her governmental capacity, the City's Building Official will issue a Building Permit to the Design/Build Entity. The issuance of the Building Permit or Notice to Proceed does not relieve the Design/Build Entity of satisfactorily and timely complying with all provisions of the Contract Document.

- .f The construction documents for hazardous and/or toxic abatement efforts and demolition activities shall be of sufficient clarity and detail and shall be submitted to the City and other applicable authorities having jurisdiction for review.

.3 Ownership of Design Materials.

- .a All materials and documents developed in the performance of this Agreement are the property of the City. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes, and other work developed in the performance of this Agreement, including the right to use same on any other City work at no additional cost to the City.

Design/Build Entity agrees to and does hereby grant to the City a royalty-free license to all such data that Design/Build Entity may cover by copyright and to all designs as to which Design/Build Entity may assert any rights or establish any claim under the patent or copyright laws. The Design/Build Entity for a period of three years after completion of the Project agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the City.

The City agrees to make no demand on Design/Build Entity and indemnifies the Design/Build Entity of any damages for responsibility for the City's use of such materials for any other City work that is not the subject of an agreement between the City and Design/Build Entity for such use.

USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the City. The City must utilize the Interagency Edison extramural invention reporting system at

<http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- .b The Design/Build Entity shall perform the work required under this Agreement with Computer-Aided Design (CAD) software, using the latest version of AutoCAD, and shall deliver to the City the compact disks containing the electronic files of all approved construction document drawings and as constructed Record Drawings.
- .c The City does not assume any obligation to employ the Design/Build Entity's services or pay Design/Build Entity royalties of any type as to future programs that may result from the work performed under this Agreement.

.4 Design Material Errors

The Design/Build Entity shall be solely responsible for all design errors, including, but not limited to: errors, inconsistencies or omissions in the construction documents, and errors, omissions and inconsistencies that do not conform to the minimum standards of the Contract Requirements and the Performance Requirements. The Design/Build Entity shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Build Entity from the Contract Requirements and the Performance Requirements before commencing activities.

3.2.4 Construction Phase Responsibilities.

The Design/Build Entity shall provide all supervision, labor, materials, equipment, temporary utility services and facilities necessary to design and construct the entire fully-functional Project, as required by the Contract Documents, including, but not limited to:

- .1 Prepare an existing conditions survey of the all surrounding and adjacent properties, including streets and observable and recorded utilities, prior to the start of construction. The survey shall professionally document existing conditions of surrounding and adjacent properties using a professional video/filming service hired by the Design/Build Entity and approved by the City prior to the start of Project. Videotape shall be on DVD and contain detailed audio documentary describing property, location and existing conditions in areas of view. Design/Build Entity will endeavor to gain access to non-City owned properties. Submit three copies of the videotapes to the City 10 days prior to the start of construction.
- .2 Competitively bid all work not performed by the Design/Build Entity or its members or the Designated Subcontractors for packages that exceed \$200,000 in anticipated value.

- .a Provide public notice of the availability of work to be subcontracted in accordance with Section 22160 *et seq.* of the Public Contract Code.
 - .b The contents of the notice shall state the time and method for receiving bids or proposals from respondents and a description of the work in accordance with Section 22160 *et seq.* of the Public Contract Code.
 - .c As authorized by the City, establish reasonable pre-qualification criteria and standards for the submittal of bids or proposals. See Public Contract Code Section 22160 *et seq.*
 - .d Award the subcontracted work to the best value respondent as determined by the Design/Build Entity. The Design/Build Entity retains the right in its sole discretion, to reject any or all respondent submittals and re-procure any subcontract work package in the event all bids or proposals exceed the Design/Build Entity's budget for the particular work package.
 - .e The City retains the right to observe the procurement process described under Section 3.2.4.2 above in its entirety, providing input as necessary to procurement document development, evaluation of subcontractor respondent submittals, and the documentation of the procurement process, provided, however, that the decision as to the award remains solely that of the Design/Build Entity as it is responsible for the work of its subcontractors.
- .3 If a discovery is made of items of archaeological interest on site during excavation activities, the Design/Build Entity shall immediately cease excavation in the area of discovery and shall not continue until ordered by the Construction Manager. Design/Build Entity shall cooperate with and provide access to the City's Archaeologist and other monitoring services.
- .4 Except as otherwise specifically approved by the City, prepare and submit construction progress photographs monthly from groundbreaking through project completion, within three calendar days of the date of the Design/Build Entity's application for progress payment. To the extent practicable, make photographs at approximately the same time of day through progress of the work. When inclement weather is anticipated, consult with the City and determine acceptable alternative arrangements.

Identify each location by word description, by marked drawing, or by such other means as acceptable to the City, to enable future photographs to be taken from the same position. When so directed by the City, because of the stage of construction, change one or more of the locations to new locations inside or outside the buildings. Make each photograph clear, in focus, with high resolution and sharpness, and with minimum distortion.

The Design/Build Entity shall retain the digital copies for at least four years following Date of Substantial Completion, and to provide prints to the City

during that period at the prevailing commercial rates for such prints. Do not permit prints to be issued for any other purpose without specific written approval from the City.

- .5 Competitively procure all process equipment packages from the preapproved vendors as identified in, and in accordance with the Scope of Work (Exhibit B).
 - .a Award the process equipment package to the best value preapproved vendor (pre-approved in accordance with Design/Build Entity's procurement practices) as determined by the Design/Build Entity. Design/Build Entity retains the right, in its sole discretion, to reject any or all preapproved vendor submittals and re-procure any process equipment package in the event (i) all bids or proposals exceed Design/Build Entity's budget for the particular equipment package; or (ii) in the Design/Build Entity's sole judgement, the preapproved vendor cannot meet the timing or quality requirements of the Project as established by the Contract Documents.
 - .b City retains the right to observe the procurement of all process equipment packages as identified in the Scope of Work (Exhibit B), providing input as necessary to procurement document development, evaluation of preapproved vendor submittals, and the documentation of the procurement process; provided, however, that the decision to award remains solely that of the Design/Build Entity, as it is responsible for the work of its vendors.

3.3 Standards of Performance.

The work on the Project shall be performed in accordance with the professional standards and quality of care applicable to projects, buildings or work of similar size, complexity, quality and scope constructed within a California urban environment.

- 3.3.1 The Design/Build Entity shall assign **Gary Silverman**, Project Manager, as previously approved by the City. The Project Manager shall remain on the Project through Final Completion. The Design/Build Entity shall make assignments of consultants and subcontractors as detailed in the Proposal.

The Design/Build Entity may make additions or substitutions to personnel and responsibilities provided they are suitably qualified and are approved by the City in writing. In the event that personnel assigned by the Design/Build Entity fail to meet the professional standards required or are persistently uncooperative, in the sole discretion of the City, the City may request substitution of such personnel. Once notice of such request has been received, the Design/Build Entity shall have 20 business days to substitute such other personnel as approved by the City.

- 3.3.2 The Design/Build Entity shall employ a competent, on-site project team including, but not limited to, Project Superintendent, and necessary assistants who shall be in attendance at the Project Site at all times during the construction of the Project. The Project Superintendent shall represent the Design/Build Entity and

communications given to and by the Project Superintendent shall be as binding as if given directly to and by the Design/Build Entity. The Design/Build Entity shall confirm all communications in writing and provide a matrix of signature authority limitations for its team.

- 3.3.3 At any other time when the Project Superintendent is absent from the Project Site because no work is being performed, the Project Superintendent shall nevertheless keep the City advised of the Project Superintendent's whereabouts so that the Project Superintendent may readily be reached and available for consultation at the Project Site at any time.

3.4 Applicable Laws and Codes.

The Design/Build Entity shall comply with all applicable laws, codes, regulations, City Resolutions and City ordinances and shall give notices as applicable. Design/Build Entity shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the work and shall secure and pay as part of the Guaranteed Not to Exceed Amount, for plan check and permits fees, licenses and inspections required.

- 3.4.1 The Design/Build Entity shall comply with the current adopted edition of the California Building Code ("CBC"), including any updates following the date the Design/Build Entity submits the Project for plan check. Whenever the Contract Documents require higher standards than the minimum required by applicable laws, the Contract Documents shall take priority.

- 3.4.2 Design/Build Entity shall submit for review to the City and to other authorities having jurisdiction required calculations and other materials demonstrating the energy use of proposed systems and sustainability.

3.5 Permits, Fees and Notices.

- 3.5.1 Unless otherwise provided in the Contract Documents, the Design/Build Entity shall be responsible for obtaining the required permits, governmental fees, licenses, inspections, approvals, notices and actions necessary to complete the Work and to prepare all documents customarily required for regulatory agency approvals. City shall be responsible for the cost of the building permit and such cost shall not be included in the Guaranteed Not to Exceed Amount. Design/Build Entity shall provide a minimum of 10 working days' notice to City to cut checks for the building permit.

- 3.5.2 Design/Build Entity shall promptly, notify the City, in writing, of variances observed between the Contract Documents and applicable laws. The Design/Build Entity shall bear responsibility for any attributable costs for work performed, without prior notice to the City, known to be contrary to applicable laws.

- 3.5.3 The Design/Build Entity may be subject to City, or state laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon City property and shall be solely responsible for meeting these requirements.

- 3.5.4 The Design/Build Entity shall pay any site de-watering fees and will cooperate with the City in any reasonable measure to limit the quantity of de-watering.
- 3.5.5 The City shall pay all utility assessments and connection fees levied by the City, or other utility service provider.
- 3.6 Use of Project Site.
 - 3.6.1 The Design/Build Entity shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents.
 - 3.6.2 The Design/Build Entity shall perform no operations of any nature on or beyond the limits of Work or premises, except as such operations are authorized in the Contract Documents or authorized by the City.
 - 3.6.3 The Design/Build Entity shall provide and maintain a temporary construction fence and suitable temporary barriers as required preventing public entry; protecting the work and existing facilities, persons, and trees and plants from damage or injury from construction operations. Temporary barriers shall be maintained in a structurally sound condition and neat appearance.
 - 3.6.4 If regulatory requirements necessitate construction of temporary barriers, barricades, or pedestrian walkways not indicated or specified in the Construction Documents, then the Design/Build Entity shall construct or provide same, as required, at no increase in the Guaranteed Not to Exceed Amount. The Design/Build Entity shall also paint, at no increase in the Guaranteed Not to Exceed Amount, such items in a color selected by the City's Representative.
- 3.7 Cutting and Patching.
 - 3.7.1 The Design/Build Entity shall be responsible for cutting, fitting or patching required to complete the Work.
 - 3.7.2 The Design/Build Entity shall not damage nor endanger the Work by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of the City.
- 3.8 Cleaning.
 - 3.8.1 The Design/Build Entity shall keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by operations under the Agreement and at other times when directed by the City. At all times while finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash. Prior to issuance of the Certificate of Final Completion, the Design/Build Entity shall remove from the Project Site the Design/Build Entity's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for the City's final inspection.

3.8.2 If the Design/Build Entity fails to clean up as provided in the Contract Documents, then the City may do so and the cost thereof charged to the Design/Build Entity.

3.9 Site Availability.

3.9.1 The City shall turn over the Site to the Design/Build Entity as described in the Notice to Proceed and as further described in EXHIBIT A – PROJECT MILESTONE SCHEDULE, at which time the Design/Build Entity shall be obligated to take control and responsibility. The Design/Build Entity shall provide the City, Construction Manager and other City consultants with continuous access to the Site.

3.10 Site Conditions.

3.10.1 The Design/Build Entity represents it has taken the necessary steps to ascertain the nature, location and extent of the Work, and it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:

- (a) conditions bearing on transportation, disposal, handling and storage of materials;
- (b) the availability of labor, water, power and roads;
- (c) normal weather conditions;
- (d) physical conditions at the Site;
- (e) the conditions of the ground;
- (f) the character of equipment and facilities needed prior to and during the performance of the Work.

3.10.2 To the extent the Design/Build Entity encounters subsurface conditions or hazardous materials, which differ materially from that actually known by the Design/Build Entity, or from those ordinarily known to exist or could have been reasonably discovered, or generally recognized as inherent in the area, then notice by the Design/Build Entity shall be immediately given to the City, before conditions are disturbed, and in no event later than two business days after the first observance of the conditions. If, as a direct result of such conditions the Design/Build Entity incurs additional costs or delays in meeting the Project Milestones set out in Exhibit A as a direct result of such concealed conditions, then such conditions shall be the subject of a Change Proposal submitted by the Design/Build Entity and the City shall not unreasonably deny that Change Order if the Design/Build Entity submits timely and complete documentation in accordance with this Agreement.

If any existing utilities or services are disturbed, disconnected or damaged during construction, then the Design/Build Entity shall be responsible, at no additional cost or time to the City, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

3.10.3 The Design/Build Entity is responsible for site conditions and toxic materials to the extent described in the Contract Documents.

3.11 Hazardous Materials.

Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Requirements, or which reasonably could not have been discovered within the time permitted or the Design/Build Entity to prepare its Proposal, may properly be the subject of a Change Proposal. The City agrees the Design/Build Entity cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

3.11.1 "Hazardous materials" means 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 or the City; 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 Design/Build Entity or the City; or as defined in the California Health and Safety Code.

3.11.2 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the State of California and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

3.11.3 The indemnification provision of the Agreement, Paragraph 12.2, Indemnification, is applicable to this paragraph in its entirety.

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

- 3.12.1 Shop drawings means drawings, submitted to Design/Build Entity by, subcontractors, manufacturers, supplier or distributors showing in detail the proposed fabrication and assembly of building elements and the installation (i.e., form, fit, and attachment details) of materials or equipment.
- 3.12.2 Design/Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design/Build Entity's construction documents and shall indicate its approval thereon as evidence of such coordination and review.
- 3.12.3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in Exhibit B Scope of Work.
- 3.12.4 Prior to placement of material orders or start of component fabrication, the Design/Build Entity shall submit to the City a preselected list of shop drawings approved by the Engineer of Record and samples of submittals that relate to finish materials and products.
- 3.12.5 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the City.

3.13 Federal Conditions & Cross-Cutters.

Funding in part or in whole for the Work has been secured through the Water Infrastructure Finance Innovation Act and/or the California State Revolving Fund. Therefore, the City and, the Design/Build Entity and its subcontractors must and will comply with Federal conditions and cross-cutter requirements. Those requirements are hereby incorporated in total, as part of this Agreement through Exhibit G even if not expressly stated herein or in Exhibit G.

3.14 Site Conditions.

- 3.14.1 The Design/Build Entity is responsible for assessing the site conditions prior to start of design work. Preliminary findings that will impact the design work must be notified to the City immediately. Design/Build Entity shall be responsible to verify the accuracy of the information provided and, at its cost, obtain any additional measurements, and verifications.
- 3.14.2 The Design/Build Entity shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.
- 3.14.3 The Design/Build Entity shall obtain, and pay for, the services of geotechnical engineers licensed in the State of California and other consultants to provide services deemed necessary by the Design/Build Entity. Such services may include reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional interpretations and recommendations thereof.

3.15 Meetings and Reports.

3.15.1 Prior to commencement of the work, the Design/Build Entity shall attend a Project Kick-off meeting, at a time and a place selected by the City's Representative, to discuss procedures to be followed during the course of the work. Design/Build Entity shall follow the procedures as set forth by the City's Representative and as provided in the Design/Build Entity's procedure manual to be supplied at the Kick-off conference. The purpose of the meeting will be to introduce the City's key personnel and to review the contract provisions and any other items pertaining to the Project.

3.15.2 Once a week, or at such interval as mutually agreed by the parties, the City's Representative will meet with the Design/Build Entity to review the overall project progress, the status of the design and/or construction, and to discuss any problems that may arise. The Design/Build Entity and the Engineer of Record shall attend all progress meetings. Subconsultants, Subcontractors and Vendor Representatives shall attend the progress meetings as appropriate to the particular stage of the work. The Design/Build Entity shall prepare and submit written reports to be presented at these weekly meetings of the progress and quality of Work.

3.15.3 Each month the Design/Build Entity shall attend a payment meeting with the City's Representative to agree on the work completed during the current month and establish an amount to be requested in the Application for Payment.

3.15.4 The Design/Build Entity shall prepare and submit to the City, during design completion, the construction document 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 the City. One electronic of the Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design/Build Entity's projected progress for the forthcoming month.

3.15.5 Thirty days prior to the estimated final completion, the Design/Build Entity shall hold a meeting to review maintenance manuals, guarantees, close-out submittals, bonds, and service contracts for materials and equipment. Implement repair and replacement of defective items and extend service and maintenance contracts as desired by the City.

3.16 Other Reports.

3.16.1 The Design/Build Entity will cooperate with the City, and as may be requested, assist in preparing periodic project reports required by the City Council, the City's Project Management team, or other City agencies as required.

3.17 Notices of Labor Disputes.

3.17.1 If Design/Build Entity has knowledge any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, then Design/Build Entity shall immediately give notice including all relevant information to the City.

3.17.2 Design/Build Entity agrees to insert the substance of this Article including this Clause in any subcontract to which a labor dispute may delay the timely performance of the Work, 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 Design/Build Entity, as the case may be, of all relevant information concerning the dispute.

3.18 Guarantee.

3.18.1 The Design/Build Entity unconditionally guarantees the Work 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 year after the date of Substantial Completion, unless a longer guarantee period is specifically called for in the Contract Documents. For equipment or building components started in operation prior to Final Completion, the Design/Build Entity shall, at no additional cost to the City, provide guarantees such that the guarantee period will be in force for the full year after Substantial Completion as detailed in sections 1.33 and 6.11.4 of this Design Build Agreement.

The Design/Build Entity shall repair or replace, at Design/Build Entity's option, 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 the City; ordinary wear and tear or operation and maintenance that is not in accordance with the Operations and Maintenance Manual(s) submitted by the Design/Build Entity and abuse by other than the Design/Build Entity or its officers, employees, agents or subcontractors of any tier excepted.

3.18.2 The Design/Build Entity further agrees, within seven days after being notified in writing by the City, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design/Build Entity shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the City finds that the Design/Build Entity fails to perform any of the work under the guarantee, then the City will proceed to have the work completed at the Design/Build Entity's expense and the Design/Build Entity will pay costs of the work upon demand. The City will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the Design/Build Entity's refusal to pay the above costs.

3.18.3 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of City employees, property, or licensees, the City may undertake, at the Design/Build Entity's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design/Build Entity not being in accordance with the requirements of the Contract Documents.

3.19 Warranty.

3.19.1 The Design/Build Entity warrants to the City that any and all materials, equipment and furnishings when incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of the 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 the City to maintain an action for breach of contract against the Design/Build Entity.

3.20 Patents, Trademarks, and Copyrights.

3.20.1 The Design/Build Entity shall pay, as part of the Guaranteed Not to Exceed Amount, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Build Entity shall defend all suits or claims for infringement of patent, trademark, and copyrights against the indemnified parties, and shall indemnify, defend, and hold harmless the indemnified parties from any claims, causes of action, losses, or costs related to any and all matters arising in connection with Work on the Project (such costs to be paid as part of the Guaranteed Not to Exceed Amount), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by the City, other than pursuant to the recommendation or suggestion of the Design/Build Entity; provided, however, if the Design/Build Entity has reason to believe that the design, process, or product so specified is an infringement of a patent, the Design/Build Entity shall be responsible for any loss resulting unless the Design/Build Entity has provided the City with prompt written notice of the Design/Build Entity's belief, and the City has nevertheless elected to go forward with such design, process, or product so specified.

3.21 Taxes and Business License.

3.21.1 The Design/Build Entity shall pay all applicable taxes for the Work, or portions thereof provided by the Design/Build Entity, which were legally enacted as of 30 days prior to the submission of the Design/Build Entity's Request for Proposal, whether or not yet effective or merely scheduled to go into effect. Any federal, state, or local taxes payable on any materials, labor or any other thing to be furnished by Design/Build Entity under the Contract Documents and in effect 30 days prior to the submission of the Design/Build Entity's Request for Proposal shall be included in the Guaranteed Not to Exceed Amount and paid by Design/Build Entity. Design/Build Entity must procure a City Business Tax Certificate before or during the construction of work.

3.22 Tests and Inspections.

3.22.1 The Design/Build Entity shall be responsible for designating a Quality Assurance Manager assigned to the Project. The Quality Assurance Manager shall be subject to approval by the City. The Design/Build Entity shall provide the City with the detailed qualifications of the Quality Assurance Manager, including but not limited

to, a description of previous relevant project experience, and all training, licensing and certifications.

The Design/Build Entity shall be responsible for requesting and scheduling all tests and inspections necessary to ensure the quality of the Work are in accordance with the terms of the Contract Documents. The Design/Build Entity shall at all-time permit the City and its agents, inspectors, officers, and employees to visit the Project Site and inspect the Work and such other locations where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the work to be tested, such portion of work shall not be covered up until inspected and approved. The Design/Build Entity shall be solely responsible for notifying the City where and when the work is ready for inspection and testing. The City shall provide inspectors to review and verify compliance of the Design/Build Entity's quality control and assurance teams with the contract documents.

If any work is covered without the required testing or witnessed by the City, then such work shall be uncovered at the Design/Build Entity's expense. Whenever the Design/Build Entity intends to perform work on Saturday, Sunday, or a legal holiday, the Design/Build Entity shall give written notice to the City of such intention at least 48 hours prior to performing the work, so that the City may make necessary arrangements.

- 3.22.2 If the City determines portions of the Work require additional testing or inspection that is not included in the Contract Documents, then the City will instruct the Design/Build Entity, in writing, to make arrangements for additional testing or inspection by an entity acceptable to the City, and the Design/Build Entity shall give 48 hours written notice to the City of where and when tests and inspections will be conducted so that the City may observe the procedures. The City will bear the costs except as provided in Subparagraph 3.22.1.
- 3.22.3 If procedures for testing, inspection or approval under Subparagraphs 3.22.1 and 3.22.2 reveal failure of a portion(s) of the work to comply with the Contract Documents, the Design/Build Entity shall bear all costs and time made necessary by such failure(s) including those of repeated procedures and compensation for the City's services and expenses. The Design/Build Entity shall notify the City in writing within 24 hours of any test conducted by the independent testing agency reveals work failing to comply with the contract documents.
- 3.22.4 Required certificates of testing and inspection shall, unless otherwise required by the Contract Documents, be secured by the Design/Build Entity and delivered to the City within seven days after each test.
- 3.22.5 Provide qualified on-site personnel to review and record daily construction activities, including subcontract activities, to determine adequacy of work and compliance with the approved plans and specifications. Provide written daily reports in a daily report format approved by the City, including, but not limited to: project title, date of work, contract day, weather and conditions (temperature, wind, humidity, etc.), a description of the work in progress by corresponding schedule activity number(s), name of each subcontractor on site and work being performed,

location of each trade on the Project site, total daily man count per trade (including the Design/Build Entity's work force), material deliveries and quantities, equipment deliveries, potential delays and delays encountered, orders of instruction, unsatisfactory work, tests performed, safety concerns, visitors, and any other issues to document work performed and areas of concern.

Daily reports shall be signed by the Design/Build Entity's Quality Assurance Manager and Project Superintendent and submitted to the City's Construction Manager through the Procore system no later than the 12:00 p.m. following the day work was performed. The Design/Build Entity shall separately provide written reports to the City's Construction Project of any noted deficiencies in the installed work and corrective measures taken, and test reports of work being installed.

3.23 Air Pollution.

3.23.1 The Design/Build Entity and each subcontractor shall comply with all State, City and or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Agreement. If there is a conflict between the State, City and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.

3.24 Certification by Design/Build Entity of Recycled Content.

3.24.1 If required by SRF or WIFIA requirements, the Design/Build Entity shall certify in writing, under penalty of perjury, to the City awarding an agreement under this part, the minimum, if not exact, percentage of recycled content, both post-consumer material and secondary material, as defined in Public Contract Code Sections 12200-12226, in materials, goods, or supplies offered or products used in the performance of the Agreement, regardless of whether the product meets the required recycled percentage as defined in Sections 12200-12226. The Design/Build Entity may certify that the product contains zero recycled content. This information shall be provided for all materials with recycled content noted in the Contract Documents. See also Management Plan Information and Requirements, and Waste Management Plan

3.25 Unfair Business Practices.

The Design/Build Entity agrees, and will require all of the Design/Build Entity's contractors and subcontractors and suppliers to agree, to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or any subcontract there under. An assignment made by the Design/Build Entity, and all additional assignments made by subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the City tenders Final Payment to the Design/Build Entity, without further acknowledgment of the parties.

ARTICLE 4 – CITY'S DUTIES AND RESPONSIBILITIES

4.1 City's Representative.

- 4.1.1 The City shall designate, from time to time, one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. Functions for which this Design/Build Agreement provides to be performed by the City may be delegated by the City only by written notice to the Design/Build Entity from the City.

The Design/Build Entity shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design/Build Agreement. Directions and decisions made by Authorized Representatives of the City shall be binding on the City.

4.2 Communication with the Design/Build Entity.

- 4.2.1 During the term of this Design/Build Agreement, the City shall communicate with the Design/Build Entity, subcontractors, suppliers, and others performing any part of the Work only through the Design/Build Entity's Authorized Representatives, as may be amended, subject to any approvals required by the City as described in the Contract Documents.

4.3 City's Consent.

- 4.3.1 Whenever the City's consent, review, satisfaction, or determination shall be required or permitted under the Contract Documents with respect to the Design/Build Entity's performance of the Work, and this Design/Build Agreement does not expressly state that the City may act in its sole discretion, such consent, review, satisfaction or determination shall not be unreasonably withheld.

The City shall cooperate fully with the Design/Build Entity and shall furnish decisions, information, and/or reviews required by this Design/Build Agreement in a timely manner so as not to delay the Work, provided that the City shall have no less time for review than set forth in the Project Baseline Schedule as developed by the Design/Build Entity and accepted by the City.

4.4 City Review of Design Materials.

- 4.4.1 The Design/Build Entity shall be entitled to proceed with all or a part of the construction phase of the Project upon the City's review and approval of the design and construction documents and selected subsequent submittals or shop drawings for conformance with the Scope of Work, and other Contract Documents. If the City modifies or otherwise changes in a material way the Scope of Work called for in the construction documents, subsequent submittals or shop drawings, after such review for conformity, the Design/Build Entity shall be entitled to a Change Order in accordance with Article 8, Changes in the Work, of the Agreement. In no event shall a Change Order be issued to the extent such modification is due to the fault or neglect of the Design/Build Entity, or in the event the original submittals were not accompanied by annotations showing nonconformance with the Contract Documents, if any.

ARTICLE 5 – SUBCONTRACTING AND LABOR

5.1 Subletting and Subcontracting.

- 5.1.1 The Design/Build Entity shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code, Section 4100. Subcontractor substitutions shall be in accordance with the Act and any violations may subject the Design/Build Entity to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.
- 5.1.2 The Design/Build Entity shall be responsible for all work performed under this Agreement. All persons engaged in the Project will be considered employees of the Design/Build Entity. The Design/Build Entity shall give personal attention to fulfillment of the Agreement and shall keep the Work under the Design/Build Entity's control. When any subcontractor fails to execute a portion of the work in a manner satisfactory to the City, the Design/Build Entity shall remove such subcontractor immediately upon written request notice from the City, and the subcontractor shall not again be employed on the Project. Although Specification Sections, Part 4 of the Contract Documents, may be arranged according to various trades or general grouping of work, the Design/Build Entity is not obligated to sublet work in such manner. The City will not entertain requests to arbitrate disputes among subcontractors or between the Design/Build Entity and subcontractor(s) concerning responsibility for performing any part of the Work.
- 5.1.3 The City may not permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

Any contract on a public works project entered into between a Design/Build Entity 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, and any public money that may have been paid to a debarred subcontractor by the Design/Build Entity on the Project shall be returned to the awarding body by the Design/Build Entity. The Design/Build Entity shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project. For additional details on subcontracting with debarred and suspended entities refer to Exhibit G.

5.2 Disadvantaged Business Enterprise Requirements

The WRF Project is partially funded through the California State Revolving Fund (CASRF) Program for Clean Water. Part of the requirements of CASRF funding is compliance with Disadvantaged Business Enterprise (DBE) Requirements. The requirements and applicable forms are described below and in Exhibit G.

- 5.2.1 Disadvantaged Business Enterprises are defined in Exhibit G under the section titled "Disadvantaged Business Enterprises are:".

5.2.2 The method for certifying DBE firms is defined in Exhibit G under the section titled "Certifying DBE Firms:"

5.2.3 Good Faith Efforts (GFE)

The Design/Build Entity shall comply with the Six Good Faith Efforts and submit the required forms to the City per Exhibit G Section "Six Good Faith Efforts (GFE)". Prior to signing this Agreement, the City reviewed the Design/Build Entity documents closely to determine the GFE was performed **prior** to submittal of the response to the RFP or proposal opening date. Failure to have completed the GFE and to substantiate completion of the GFE before that submittal opening date could jeopardize CWSRF financing for the Work. Refer to the aforementioned section of Exhibit G for details of situations and circumstances that require action.

5.2.4 **Administration Requirements**

The Design/Build Entity shall maintain a bidders list and comply with all other requirements as detailed in the Exhibit G section labeled "Administration Requirements". All lists have been submitted to the City after submittal of the Design/Build Entity's proposal but prior to execution of this Agreement.

5.3 Subcontracting Relations.

The Design/Build Entity shall, by subcontractor agreement, require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Design/Build Entity by terms of the Contract Documents, and to assume toward the Design/Build Entity all the obligations and responsibilities which the Design/Build Entity, by the Contract Documents, assumes toward the City. Each subcontractor agreement shall preserve and protect the rights of the City under the Contract Documents with respect to the work to be performed by the subcontractor.

The subcontractor shall be allowed, unless specifically provided otherwise in the subcontractor agreement, the benefits of all rights, remedies and redress against the Design/Build Entity that the Design/Build Entity, by the Contract Documents, has against the City. The Design/Build Entity shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Design/Build Entity shall make available to each proposed subcontractor, prior to the execution of the subcontractor agreement, copies of those portions of the Contract Documents to which the subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

5.4 Subcontractor Progress Payments.

Within 10 days of receipt of each progress payment, the Design/Build Entity shall make payment to subcontractors in accordance with Public Contract Code Section 10262.

5.5 Contract Assignments.

Performance of the Contract Documents may not be assigned except upon written consent of the City. Consent will not be given to an assignment that would relieve the

Design/Build Entity or the Design/Build Entity's surety of their responsibilities under the Contract Documents.

5.6 Procurement Prohibitions.

To the extent applicable, the Design/Build Entity must comply with procurement prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the City may not procure goods, services, or materials from suppliers listed on the Excluded Parties Listing System: <http://epls.arnet.gov/>.

5.7 Uniform Relocation and Real Property Acquisition Policies Act.

The Design/Build Entity must comply with the Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655, to the extent it is applicable. The City must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105, to the extent they are applicable.

5.8 Debarment and Suspension.

To the extent it is applicable, the Design/Build Entity must comply with the Debarment and Suspension Executive Order No. 12549 (1986). The City certifies it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the planning, design or construction of the Project. Contractors on the Project must provide a similar certification prior to the award of a contract and subcontractors on the Planning must provide the general contractor with the certification prior to the award of any subcontract.

5.9 Statement of Compliance.

The Design/Build Entity's execution of this Agreement shall constitute a certification under penalty of perjury under the laws of the State of California that the Design/Build Entity will, unless exempted, comply with the nondiscrimination program requirements of Government Code section 12990 and 2 CCR, section 8103.

5.10 Drug-Free Workplace Certification.

By signing this Agreement, the Design/Build Entity certifies under penalty of perjury under the laws of the State of California that the Design/Build Entity will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.).

5.11 Nondiscrimination.

5.11.1 Equal Employment Opportunity. Design/Build Entity agrees for the duration of this Contract it will not discriminate against any employee or applicant for employment because of age, ancestry, creed, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual

orientation or other protected status. The Design/Build Entity will take affirmative action to insure that applicants are employed, and employees are treated during employment or training without regard to their race, creed, color, religion, sex, national origin, age, political affiliation, marital status, or disability. Such action shall include, but not be limited to the following: employment upgrading, demolition, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design/Build Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the Nondiscrimination Clause.

- a. The Design/Build Entity will in all solicitations or advertisements for employees placed by or on behalf of the Design/Build Entity, state that all qualified applicants will receive consideration for employment without regard to age, ancestry, creed, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.

- b. The Design/Build Entity will send to each labor union or other representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the workers' representative of the Design/Build Entity commitments under this Agreement. The Design/Build Entity agrees that it will comply with the provisions of Titles VI and VII of the Civil Rights Act, Revenue Sharing Act Title 31, U.S. Code Section 2716 and California Government Code Section 12990. Additionally, the Design/Build Entity and its subcontractors will send to each labor union or representative of workers with a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Design/Build Entity's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Design/Build Entity will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The Design/Build Entity will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. In the event of the Design/Build Entity's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Design/Build Entity may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as

otherwise provided by law. The Design/Build Entity will include the provisions of Paragraphs 5.11.1 and 5.11.3 in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Design/Build Entity will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Design/Build Entity becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Design/Build Entity may request the United States to enter into such litigation to protect the interests of the United States.

- c. The Design/Build Entity agrees it will assist and cooperate with the City, the State of California and the United States Government in obtaining compliance with the Equal Opportunity Clause, rules, regulations and relevant orders of the State of California and United States Government issued pursuant to the above-referenced Acts.
- d. In the event of the Design/Build Entity's non-compliance with the Nondiscrimination Clause or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part by the City.

5.11.2 Disabled Non-Discrimination. This project is subject to Section 504 of the Rehabilitation Act of 1973 as amended, (29 U.S.C. 794), the Americans with Disabilities Act of 1990 and all requirements imposed by the guidelines and interpretations issued in furtherance of the ADA. In this regard, the City, its Design/Build Entity's and subcontractors will take all reasonable steps to ensure that disabled individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

5.11.3 Fair Employment and Housing Act Addendum. In the performance of this Agreement, the Design/Build Entity will not discriminate against any employee or applicant for employment because of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation. The Design/Build Entity will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Design/Build Entity shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State or local agency setting forth the provisions of this Fair Employment and Housing Section.

- a. The Design/Build Entity will permit access to his records of employment, employment advertisements, application forms and other pertinent data and records by the California Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment and Housing section of this Contract.
- b. The State, County, or City may determine a willful violation of the Fair Employment and Housing provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which Design/Build Entity was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Design/Build Entity has violated the Fair Employment and Housing Act and has issued an order or obtained an injunction under Government Code Sections 12900, *et seq.*
- c. For willful violation of this Fair Employment and Housing provision, the City may terminate this Contract either in whole or in part and any loss or damage sustained by the City in securing replacement goods or services shall be borne and paid for by the Design/Build Entity and by his surety under the Performance Bond, and/or the City may deduct from any moneys due or that may become due to the Design/Build Entity to compensate the City, the difference between the price named in the Agreement and the actual cost to the City.

5.12 Wages and Records.

5.12.1 Wage Rates

- a. Pursuant to Section 1770 and 1773 *et seq.* of the Labor Code of the State of California, the Director of Industrial Relations (DIR) has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification, or type of workman needed to execute the Agreement, copies of which are on file and available upon request from the California Department of Industrial Relations and the applicable Davis-Bacon wage determinations as attached hereto in Exhibit H.
- b. The Design/Build Entity and any subcontractor under him, must not pay less than prevailing wage rates to all laborers, workmen and mechanics employed in the execution of the Contract. Such wages shall be in accordance with the higher of those required by the DIR or Davis Bacon rules and regulations. It is further expressly stipulated that the Design/Build Entity shall, as a penalty to City, forfeit twenty-five dollars (\$25.00) for each calendar day (the highest penalty shall apply \$25/day or the Davis Bacon penalty), or portion thereof, for each laborer, workman, or mechanic paid less than the stipulated prevailing rates for any work done under this Agreement by him or by any subcontractor under him and Design/Build Entity agrees to comply with all provisions of Section 1770 *et seq.* of the Labor Code.

- c. The Design/Build Entity and each subcontractor shall comply with the Davis-Bacon Minimum Wages and Withholding Requirements as found in Exhibit H.
- d. Pursuant to Sections 1770 and 1773 of the Labor Code, the general prevailing rate of per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work are set forth by the Director of the California Department of Industrial Relations and are a part of the Agreement. The Design/Build Entity is required to post a copy of these prevailing wages rates on the job site.
- e. The City will not recognize any claim for additional compensation because of the payment by the Design/Build Entity of any wage rate in excess of the prevailing wage rate set forth as provided herein. The possibility of wage increases is one of the elements to be considered by the Design/Build Entity in submitting its Design/Build Proposal and will not under any circumstances be considered as the basis of a claim against the City on the Contract.

5.12.2 Wages and Records.

- a. The Design/Build Entity and each subcontractor shall comply with the Davis-Bacon payrolls and basic records requirements as found in Exhibit H.
- b. The Design/Build Entity shall meet the requirements of Section 7-1.01A(3). "Payroll Records," of the State of California Standard Specifications. The Design/Build Entity shall be responsible for compliance by his subcontractors.
- c. In addition to the Davis-Bacon Payroll submission requirements Certified Payroll records shall be grouped and submitted with each Monthly Progress Payment request showing records within 10 days after the billing period. The Design/Build Entity shall provide all information reasonably required by Labor Trade organizations.

5.13 Other Davis-Bacon Requirements

The Design/Build Entity and each subcontractor shall comply with the other provisions as detailed in Exhibit H.

- a. Apprentices and trainees
- b. Compliance with Copeland Act requirements
- c. Subcontracts
- d. Contract termination
- e. Compliance with Davis-Bacon and Related Act requirements
- f. Disputes concerning labor standards
- g. Certification of eligibility
- h. Overtime requirements
- i. Violation; liability for unpaid wages; liquidated damages

- j. Withholding for unpaid wages and liquidated damages
- k. Subcontracts
- l. Record Retention
- m. Compliance Verification

5.14 American Iron and Steel

The Design/Build Entity and all of its subcontractors acknowledge to and for the benefit of the City and the State of California (the "State") it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the Project to be produced in the United States ("American Iron and Steel Requirement"), including iron and steel products provided by the Design/Build Entity and its subcontractors pursuant to this Agreement. The Design/Build Entity and its subcontractors, jointly and severally, hereby represent and warrant to and for the benefit of the City and the State (a) the Design/Build Entity and its subcontractors have and will review and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the Project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Design/Build Entity and its subcontractors will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Design/Build Entity or any of its subcontractors shall permit the City and State to recover as damages against the Design/Build Entity any loss, expense, or cost (including without limitation attorney's fees) incurred by the City or State resulting from any such failure (including, without limitation, any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the City). While the Design/Build Entity and its subcontractors have no direct contractual privity with the State, as a lender to the City for the funding of its project, the City and the Design/Build Entity and its subcontractors agree the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State. For reference, additional information on the American Iron and Steel requirements are attached in Exhibit G.

ARTICLE 6 – PAYMENTS AND COMPLETION

6.1 Cost Plus with Guaranteed Not to Exceed Amount.

In consideration of Design/Build Entity's obligations under the Contract Documents, Design/Build Entity will be paid the Cost Plus with Guaranteed Not to Exceed Amount, in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the Cost Plus with Guaranteed Not to Exceed Amount will fully compensate Design/Build Entity for all of the services required under the Contract Documents, including the scope of services described in this Agreement.

6.2 Application for Payment.

The Design/Build Entity shall deliver to the City on the last business day of each month, or as otherwise agreed by both parties, an Application for Payment, in the format approved by the City, covering the Cost of the Work with Overhead and Fee for the Work completed during each month. Invoices shall include the contract number, the project number, the amendment number, Design/Build Entity's Federal Employer Identification Number (FEIN); and shall be submitted to the City, attention of the Project Director in care of the City's Construction Manager.

Application for payment shall not be submitted more frequently than once monthly. The application for payment shall be signed by an officer or designee of the Design/Build Entity. Provided the Application for Payment is received and approved by the City, the City shall make payment to the Design/Build Entity not later than 30 days after receipt by the City of the approved payment application. With each Application for Payment, the Design/Build Entity shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred. Such evidence shall consist of copies of both the JRF and OCI invoices to the Joint Venture which shall include the reports of all costs expended during the pay period delineated by labor, materials, subcontract, equipment or other and shall include copies of the invoice or pay application for any cost over \$50,000, as well as any costs paid directly by the Design/Build Entity. The City shall have the right to request additional backup documentation be submitted for any other cost it may want to verify but that are not normally submitted as evidence.

WAIVER AND RELEASE FORMS

Consistent with the provisions of California Civil Code sections 8122 and 8124, the Design/Build Entity and its subcontractors shall promptly furnish the City with a release of all claims against the City arising by virtue of the Contract Documents related to amounts to be paid or which have been paid. This section shall survive expiration or termination of the Contract. The Design/Build Entity shall include these requirements in all subcontracts for this project. The Design/Build Entity and subcontractors from the operation of the release may specifically exclude disputed contract claims in stated amounts.

Neither the City nor the Design/Build Entity by any term of this Contract, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the Contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this section shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the City, construction lender, and surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in California Civil Code section 8132 and this section and is signed by the claimant or his/her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:

- (1) It is pursuant to a waiver and release prescribed herein, or

(2) The claimant had actually received payment in full for the claim.

This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the stop notice or bond claims.

The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the forms as presented in California Civil Code section 8122.

6.4 Progress Payments.

The City shall pay the Design/Build Entity the progress payments through the period covered by the Application for Payment, less five percent retention. Upon receipt of an Application for Payment from the Design/Build Entity, the City will promptly review the same to determine if it is a proper Application for Payment. Any Application for Payment determined by the City not to be suitable for payment shall be modified and processed per the City's assessment. The reason(s) the Application for Payment was deemed unsuitable shall be stated in writing and shall be subject to dispute resolution in accordance with the terms of this Agreement. Non-disputed portions shall be paid as required by this Agreement and State law.

6.5 Withholding of Payment.

6.5.1 Notwithstanding the provisions of Subparagraph 6.11.6, Final Payment, the City may withhold payment on account of an Application for Payment to the extent necessary to protect the City from loss because of:

.1 Defective Work not remedied;

.2 Third-party claims filed or reasonable evidence indicating probable filing of such claims;

.3 Failure of the Design/Build Entity to make payments of undisputed amounts to Design/Build team consultants or subcontractors for labor, materials, or equipment;

.4 Damage to the City caused by the fault or neglect of the Design/Build Entity to the extent not covered by insurance; or

.5 Reasonable evidence that the Work will not be substantially completed within the Contract Time due to delay not considered a Compensable Event, and that the unpaid balance of the Cost Plus with Guaranteed Not to Exceed Amount would not be adequate to cover liquidated damages for the anticipated inexcusable delay.

6.5.2 When the above reasons for withholding payment are removed, payment less retention shall be made for amounts previously withheld. Prior to any withholding

pursuant to this paragraph, the City shall meet with the Design/Build Entity to discuss potential withholding and shall attempt in good faith to resolve such issue without the need for withholding. Amounts withheld shall bear interest at whatever rate is paid to the City from time to time for funds it may have on deposit, from the date the funds would otherwise have been due until paid, if at all. In lieu of withholding the Design/Build Entity may deposit securities equivalent to the amount withheld in accordance with the procedures outlined in Article 6.10.1.1

6.6 Payment for Stored Materials.

Unless otherwise provided in the Contract Documents, payment will be made on account for materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and/or if approved in advance by the City, payments may be made for materials or equipment stored at some other location agreed upon in writing. Payments made for materials or equipment stored on or off-site shall be conditioned upon submission by the Design/Build Entity of bills of sale or such other procedures satisfactory to the City to establish City's title to such materials or equipment or otherwise protect the City's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off-site.

6.7 Payments as Trust Funds.

Any and all funds payable to the Design/Build Entity are hereby declared to constitute trust funds in the hands of the Design/Build Entity to be applied first to payment of claims of subcontractors, sub-subcontractors, architects, engineers, surveyors, laborers, material men or employees arising out of the described Work, to obligations for utilities furnished, tax imposed or such to the payment of premiums on security or other bonds, and to payment of insurance premiums relating to the Project and to payments and contributions to union pension plans and trust funds before application to any other purpose.

6.8 Payment Not a Waiver.

6.8.1 No payment hereunder, including Final Payment to Design/Build Entity, nor City's use or Beneficial Occupancy of the Work, shall release Design/Build Entity with respect to design, construction, workmanship, materials, equipment or machinery incorporated in the Work which are found to be defective, unsound or improper.

6.8.2 No payment made under the Design/Build Agreement, shall be evidence of performance thereof, either wholly or in part, nor shall it be construed to be acceptance of defective work or improper material, or an approval of any items in any application for payment.

6.9 Waiver of Lien and Payment Bond Rights.

To the extent permitted by applicable law, the Design/Build Entity shall attach to each application for payment, a waiver of all lien and payment bond rights, with respect to all amounts requisitioned up to and including the then current requisition from the Design/Build Entity, which waiver of lien and payment bond rights covers all amounts requisitioned from the Design/Build Entity's subcontractors and all tiers and suppliers.

Upon request, Design/Build Entity shall make available copies of similar waivers from its subcontractors of all tiers and suppliers.

6.10 Retentions.

The City will retain five percent of such estimated value of all Work completed (including design and other professional services) and a like percentage within limits established by law, of the value of materials so estimated to have been furnished, delivered and unused, as aforesaid, as part of security for fulfillment of the Contract Documents by the Design/Build Entity. Upon Substantial Completion, the City shall reduce funds withheld to an amount equal to not less than 125% of the estimated value of the Work yet to be completed (excluding the value of any Work required for the Performance and Operations Testing Period and the demolition of the City's existing waste water treatment plant), as determined solely by the City and pay the excess funds to the Design/Build Entity within 30 days after the City's receipt of an invoice from the Design/Build Entity received after Substantial Completion. The completion of the design work will be evaluated separate from the construction effort, and redirection of retainage will be evaluated accordingly. The City will pay monthly to the Design/Build Entity while executing the remaining Work, the balance not retained after deducting all previous payments and all sums to be retained under provisions of the Contract Documents. In addition, the City shall pay the amount of retention withheld on account of each subcontractor's portion of the Work upon Substantial Completion. Amounts held for the value of the remaining Work after Substantial Completion (excluding the Performance and Operations Testing Period work and demolition of the City's existing waste water treatment plant), shall be released monthly as the remaining Work is completed within 30 days after the City's receipt of an invoice from the Design/Build Entity. The timing of all the foregoing payment obligations are subject to no stop notices having been filed. Any retainage not already released shall be released within 35 days after Final Completion and the time has run on the ability for filing a stop notice and no stop notices have been filed. To receive payment earlier than above-described, the Design/Build Entity will be allowed to provide a bond, in the amount of at least 125% of all timely filed stop notices and as reasonably approved by the Public Works Director, to secure any payment that would otherwise be required to be withheld due to one or more valid stop notices.

Investment Options:

6.10.1 At the request and expense of the Design/Build Entity, and in accordance with Public Contract Code Section 10263, securities equivalent to the amount withheld shall be deposited with the City Treasurer or, a state or federally chartered bank in California, as the escrow agent, who shall then pay the moneys to the Design/Build Entity. Upon satisfactory completion of the Agreement, the securities shall be returned to the Design/Build Entity.

6.10.2 Alternatively, the Design/Build Entity may request, and the City will make payment of the retention earned directly to the escrow agent. The Design/Build Entity may direct the investment of the payments into securities and the Design/Build Entity shall receive the interest earned on the investments upon the same terms provided for securities deposited by the Design/Build Entity. Upon satisfactory completion of the Work, the Design/Build Entity shall receive from the escrow agent all securities,

interest, and payments received by the escrow agent from the City, pursuant to the terms of Final Payment.

- 6.10.3 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 securities mutually agreed to by the Design/Build Entity and the City.
- 6.10.4 The Design/Build Entity shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.
- 6.10.5 The escrow agreement shall be substantially similar to the form "Escrow Agreement for Security Deposits in Lieu of Retention" found in Public Contract Code Section 10263.

6.11 Payment and Completion.

- 6.11.1 The City reserves the right to occupy all or any part of the Project prior to completion of the Work, upon written notice. In that event, the Design/Build Entity shall be relieved of responsibility to the City for injury or damage that results from occupancy and use by the City. If, by reason of the City's occupancy, the premium for the Design/Build Entity's bodily injury and property damage insurance is increased, the City will reimburse the Design/Build Entity for the additional amount necessarily incurred allocable to the area and the period of City's occupancy up to the date of Final Completion.
- 6.11.2 The City's occupancy does not constitute acceptance by the City of the Work, or any portion of the Work, nor will it relieve the Design/Build Entity of responsibility for correcting defective Work or materials found at any time before Final Completion, as set forth in Paragraph 3.18, Guarantee, or during the guarantee period after the City's acceptance, as set forth in Subparagraph 6.11.7, Final Payment. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the City, then upon written request by the Design/Build Entity and by written consent from the City, the guarantee period will commence to run for a building or buildings from the date of the City's Beneficial Occupancy of a building or buildings.
- 6.11.3 Beneficial Occupancy. The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design/Build Entity, provided such occupancy or use is consented to by the insurer of the Project and the City, Notice of Substantial Completion, and a Temporary Certificate of Occupancy is obtained.

Such partial occupancy or use may commence whether or not the portion is complete, provided the City and the Design/Build Entity have accepted in writing the responsibilities assigned to each of them for payment, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Immediately prior to such occupancy, the City and the Design/Build Entity shall jointly inspect the area to be occupied in order to

determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

6.11.4 Substantial Completion: When the Work, or designated portion thereof, is sufficiently complete in accordance with the construction documents so that it can be used for its intended purpose, the Design/Build Entity and the City shall collaboratively prepare a single comprehensive punch list. The Design/Build Entity shall then proceed promptly to complete and correct the punch list items. Failure to include an item on the punch list does not alter the responsibility of the Design/Build Entity to complete all work in accordance with the Contract Documents. For the avoidance of doubt, Substantial Completion does not include the Work to be done during the Performance and Operations Testing Period nor any work on demolition of the City's existing waste water treatment plant. If the City decides that the Design/Build Entity shall do the demolition of the existing waste water treatment plant, that option shall have separate retainage, separate Substantial and Final Completion Dates, separate warranty period dates and bonds, if required.

6.11.5 Final Completion: Upon completion of the punch list the City will make an inspection to determine whether the work has been completed. The Certificate of Final Completion shall be issued when all work is complete, and the Council has formally accepted the project. For the avoidance of doubt, Final Completion excludes any demolition of the City's existing waste water treatment plant and Performance and Operational Testing Period.

6.11.6 Waiver of Claims. Acceptance of Final Payment by the Design/Build Entity shall constitute a waiver of affirmative claims by the Design/Build Entity, except those previously made in writing and identified as unsettled at the time of Final Payment.

6.11.7 Final Payment. Upon execution of the Certificate of Final Completion, providing no stop notices have been filed which have not been discharged or bonded, all amounts unpaid under the Design/Build Agreement will be paid to Design/Build Entity. The City may withhold any reasonable sums payable to Design/Build Entity for the value of any Work, which the City may have found defective and ordered to be replaced. Final Payment for withholdings will be made when the Work is completed and/or defective Work replaced.

City shall pay the remaining amount of the Cost Plus with Guaranteed Not to Exceed Amount due to the Design/Build Entity, after:

- .1 Acceptance and Close-out of the Work.
- .2 Resolution of all stop notices.
- .3 Execution by the Design/Build Entity of a release of all claims against the City arising by virtue of this Agreement except those previously identified in writing and not released by the payment.
- .4 Any other requirements spelled out in this Agreement.

6.11.8 The Design/Build Entity is required to pay subcontractors from whom a retention has been withheld within seven days of receipt from the City of retention proceeds.

6.11.9 The making of Final Payment by the City shall constitute a waiver of claims by the City, except those arising from (a) liens, claims, security interests and encumbrances arising out of the Work after Final Payment, or identified in writing as unsettled at the time of Final Payment; (b) latent defects arising after Final Payment; (c) the terms of warranties required by the Contract Documents; or (d) indemnities which shall survive completion of this Agreement.

6.12 Interest.

Payments due and unpaid under this Agreement shall bear interest pursuant to Public Contract Code Section 10261.5 (relating to progress payments) and Section 7107 (relating to retentions).

6.13 Shared Cost Savings.

Any potential modifications to the project work identified by the Design/Build Entity after the execution of this document shall be submitted for approval by the City's authorized representative. If approved and validated, then any actual cost savings realized by the City will be shared with the Design/Build Entity. The amount to be shared with the Design/Build Entity shall be 50% of the final realized cost savings based on those modifications and on any deletions to the Project made by the City.

In addition to the Project modifications and associated cost savings/sharing detailed in the paragraph above, any further cost savings realized at the conclusion of the Project will be shared between the City and the Design/Build Entity. Those realized savings will be shared between the Design/Build Entity and the City through a disbursement of the final payment per the following. Design/Build Entity will receive up to 50% of the net savings not to exceed \$2,000,000.

6.14 Allowance for Environmental Requirements

6.14.1 The Cost Plus with Guaranteed Not to Exceed Amount described in section 3.2.1 includes One Million Dollars (\$1,000,000) for the execution of requirements neither specified nor anticipated in the Anticipated Environmental Impact Report Mitigation Measures (EIRMM). That amount will be utilized by the Design/Build Entity on a time and materials basis for EIRMM work resulting directly from requirements not specified in the EIRMM that could arise during the EIR process and that will add cost to the project. This allowance item is only to be utilized for unanticipated work associated with the EIRMM.

6.14.2 The Design/Build Entity and the City have worked together to review the Allowance Item and Values based on available EIRMM information to determine the Allowance Values constitute reasonable estimates for the unanticipated EIRMM work. The Design/Build Entity and City will continue working closely together during the preparation of the design to develop Construction Documents consistent with these EIRMM Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design/Build Entity the EIRMM Allowance Item in question can be performed for the Allowance Value.

- 6.14.3 No work shall be performed on any EIRMM Allowance Item without Design/Build Entity first obtaining in writing advanced authorization to proceed from the City. The City agrees if the Design/Build Entity is not provided written authorization to proceed on an EIRMM Allowance Item by the date set forth in the Project schedule, due to no fault of Design/Build Entity, Design/Build Entity may be entitled to an adjustment of the Contract Time(s) and the Cost Plus with Guaranteed Not to Exceed Amount.
- 6.14.4 The Allowance Value for an EIRMM Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, the Design/Build Entity's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the EIRMM Allowance Item unless they result in a change in the Scope of Work.

6.15 [Intentionally left blank]

6.16 Compensable Cost Escalation

- 6.16.1 After the award of this Design-Build Agreement, the construction start date is anticipated to be delayed for up to twelve months until financing is approved. The Design/Build Entity will not be compensated for increases in pricing within that delay, unless the Engineering News-Record (ENR) Construction Cost Index (CCI) for San Francisco, CA exceeds 3.0% annual average for that twelve months.
- 6.16.2 If the construction start date is delayed for any reason beyond 12 months after the award date of this Design-Build Agreement, the City and the Design/Build Entity will negotiate a mutually fair and reasonable adjustment to the Cost Plus with Guaranteed Not to Exceed Amount of the Design-Build Agreement based on the specific circumstances at the time.

ARTICLE 7 – SCHEDULE

7.1 Contract Time.

The "Contract Time" – is the period from receipt by Design/Build Entity of written authorization to begin the Project in the form of a Notice to Proceed from the City, until the scheduled date of Final Completion of the Work. The Design/Build Entity agrees to design, construct and manage the Work in accordance with the Project Milestone Schedule and approved Baseline Schedule.

7.2 Completion.

By executing this Design/Build Agreement, the Design/Build Entity confirms the Contract Time and Milestones, as stated in the Project Milestone Schedule (Exhibit A) of the Contract Documents, are of the essence of this Design/Build Agreement. Subject to a Force Majeure Event or other Compensable Event or other provisions of this Agreement relating to delay, the Design/Build Entity confirms the times set forth in Exhibit A Project

Milestone Schedule allow a reasonable period of time for achieving Substantial Completion and Final Completion of the Work, excluding any demolition of the City's existing waste water plant, for the Project.

7.3 Schedules.

7.3.1 The Design/Build Entity shall be responsible for the development and maintenance of the Preliminary Baseline Schedule, the Baseline Schedule and the Progress Schedule as described below. The Design/Build Entity shall submit, as indicated below, each schedule for the execution of the Work for the City's review and response. The City's review of and response to the schedule submissions shall not be construed as relieving the Design/Build Entity of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work. Each schedule shall provide an interrelated means for defining activities involved in the planning, design, construction, and completion of the Project, their sequences and elapsed completion time from the date of the Notice to Proceed.

Each schedule shall utilize CPM (Critical Path Method) and shall be submitted in diagram and listed form. The computerized schedules shall permit the Design/Build Entity to obtain several print sorts that aid in identifying various activities and requirements. Of particular importance would be critical activities that require information or reviews by City, City agencies, or the Construction Manager. The Design/Build Entity shall utilize Primavera (P6).

The Design/Build Entity shall make its Authorized Schedule Representative available throughout the contract time and authorize that person to make scheduling commitments binding on the Design/Build Entity, as required to fulfill the scheduling requirements. The Design/Build Entity has submitted a preliminary schedule of the work (the "Proposal Schedule") in bar chart form with its proposal, incorporating all critical path milestones identified by the City or known milestones and critical activities by the Design/Build Entity, as well as the date for contract completion.

Design/Build Entity's representation that it could comply with the contract milestones, as demonstrated by its Proposal Schedule was an element of consideration in the City's award of the contract. Design/Build Entity's Proposal Schedule, as submitted with its proposal and as modified during negotiations and accepted by the City, will be utilized as an interim contract schedule for all purposes until the Design/Build Entity's submittal of an acceptable Preliminary Baseline Schedule.

7.3.2 Design/Build Entity's Preliminary Baseline Schedule. Within 14 calendar days after the Notice to Proceed, the Design/Build Entity shall submit a Preliminary Baseline Schedule to the Construction Manager. This schedule shall show, but is not limited to, the general plan for the work to be completed in the first 90 calendar days after the Effective Date, as defined below. The Preliminary Baseline Schedule shall contain, but not be limited to:

.1 dates established in the City's Project Milestone Schedule;

- .2 dates to acquire, set up and occupy a field office if required;
- .3 dates of all mobilization activities on site, including notices and permits;
- .4 dates detailing the planned design schedule, including submittals and reviews;
- .5 anticipated dates for the start and completion of each stage of the design and construction process; and
- .6 established milestone dates representing important events in the first 90 days and 'major milestones' representing the completion of a group of activities in the first year.

The Preliminary Baseline Schedule shall be in the form of a CPM schedule. Design/Build Entity will provide all data files electronically through Procore. The City and Construction Manager will review the Design/Build Entity's Preliminary Baseline Schedule for conformance with the Milestone Schedule and interrelationships with other activities requiring coordination that may be outside the scope of this agreement. Upon completion of the review, the City may make recommendations to the Design/Build Entity as to adjustments to the Preliminary Baseline Schedule. These recommendations, if accepted by both the City and Design/Build Entity, will be incorporated into the development of the Design/Build Entity's Baseline Schedule.

7.3.3 Design/Build Baseline Schedule. Within 60 calendar days after the Notice to Proceed, the Design/Build Entity, after an initial meeting with the City, shall prepare a proposed Baseline Schedule for the Project. Recognizing that planning activities and design activities need time control to no less degree than construction activities, this schedule shall include, but not be limited to:

- .1 A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, and other information required for all design, pre-construction and construction activities. Each activity shall have a minimum of one predecessor and one successor, with the exception of the first and last activities. The first activity will be denoted as "Notice To Proceed" and the last activity will be denoted as "Final Completion". Both activities shall be contract milestones.
- .2 The CPM format shall include all Contract Milestones defined in this Agreement and/or by the Design/Build Entity's proposed preliminary schedule, as well as all engineering, fabrication and delivery dates required to support the milestones.
- .3 Activities indicating the start and finish dates for project design, engineering, preparation of design development and construction documents, government agency plan check and City document review.
- .4 Activities to be integrated and shown in the CPM network shall include all milestones representing the Design/Build Entity's submittal dates and

activities representing the City's review period of each submittal (which review period shall in no case be scheduled for less than 10 working days); Design/Build Entity's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the job-site of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems.

- .5 Activities showing the start and finish dates for all temporary protection.
 - .6 Activities showing start and finish dates of owner-furnished items and interface requirement dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.
 - .7 Activities showing start and finish of space planning (as appropriate), furniture, fixtures and equipment, moving activities, and occupancy.
 - .8 Close-out activities.
 - .9 The schedule shall consider all foreseeable factors or risks affecting, or which may affect the performance of the work, including historical and predicted weather conditions, applicable laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.
 - .10 The Design/Build Entity shall not use any "float suppression" techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably overestimating activity durations in preparing its schedule.
 - .11 The Design/Build Entity's Authorized Schedule Representative shall formally present the detailed time-scaled CPM network for the duration of the contract time, demonstrating compliance with contract milestones and other requirements to the City clearly showing the critical path(s) of the project (activities with 10 days of float or less) through completion.
 - .12 Time units for all schedules shall be in calendar days, and no construction activity scheduled to commence within sixty days of the Data Date shall have a duration greater than fifteen calendar days. Activities scheduled to start more than 60 days of the data date shall have durations no greater than thirty days.
- 7.3.4 The proposed Baseline Schedule shall be submitted and reviewed by the City's Construction Manager. Changes to the Baseline Schedule shall be reviewed with the City's Construction Manager prior to implementation. The City, at its sole discretion, may allow or require the Design/Build Entity to more fully detail portions of the Baseline Schedule at a later date.

The City's Construction Manager shall notify the Design/Build Entity of acceptance or of any necessary changes to the CPM network within 10 working days from the formal presentation, after which the Design/Build Entity shall make the required changes and resubmit it for acceptance within five working days certifying in writing

that all information contained in it complies with the contract requirements. Upon notification by the City of acceptance of the CPM network, the Design/Build Entity shall prepare computer plots and printouts (8 1/2" x 11"), and complete its submission of the Baseline Schedule, which shall include:

- .1 Bar Charts for Contract Milestones; Summary Level (sorted by craft/trade or project area); and Detail (sorted by Early Dates).
- .2 Reports for: Float (sorted low to high).
- .3 Provide all data files electronically through Procore.

Once accepted by the City, this schedule shall become the Baseline Schedule for the Project from which all future Progress Schedules will be generated.

7.3.5 Design/Build Entity Progress Schedule. Each month, in conjunction with the application for payment process, the Design/Build Entity and City's Construction Manager will conduct monthly reviews to determine: "planned" versus "actual" progress to date; compliance with contract submittal requirements, contract milestones and accepted contract schedule; and determination of any changes to the work plan or implementation which must be made by the Design/Build Entity to comply with the contract schedule. The monthly schedule review shall include, at a minimum:

- .1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.
- .2 Reviews of revisions added or deleted work and how those activities are being integrated into the Design/Build Entity's work plan.
- .3 Review of all impacts to the work during the preceding month and to date, Design/Build Entity evaluation of those impacts and any recovery plans or remedial actions required to comply with the contract schedule.

Following the review of the above and all other information relevant to the progress of the work, the Design/Build Entity shall adjust its work plan as required to insure compliance with the contract schedule. The requirement for additional work force allocations, additional shifts, overtime, etc., will not entitle Design/Build Entity to additional compensation except to the extent expressly provided for by this Agreement or change order. The contract schedule shall be updated and submitted monthly for the City's Construction Manager's review concurrent with each payment application submitted by the Design/Build Entity. The schedule update shall incorporate actual status to date and shall include the following:

- .1 Computer plotted time-scaled CPM network, in color;
- .2 Bar Charts generated separately using the format template provide by the City for:

- (1) Contract Milestones only (Baseline vs. forecast);
- (2) Summary Level (sorted by craft/trade or project area);
- (3) Detail (sorted by Early Dates);

.3 Reports generated separately using the format template provided by the City for Float (sorted low to high); and

.4 Provide all data files electronically through Procore.

7.3.6 Schedule Revisions. The implementation of revised schedule logic or activity duration estimates for updating the contract schedule or other interim schedule whether furnished by the Design/Build Entity or the City do not constitute an extension of contract time, relaxation of contract milestones or basis for a change to the contract sum. Such revisions are for the purpose of maintaining the accuracy of the contract schedule's representation of the work to be accomplished and to present best duration estimates for work yet to be performed. In updating the contract schedule, the Design/Build Entity shall make no modifications to Activity ID numbers in the accepted contract schedule calculation rules/criteria, or the Activity Coding Structure provided by the City's Construction Manager without the explicit written permission of the City, which permission the City may withhold at its sole discretion.

7.3.7 City's Project Master Schedule. The purpose of the Master Schedule is to combine, coordinate, and track schedules produced by the Design/Build Entity and other Project team members throughout the course of the Project. The Master Schedule will also include milestone dates and the Design/Build Entity's Baseline Schedule and shall be utilized by the City and the Design/Build Entity to identify any coordination issues and/or conflicts with other Project team members under separate contract. The Construction Manager shall be responsible for maintaining, updating and distributing the Master Schedule.

7.4 Float Time.

All float time contained in the Work shall be shared between the City and Design/Build Entity. Under no circumstances shall Design/Build Entity be entitled to maintain a claim against the City for Design/Build Entity's failure to achieve Final Completion on a date earlier than that set forth on said Project Milestone Schedule as the same may be adjusted by approved Change Orders.

7.5 Compensable Event.

7.5.1 Notwithstanding anything in this Design/Build Agreement to the contrary, in the event of a "Compensable Event," as hereinafter defined, Design/Build Entity shall notify the City in writing within 14 days, setting forth all of the facts and circumstances relating to the Compensable Event, the expected financial impact on the Cost Plus with Guaranteed Not to Exceed Amount, and any delays to the Contract Time. In the event the City agrees it is a Compensable Event, the City shall have the option of either:

- (a) adjusting the Contract Time by the delay occasioned by the Compensable Event, if any, and increasing the Cost Plus with Guaranteed Not to Exceed Amount by the financial impact of the Compensable Event, if any, or
- (b) reducing the scope of the Project so the Cost Plus with Guaranteed Not to Exceed Amount and/or Contract Time will not be exceeded. Design/Build Entity shall cooperate with the City and provide information at no additional cost to the City, at the City's request to identify appropriate program modifications to achieve the desired effect.

"Compensable Event" shall mean any one of the following:

- .1 material acts or omissions of the City's agents or contractors (other than Design/Build Entity, the Engineer of Record and/or any of either or both of their members, subcontractors, employees, consultants or representatives), which are inconsistent with the terms of the Contract Documents and result in any delay or cost increase to the Project that results in an extension of the Contract Time;
- .2 a change in any applicable laws, ordinances, rules, codes, regulation, and lawful orders of governmental authorities relating to the Project after the date of submission of the Proposal for this Agreement by the Design/Build Entity, which results in a delay or cost increase; and
- .3 any Force Majeure Event,

7.6 Costs of Compensable Event.

The increased costs occasioned by a Compensable Event shall include all costs of Design/Build Entity, including the Cost of the Work, Fee and Overhead. . To the extent a Compensable Event increases the time of performance of either the design or construction, an extension to the Contract Time shall be granted. Notwithstanding the foregoing, if the Compensable Event is of the type described by clause .3, immediately above, Design/Build Entity shall not be entitled to recovery of any costs for the first 30 days of delay (in the aggregate), and shall be entitled to file a claim for recovery of costs thereafter, which claim shall be for all costs incurred by Design/Build Entity, including the Cost of the Work, and the Fee and the Overhead on such Cost of the Work.

7.7 Liquidated Damages.

The City and Design/Build Entity agree the City will suffer economic damage should the Design/Build Entity fail to complete the Project in the time required as shown in Exhibit A. The City has determined the estimated cost of such damages is **Five Thousand Dollars (\$5,000)** per day, or portion thereof, of a delay in achieving Substantial Completion and a total of **One Thousand Dollars (\$1,000)** per day, or portion thereof, of delay in achieving Final Completion for the Project, by the date indicated in the Milestone Schedule shown in Exhibit A. Design/Build Entity agrees that is a reasonable estimate of such costs.

The City and Design/Build Entity agree such amount shall be treated as Liquidated Damages pursuant to Government Code Section 53069.85, Civil Code Section 1671 and

Public Contracts Code Section 10226, and Design/Build Entity shall accordingly pay the City the sum of **Five Thousand Dollars (\$5,000)** per day, or portion thereof, of a delay in achieving Substantial Completion and a total of **One Thousand Dollars (\$1,000)** for each day, or portion thereof, by which the Certificate of Final Completion is delayed beyond the Contract Time set forth in the Project Milestone Schedule, whether the City's actual damages for such occupancy delays are more or less than the liquidated sum.

However, if the City has taken Beneficial Occupancy of any portion of the Project, then the liquidated damages sum for the failure to reach Substantial or Final Completion, respectively shall be reduced proportionately. For example, if the City takes 10% Beneficial Occupancy of the Project, then the amount of the Liquidated Damages shall be reduced by 10% for Substantial Completion and Final Completion respectively. This paragraph shall not limit the City's right to seek and obtain additional legal remedies or damages that result from any breach of the Contract Documents by the Design/Build Entity for damages other than those resulting from any failure to achieve any performance or milestone dates or Contract Time(s), including but not limited to Substantial and Final Completion, as required by the Contract Documents. Those additional damages include, but are not limited to, such things as breach of contract or breach of warranties either express or implied. The Liquidated Damages set forth herein in this Article 7 shall be the exclusive remedy for the Design/Build Entity's delay and/or failure to reach any performance date or milestone or Contract Time(s), including without limitation Substantial and Final Completion, and are in lieu of any other remedies or damages resulting from any such delay and/or failure.

7.7.1 Design-Build Entity acknowledges and agrees the foregoing damages have been set based on an evaluation by the City of damages that it will incur in the event of late completion. The Design-Build Entity and City agree the amount of such damages is impossible to ascertain as of the date of execution hereof, and the parties have agreed to such Liquidated Damages to fix Design-Build Entity's costs and to avoid later disputes over which items are properly chargeable to the Design-Build Entity. It is understood and agreed by the Design-Build Entity that any Liquidated Damages payable pursuant to his Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

7.7.2 To the extent permitted by law, it is further mutually agreed the City shall have the right to deduct Liquidated Damages, to which the City is entitled, against progress payments or retention. In the event the remaining unpaid Contract Price and retention is insufficient to cover the full amount of Liquidated Damages, the Design-Build Entity shall pay the difference to the City, within 60 days after written notice from the City of the amount due.

ARTICLE 8 – CHANGES IN THE WORK

8.1 General.

8.1.1 The City may order changes, including but not limited to, revisions to the Construction Documents, performance of extra work, and the elimination of work. Orders for such changes will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Design/Build Entity shall notify the City for their evaluation whenever it appears a change is

necessary. Contract Time and Cost Plus with Guaranteed Not to Exceed Amount will be adjusted by written Change Order for changes increasing or decreasing the time for performance or cost.

8.1.2 The Design/Build Entity, when ordered by the City, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the City records as specified in this Agreement.

8.1.3 If the Design/Build Entity fails to provide such records, then the City's records will be used for the purpose of adjustment in Contract Time and Cost Plus with Guaranteed Not to Exceed Amount.

8.2 Change Order.

8.2.1 Costs for Change Orders shall be computed in accordance with Exhibit C Schedule of Costs. The Design/Build Entity shall be paid Cost of the Work as set forth in Exhibit C, and Fee and Overhead on Cost of the Work for all Change Orders.

8.3 Acceptance of Change Orders.

The Design/Build Entity's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature.

8.4 Effect on Sureties.

All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of surety(s).

8.5 Covering and Uncovering of Work.

8.5.1 When inspections are required by the Contract Documents the Design/Build Entity shall notify the City two working days prior to covering any work.

8.5.2 If a portion of the Work is covered prior to the City's review, it shall, if requested in writing by the City, be uncovered for the City's observation and replaced at the Design/Build Entity's expense without change in the Contract Time.

8.6 Correction of Work.

8.6.1 The Design/Build Entity shall promptly correct work rejected by the City or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Build Entity shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the City's services and expenses made necessary thereby.

8.6.2 Notwithstanding Paragraph 3.18, Guarantee, in the event of an emergency constituting an immediate hazard to the health or safety of City employees, property, or licensees, the City may undertake, at the Design/Build Entity's expense and without prior notice, all work necessary to correct such hazardous

condition(s) when it was caused by work of the Design/Build Entity not being in accordance with requirements of the Contract Documents.

8.6.3 The Design/Build Entity shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Build Entity nor accepted by the City.

8.6.4 If the Design/Build Entity fails to correct nonconforming work, as per Paragraph 3.18, Guarantee, the City may correct the nonconforming work in accordance with Paragraph 9.3, The City Remedies. If the Design/Build Entity does not proceed with correction of such nonconforming work, within such time fixed by written notice from the City, the City may remove and store the salvable materials articles and/or equipment at the Design/Build Entity's expense.

If the Design/Build Entity does not pay all costs of such removal and storage within 14 days after written notice, the City may, upon 14- additional-days' written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds, after deducting costs and damages that would have been borne by the Design/Build Entity, including compensation for the City's services and expenses made necessary by it. If the proceeds of a sale do not cover all costs that the Design/Build Entity would have borne, the Cost Plus with Guaranteed Not To Exceed Amount shall be reduced by the deficiency. If payments then or thereafter due the Design/Build Entity are not sufficient to cover such amount, the Design/Build Entity shall pay the difference to the City.

8.6.5 The Design/Build Entity shall bear the cost of correcting destroyed or damaged work executed by the City or separate contractors, whether fully completed or partially completed, which is caused by the Design/Build Entity's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

8.6.6 Nothing contained in this Paragraph 8.6, Correction of Work, shall be construed to establish a period of limitation with respect to other obligations that the Design/Build Entity might have in the Contract Documents. Establishment of the time period of one year, as described in Paragraph 3.18, Guarantee, relates only to the specific obligation of the Design/Build Entity to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Build Entity's liability with respect to the Design/Build Entity's obligations other than specifically to correct the Work.

8.7 Acceptance of Nonconforming Work.

If the City prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the City may do so instead of requiring its correction and/or removal, in which case the Cost Plus with Guaranteed Not to Exceed Amount will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not Final Payment to the Design/Build Entity has been made.

ARTICLE 9 – EVENTS OF DEFAULT AND TERMINATION

9.1 City Events of Default.

9.1.1 The following shall be considered the City Events of Default:

- .1 If the Work is stopped for a period of 180 consecutive days through no fault of the Design/Build Entity for any of the following reasons:
 - a. The issuance of an order of a court or other public authority having jurisdiction;
 - b. An act of government, such as a declaration of national emergency, making material unavailable;
 - c. Non-payment by the City for approved design and approved work-in-place after 60 days of a properly submitted and approved invoice.

9.2 Design/Build Entity Events of Default.

9.2.1 The following shall be considered Design/Build Entity Events of Default:

- .1 If Design/Build Entity fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents and fails, after seven-days' written notice from the City, to commence a cure to correct such failure or neglect and/or thereafter diligently pursue such cure to completion; or
- .2 If Design/Build Entity materially breaches this Agreement after written notice from the City and fails, after seven-days' notice from the City, to commence a cure to correct such breach and/or diligently pursue such cure to completion; or
- .3 If a custodian, trustee or receiver is appointed for Design/Build Entity, or if Design/Build Entity becomes insolvent or bankrupt, is generally not paying its debts as they become due, or makes an assignment for the benefit of creditors, or if Design/Build Entity causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for Design/Build Entity, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Design/Build Entity, and in any of the foregoing cases such action is not discharged or terminated within 60 days of its institution; or
- .4 If the Design/Build Entity changes its corporate identity in a manner different from that described in this Agreement due to merger, takeover, offer, sale or exchange of interest therein, dissolution, whether by operation of law or otherwise, and the change in interest is not approved in advance in writing by the City. In the event such a change does not have the effect or diminishing or impairing the Design/Build Entity's ability to perform the Work or its financial capabilities, such approval shall not be unreasonably withheld. The City shall have at least 30-days' notice of such a change.

9.3 City Remedies.

9.3.1 Without prejudice to any other rights or remedies of the City, the following remedies shall be available to the City in the case of a Design/Build Entity event of default:

- .1 The City shall have the right to terminate this Agreement upon an additional seven-days' written notice to Design/Build Entity; provided that Design/Build Entity has not commenced a cure within such seven- day period.
- .2 The City may take possession of the Project site and of all materials, equipment, tools and construction equipment on site owned by Design/Build Entity.
- .3 The City may accept assignment of the construction subcontract and/or design subcontract.
- .4 The City may finish the Work by whatever reasonable method the City may deem expedient.
- .5 The City may seek such remedies as may be available under existing law.

9.4 Termination.

When the City terminates this Design/Build Agreement as provided above, Design/Build Entity shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Cost Plus with Guaranteed Not To Exceed Amount exceeds costs incurred by the City in finishing the Work, then such excess shall be paid to Design/Build Entity. However, if such costs exceed the unpaid balance of the Cost Plus with Guaranteed Not To Exceed Amount, then Design/Build Entity shall pay the difference to the City.

9.5 Design/Build Entity Remedies.

The following remedy shall be available to Design/Build Entity in the case of the City event of default: Design/Build Entity may, upon seven-days' additional written notice to the City, terminate this Agreement and recover from the City payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered, including reasonable overhead and profit.

9.6 Multiple Remedies.

Except as otherwise provided in this Design/Build Agreement, no remedy under the terms of this Design/Build Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any event of default or acquiescence to it, and every such right and power may be exercised from time to time as often may be deemed expedient.

9.7 Termination for Convenience.

The City may terminate this Design/Build Agreement at any time for convenience if the City determines such termination is in the best interests of the City upon 60-days' advance written notice. In the event the City terminates this Agreement for convenience and subsequently rebids or otherwise completes the Project, then Design/Build Entity shall be entitled to recover lost profits in addition to other costs recoverable under this Agreement, so long as it shall provide a title insurance policy in an amount acceptable to the City together with such endorsements as may be requested by the City.

Such Title Insurance policies and endorsements shall be at the sole cost and expense of the Design/Build Entity and shall insure the Project is free of all liens and encumbrances. Any liens or charges encumbering the Project, or which are claimed to encumber the Project, other than those placed by or agreed upon by the City, shall be offset against whatever amount is determined to be owed to the Design/Build Entity.

9.8 Termination Payment.

In the event the City terminates this Design/Build Agreement for convenience as set forth above, the City shall pay to the Design/Build Entity all funds due the Design/Build Entity for work satisfactorily performed up to the date of termination, plus all demobilization and close-out costs, including, but not limited to, any penalties payable to subcontractors for early termination, plus reasonable overhead and profit. All funds due pursuant to this Section, including unpaid retainage, shall be released within 30 days after termination of the Design/Build Agreement for convenience, subject to the provisions of Paragraph 9.7, Termination for Convenience.

9.9 Property Rights.

In the event of termination, all studies, reports, special forms, schedules, designs and any other written information pertaining to the Project shall become the City's property as provided in this Agreement.

9.10 Suspension of Work.

9.10.1 City may order Design/Build Entity, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that the City determines appropriate for the convenience of the City.

9.10.2 If the performance of all or any part of the Work is for any period of time, suspended, delayed, or interrupted (a) by an act of the City in the administration of the Design/Build Agreement, or (b) by the City's failure to act within the time specified in the Design/Build Agreement (or within a reasonable time if not specified), or (c) for other reasons which Design/Build Entity is entitled to claim delay under this Agreement, Design/Build Entity shall provide notice according to this Agreement.

9.10.3 Design/Build Entity shall be entitled to an increase in the Cost Plus with Guaranteed Not to Exceed Amount and the Contract Time to the extent the cost of performance of the Design/Build Agreement or the time therefore is increased

as a result of suspension, delay, or interruption by the City or as otherwise provided in the Contract Documents. However, no adjustments shall be made under this Article for any suspension, delay, or interruption to the extent that Design/Build Entity's performance would have been so suspended, delayed, or interrupted by any other cause for which Design/Build Entity would not be entitled to an increase in the Cost Plus with Guaranteed Not to Exceed Amount or in the Contract Time.

9.11 Non-Compliance with Design/Build Agreement Requirements

In the event the Design/Build Entity, after receiving written notice from the City of non-compliance with any requirement of the Design/Build Agreement, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the City shall have the right to order Design/Build Entity to stop all Work in the area affected until Design/Build Entity has complied with or has initiated such action as may be appropriate to comply within a reasonable period of time. Design/Build Entity will not be entitled to any extension of Contract Time or Stipulated Sum for any costs incurred as a result of being ordered to stop Work for such cause.

ARTICLE 10 – DISPUTES AND CLAIMS

10.1 Dispute and Claim Procedures.

10.1.1 When the Design/Build Entity and the City fail to agree whether or not any work is within the scope of Contract Documents, the Design/Build Entity shall immediately perform such work upon receipt of a written notice to do so by the City. Within 14 days after receipt of such notice, the Design/Build Entity may submit a written protest to the City, specifying in detail in what particular Contract Documents were exceeded, and approximate change in cost resulting so that the City will have notice of a potential claim.

Failure to submit a protest within the specified period shall constitute a waiver of any and all rights to an adjustment in Cost Plus with Guaranteed Not to Exceed Amount and Contract Time due to such work, and the Design/Build Entity thereafter shall not be entitled to adjustment of the Cost Plus with Guaranteed Not to Exceed Amount or Contract Time. For any such work that is found to exceed Contract Documents, there shall be an adjustment in Cost Plus with Guaranteed Not to Exceed Amount and Contract Time on same basis as any other change in the Work.

- .1 The Design/Build Entity shall provide supporting data and shall provide and maintain records of costs attributable to disputes in similar manner as for Change Orders in Article 8, Changes in the Work.
- .2 The City and the Design/Build Entity will make every reasonable effort to resolve the dispute prior to proceeding to the next step.
- .3 Either the City or the Design/Build Entity may call a special meeting for the purpose of resolving the dispute. Such a meeting will be held within seven days after written request of it.
- .4 If the dispute as to the Contract Documents has not been resolved, the

Design/Build Entity shall, within 14 days after the special meeting, take one or more of the following actions:

- .a submit additional supporting data requested by the City;
 - .b modify the initial dispute;
 - .c notify the City that the initial dispute stands as is; or
 - .d withdraw the dispute. Once withdrawn, the dispute cannot be reopened by the Design/Build Entity.
- .5 If the dispute has not been resolved within seven days after the Design/Build Entity's action in response to Clause 10.1.1.4, another meeting may be scheduled, at the City's option, with senior management personnel of the City and the Design/Build Entity. The purpose of this meeting is to resolve the dispute prior to proceeding to the action under Subparagraph 10.1.2, Dispute and Claim Procedures.
- .6 Any dispute not resolved by the above meetings shall be settled by mediation conducted by a third-party neutral from Judicial Arbitration and Mediation Services ("JAMS") jointly appointed by the parties. Said mediation shall occur in San Luis Obispo County, with the costs split between all parties participating in the mediation.

10.1.2 If a dispute has not been resolved at the time of the City's proposed Final Payment, then the Design/Build Entity shall submit within 30 days a claim along with detailed documentation required by Subparagraph 10.1.1, Dispute and Claim Procedures, for the City's consideration. The City will render a written decision to the Design/Build Entity relative to the claim. The City may withhold from the Final Payment an amount not to exceed 150% of the disputed amount. If there appears to be a possibility of a Design/Build Entity's default, then the City may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

Any claim not resolved by the foregoing section will be subject to resolution pursuant to procedures set forth in Public Contract Code Section 20104, regardless of whether such claims exceed \$375,000. Said procedures are incorporated as though fully set forth in this Agreement.

10.1.3 Maintenance of Existence. OCI and JRF, each individually and solely with respect to itself, covenants it will remain in existence during the term of the Design/Build Agreement and for a period of time five years after Final Completion of the Project (the "Corporate Maintenance Period"). The purpose for which those entities shall remain in existence during the Corporate Maintenance Period is to assure the City one of those entities will be able, during the Corporate Maintenance Period, to address and/or pay claims by the City against the Design/Build Entity if the City deems the Design/Build Entity to be insufficiently capitalized to be able, on its own to carry out its obligations hereunder (financial or otherwise).

10.2 Public Contracts Code Section 9204.

10.2.1 Notwithstanding the foregoing, attention is directed to the summary of Section 9204 of the Public Contract Code (PCC) regarding the claims resolution process for all public works projects. Any dispute or claim against the City under a public works project shall be processed in accordance with PCC section 9204 and any other applicable law. Any of the foregoing that is inconsistent with PCC section 9204 or applicable law shall not apply.

SUMMARY OF PCC SECTION 9204

Any dispute or claim regarding the project shall be resolved in accordance with PCC section 9204, which is summarized herein, and other applicable law. "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (i) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City under a contract for a public works project; (ii) payment by the City of money or damages arising from work done by, or on behalf of, the Design/Build Entity pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; or (iii) payment of an amount that is disputed by the City.

Upon receipt of a claim, the City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the City and the Design/Build Entity may, by mutual agreement, extend the time period provided in Section 9204. The claimant shall furnish reasonable documentation to support the claim. If the City needs approval from the City Council to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, then the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion. 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.

If the claimant disputes the City's written response, or if the City fails to respond to a claim issued pursuant to PCC section 9204 within the time prescribed, then the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

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, then the City shall provide the claimant a written statement identifying the portion of the claim

that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement.

Any disputed portion of the claim, as identified by the Design/Build Entity in writing, shall be submitted to nonbinding mediation, with the City and the claimant sharing the associated costs equally. The City and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, then each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, then the parts of the claim remaining in dispute shall be subject to applicable law. 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 Section 9204 of the Public Contract Code. Unless otherwise agreed to by the City and the Design/Build Entity in writing, the mediation conducted pursuant to PCC section 9204 shall excuse any further obligation under PCC section 20104.4 to mediate after litigation has been commenced.

PCC section 9204 does not preclude the City from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under PCC section 9204 does not resolve the parties' dispute.

Failure by the City to respond to a claim from the Design/Build Entity within the time periods described herein or to otherwise meet the time requirements of PCC section 9204 shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of PCC section 9204, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

Amounts not paid in a timely manner as required by PCC section 9204 shall bear interest at seven percent per annum.

If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, then the Design/Build Entity may present to the City a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, the Design/Build Entity present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting the claim be presented to the City shall furnish reasonable documentation to support the claim. Within 45 days of receipt of that written request, the Design/Build Entity shall notify the subcontractor in writing as to whether the Design/Build Entity presented the claim to the City and, if the original contractor did not present the

claim, provide the subcontractor with a statement of the reasons for not having done so.

A waiver of the rights granted by PCC section 9204 is void and contrary to public policy; provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of PCC section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in PCC section 9204.

ARTICLE 11 – PROTECTION OF PERSONS AND PROPERTY

11.1 Safety of Persons and Property.

11.1.1 The Design/Build Entity shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The City shall have no responsibility for initiating, maintaining, and supervising safety of persons and property.

11.1.2 The Design/Build Entity shall take precautions for safety and provide protection to prevent damage, injury, or loss to:

- .1 Employees working under the Agreement and other persons who may be affected by it;
- .2 The Work and materials and equipment to be incorporated in it, whether in storage on or off the Project site, under care, custody or control of the Design/Build Entity or the Design/Build Entity's subcontractors or sub-subcontractors; and
- .3 Other property at the Project site, or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction.

11.1.3 The Design/Build Entity shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

11.1.4 The Design/Build Entity shall erect and maintain, as required by existing conditions and performance of the Contract Documents, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the City, other owners (other than the City) and users of adjacent sites and utilities.

11.1.5 The Design/Build Entity shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities regarding the storage and/or

use of explosives or other hazardous materials or equipment necessary for execution of Work. The Design/Build Entity shall employ properly qualified personnel for supervision of same.

11.1.6 The Design/Build Entity shall remedy damage and loss to property referred to in Clauses 11.1.2.2 and 11.1.2.3 caused in whole or in part by the Design/Build Entity, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Build Entity is responsible under Clauses 11.1.2.2 and 11.1.2.3 prior to Final Completion of the Work. The foregoing obligations of the Design/Build Entity are in addition to the Design/Build Entity's obligations under Paragraph 12.3, Indemnification.

11.1.7 The Design/Build Entity shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.

11.1.8 When conditions of the Work, in the judgment of the City, present unreasonable risk of injury or death to persons or property damage, the City, may direct the Design/Build Entity, to close down the Work and not commence work again until all dangerous conditions are eliminated. The Design/Build Entity shall be entitled to a Change Order for the costs actually incurred as a direct result of that delay to the extent such conditions are not caused by Design/Build Entity and such delay increases the Design/Build Entity's time or cost of performance.

11.1.9 The Design/Build Entity, at the Design/Build Entity's own cost, except for the amount actually paid by the insurance required to be maintained under this Agreement, shall rebuild, repair, restore and make good any and all damages to any portion of the Work prior to Substantial Completion to the extent the damages are caused by the Design/Build Entity or anyone for whom it is legally responsible.

11.2 Emergencies.

In an emergency affecting safety of persons or property, the Design/Build Entity shall act, at the Design/Build Entity's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Design/Build Entity because of an emergency will be reviewed as provided in Article 8, Changes in the Work.

ARTICLE 12 – INSURANCE, BONDS, AND INDEMNIFICATION

12.1 Insurance.

12.1.1 The City's signature on this Agreement shall be evidence the City has determined the proof of insurance the Design/Build Entity has provided meets the requirements set forth below, including having provided the City with three copies of each required certificate of insurance.

a. Workers' Compensation Insurance and Employer's Liability Insurance.

Design/Build Entity shall maintain during the life of the Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees employed on the project as described herein. Said insurance shall comply with the following:

- i. Workers' Compensation Insurance in compliance with the laws of the State of California and any applicable federal statutes.
- ii. Employers liability insurance of not less than One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each employee.

In signing this Contract, the Design/Build Entity shall make the following certification, required by Section 1861 of the Labor Law: "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."

- b. Automobile and General Liability. Design/Build Entity shall have throughout the term of this Contract policies of liability insurance covering automobile and general liability as follows:

- i. Owned/non-owned and hired automobile liability insurance with primary limits for bodily injury and property damage liability of not less than One Million Dollars (\$1,000,000) per accident. Umbrella and/or excess liability limits of not less than Two Million Dollars (\$2,000,000) per accident.
- ii. Commercial general liability and/or umbrella excess liability insurance providing coverage on an occurrence basis and with limits of not less than Five Million Dollars (\$5,000,000) each occurrence and annual aggregate for bodily injury and property damage liability combined including:
 - 1) Premises and operations liability coverage;
 - 2) Owner's and contractor's protective liability coverage;
 - 3) Broad form property damage liability coverage including completed operations;
 - 4) Blanket contractual liability coverage;
 - 5) Deletion of any limitations relating to liability arising out of explosion, collapse or underground hazards;
 - 6) Personal and advertising injury liability coverage;

- 7) For excavation and foundations, deletion of any limitation on coverage for bodily injury or property damage arising out of subsidence of soil or earth movement; and
 - 8) Not Used.
 - 9) The policy terms outright or by endorsement shall specify the policy aggregate limits apply separately to the Project.
 - 10) NOT USED
 - 11) Products and Completed Operations including five-year extension endorsement
 - 12) Occurrence Definition to include "Assault and battery committed by, at the direction of or on behalf of any insured for the purpose of protecting the person or property of any insured or of others shall be deemed to be an occurrence."
 - 13) Extended Personal Injury definition to include alienation of affections, discrimination, or humiliation.
 - 14) Bodily Injury Definition to include mental anguish, shock, mental injury, humiliation, sickness, or disease sustained by a person, including death resulting from any of these at any time.
 - 15) Exclusion Property Damage to the Insured's Work to read: "Property damage" to that particular part of "your work" that is defective or actively malfunctions. This exclusion applies only to the "products-completed operation" hazard. It does not apply if the damaged work or the work out of which the damage arises was performed on Design/Build Entity's behalf by a subcontractor.
 - 16) Contractual Liability – Municipal Work: The phrase "any other contract or agreement pertaining to your business," as included in the definition of an insured contract, includes an indemnification of a municipality required by ordinance and in connection with work performed for the municipality.
- c. Professional Liability Insurance. Upon execution of this Contract, Design/Build Entity shall obtain professional liability insurance with limits of at least Five Million Dollars (\$5,000,000) per claim and aggregate which shall cover claims resulting from professional errors and omissions of Design/Build Entity and any of its consultants in connection with the work provided such claims arise during the period commencing upon the preparation of the construction documents and ending five years following Final completion. Such insurance shall be in form reasonably acceptable to the City's Risk Manager.

- d. Builders' Risk Insurance/Installation Floater. Design/Build Entity shall, until Substantial Completion, have "all risk" builders' risk property insurance, jointly in the names of the City and the Design/Build Entity, payable as their respective interest may appear, such insurance all times to be of sufficient amount to cover fully all loss or damage to the work under this Contract, at 100% replacement cost. Design/Build Entity's responsibility for earthquake coverage shall be in accordance with Public Contract Code Section 7105. Such insurance shall be in a form acceptable to the City's Risk Manager and shall include coverage for machinery during testing.
- e. Subcontractor Insurance. The Design/Build Entity shall cause all subcontractors engaged to perform work required of Design/Build Entity pursuant to this Contract to have Workers' Compensation, Commercial General Liability/Umbrella and/or Excess Liability, and Automobile Insurance in a form and amount deemed appropriate by the Design/Build Entity for work performed under this Contract.
- f. DESIGN/BUILD ENTITY POLLUTION LEGAL LIABILITY (CPL) (and/or other applicable policies as determined by the City's Risk Manager or his/her designee, e.g. Asbestos Legal Liability) unless waived in writing by the CITY'S Risk Manager or his/her designee shall be written on either an occurrence form, or a claims-made form, and is required for all environmental and water remediation work and for all work transporting fuel. CPL is also required for demolition, renovation, HVAC, plumbing and electrical work (including, without limitation, lighting) on any structure built prior to the year 1990 with limits of liability of not less than the following:
 - (i) \$1,000,000 per occurrence or claim; and,
 - (ii) \$2,000,000 general aggregate per annual policy period.

In the event this Agreement involves any lead based, mold or asbestos environmental hazard, either the CAL policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by the Design/Build Entity pursuant to the Agreement.

12.2 Indemnification.

- 12.2.1 Subject to Section 12.2.1.1, the Design/Build Entity will indemnify, defend and hold harmless the City and its officers, officials, employees, agents, agencies, consultants, Program Manager, contractors and all other affiliated persons or entities (Indemnitees) against all loss, expense (including, but not limited to, reasonable attorneys' fees and court costs), damage, injury, liability, judgment, cause of action or claim of any kind or character (Damages); provided, that the Damages are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself or claims not covered by insurance which is required under this Agreement) including loss of use resulting therefrom (except loss of use attributable to Damages otherwise insured as provided under this Agreement), in any way arising out of any negligent act or omission (and for the purposes of the Design/Build Entity's defense obligation under this clause, for any *alleged* negligent act or omission) of the

Design/Build Entity, or any of its partners, officers, directors, employees, agents, licensees, invitees, consultants, vendors, or subcontractors of any tier (collectively the “Collective Design/Build Entity”).

- .1 Subject to Section 12.2.1.2, the total cumulative liability of the Design-Build Entity and the Collective Design-Build Entity to the Indemnitees for all Damages, whether direct, indirect, consequential, special, incidental or punitive, arising from, resulting from or in any way connected with the performance or non-performance of this Agreement, the Work or the Project, whether characterized as arising under breach of contract or warranty, tort (including negligence), indemnity, strict liability, or any other theory of legal liability shall not exceed one hundred and ten percent (110%) of the amount of compensation actually received by Design/Build Entity under this Agreement.
- .2 The limitations on liability provided for in Section 12.2.1.1 apply solely to the liability of the Design-Build Entity and the Collective Design-Build Entity for Damages to any or all of the Indemnitees arising out of the performance or unexcused nonperformance of this Agreement as a consequence of a claim or suit initiated by any or all of the Indemnitees, excluding liquidated damage and reimbursement payments to the City, as specifically provided for under this Agreement. The limitations on liability provided for in Section 12.2.1.1 do not apply to any other liability, loss, damage, cost or expense that may be incurred by the Design-Build Entity or the Collective Design-Build Entity in connection with this Agreement, including any of the following liabilities, losses, damages, costs or expenses:
 - a. Any cost overruns sustained by the Design-Build Entity or the Collective Design-Build Entity in the performance of this Agreement (including any obligations for payment to laborers, suppliers and other Subcontractors);
 - b. Any cost overruns sustained by the Design-Build Entity, the Collective Design-Build Entity or any of their sureties in seeking to cure or prevent any breach of this Agreement by the Design-Build Entity or the Collective Design-Build Entity;
 - c. Any fines or penalties levied or imposed by any governmental body on the Design/Build Entity or the Collective Design/Build Entity or any fines or penalties levied or imposed by any governmental body on the Indemnitees to the extent caused by the Design/Build Entity’s or the Collective Design/Build Entity’s negligence in the performance of this Agreement;
 - d. Any claims, losses or penalties incurred by the Design-Build Entity or the Collective Design-Build Entity to third parties in any legal proceedings;

- e. Any indemnity payment (resulting from third party claims against any or all of the Indemnitees) made by the Design-Build Entity or the Collective Design-Build Entity to any or all of the Indemnitees;
- f. Payment of any defense costs, including reasonable attorney's fees, to, for, or on behalf of any or all of the Indemnitees with respect to any third-party claim under the Design-Build Entity or the Collective Design-Build Entity's indemnification obligations of this Agreement;
- g. Any payments made to any or all of the Indemnitees in connection with any required insurance but not exceeding the minimum amounts specified under this Agreement; and
- h. Any claims, losses, penalties or settlement payments paid to any or all of the Indemnitees in connection with any tort claim by any or all of the Indemnitees against the Design-Build Entity or the Collective Design-Build Entity to the extent that such claims, losses, penalties or settlement payments are determined by final adjudication, arbitration, mediation or settlement agreement to be based on gross negligence, intentional misconduct, fraud, misrepresentation or false claims of the Design/Build Entity or the Collective Design/Build Entity.

12.3 No Personal Liability.

No officer, officials, elective and appointive Commission, Committee or Board Member, employee, or consultant of the City will be personally responsible for liabilities arising under this Design/Build Agreement.

12.4 Performance Bond and Payment Bonds.

12.4.1 The Design/Build Entity shall furnish to the City, prior to notice to proceed for commencement of construction, a surety bond in favor of the City in the amount of not less than 100% of the amount of Contract, to guarantee faithful performance of Contract and a payment bond, each in the form attached to the Design/Build Agreement. Bond shall guarantee repair or replacement of deficient, defective, or faulty materials and workmanship for a period of one year following completion of the project unless otherwise required in the Contract Documents. The Bond shall be issued by a California admitted surety with a rating classification of "A XIII" or better according to Best's Rating Service.

12.4.2 The City acknowledges that any faithful performance and payments bonds provided by the Design/Build Entity shall not apply to errors or omissions in the furnishing of professional services in connection with architecture or engineering services provided by the Design/Build Entity or its consultants. The City waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract, and the performance bonds shall include the costs of such services. Professional Liability

insurance shall be primary insurance in settling claims related to Errors and Omissions

ARTICLE 13 – SEPARATE CONTRACTS

13.1 City's Right to Perform Construction and to Award Separate Contracts.

13.1.1 The City reserves the right to perform work or operations related to the Project with the City's own work force, and to award separate contracts in connection with other portions of the Work or other construction or operations on the Work.

13.1.2 When separate contracts are awarded for different portions of the Work or for other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the contractor who executes each separate agreement.

13.1.3 The City will provide for coordination of the activities of the City's own work force and of each separate Contractor with the work of the Design/Build Entity, who shall cooperate with them. The Design/Build Entity shall participate with other separate Contractors and the City in reviewing and revising their Baseline Schedules when directed by the City. The resulting Baseline Schedules shall then constitute the schedules to be used by the Design/Build Entity, separate Contractors and the City.

13.1.4 The City reserves the right to perform other work in connection with the Project or adjacent to the Project site by separate contract or otherwise. The Design/Build Entity shall at all times conduct the Work so as to impose no hardship on the City or others engaged in the Work, nor to cause any unreasonable delay or hindrance to the Work.

13.2 Mutual Responsibility.

13.2.1 The Design/Build Entity shall afford the City and other Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the contractor's construction and operations with theirs as required by the Contract Documents.

13.2.2 If part of the Design/Build Entity's work relies on proper execution or results upon construction or operations by the City or a separate Contractors, then the Design/Build Entity shall, prior to proceeding with that portion of the work, report to the City apparent discrepancies or defects in other construction that would render it unsuitable for proper execution and results. Failure of the Design/Build Entity to report any discrepancies or defects shall constitute an acknowledgment that the City's or separate Contractors' complete or partially completed construction is fit and proper to receive the Design/Build Entity's work.

13.2.3 The Design/Build Entity shall promptly remedy damage wrongfully caused by the Design/Build Entity to any completed or partially completed construction or to any property of the City or separate Contractors.

13.2.4 The City and each separate Contractor shall have the same responsibilities for cutting and patching as are described in Paragraph 3.7, Cutting and Patching.

ARTICLE 14 – MISCELLANEOUS

14.1 Governing Law

The parties have executed and delivered this Contract in the City, County of San Luis Obispo, State of California. This Design/Build Agreement shall be governed by the laws of the State of California. The exclusive venue for any action or proceeding, in law or equity that may be brought in connection with this Contract, is the Superior Court of the State of California in and for the County of San Luis Obispo, or the United States District Court, Central District, California.

14.2 Successors.

The City and the Design/Build Entity respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other party and to shareholders, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party shall assign the Design/Build Agreement as a whole without the written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under the Design/Build Agreement and the Contract Documents.

14.3 Notice.

Written notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, by facsimile, by registered or certified first class U.S. mail, return receipt requested with postage pre-paid, or by commercial courier. Written notice shall be deemed to have been duly served in the date of delivery if delivered in person or by facsimile, on the first working day after deposit if delivery by overnight courier, or two working days after deposit of delivery by placing in the U.S. mail as provided herein. All notices shall be addressed to the appropriate Authorized Representative, as follows:

Design/Build Entity:

City

14.4 Statutory Limitations.

Commencement of statutory limitation periods and statute of repose periods shall be as follows:

14.4.1 As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Final Completion.

14.4.2 As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design/Build Entity pursuant to any applicable warranty, the date of any correction of Work or failure to correct Work by the Design/Build Entity, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design/Build Entity or the City, whichever occurs last.

14.4.3 The time period for the applicable Statute of Repose shall commence to run at Substantial Completion of the Work.

14.5 Modifications.

No modifications or Change Orders shall be valid unless in writing and signed by the City and the Design/Build Entity or their respective permitted successors and assigns. The Design/Build Entity and the City agree to make modifications to this Design/Build Agreement if requested by the City's lender(s), provided that such modifications do not adversely affect the costs and/or risks and/or time of performance of the Work.

14.6 Meaning of Words.

Any and all headings used in this Design/Build Agreement are for convenience only and do not modify, define or limit the provisions of it. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms of this Agreement. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms of this Design/Build Agreement. Where reference is made in this Design/Build Agreement to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents.

14.7 Severability.

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

14.8 Whole Agreement.

This Design/Build Agreement and any and all exhibits, the Design/Build Entity's Proposal, which is incorporated by reference, and the Contract Documents shall constitute the entire agreement between the Parties, related to the subject matter hereof. No inducements, considerations, promises or other references shall be implied in this Design/Build Agreement that are not expressly addressed in this Agreement. By incorporating the Design/Build Entity's Proposal as part of this Design/Build Agreement, the City does not accept any provision of the Proposal that are not in conformance with the criteria of the Request for Proposal.

14.9 Record Retention and Audits.

The Design/Build Entity agrees that the awarding department or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Design/Build Entity shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design/Build Agreement; the accounting and control systems shall be reasonably satisfactory to the City and shall be in accordance with generally accepted accounting standards.

Design/Build Entity shall retain all records, books, correspondence, instructions, drawings, receipts, subcontracts, vouchers, memoranda and other data relating to this Design/Build Agreement for a period of five years after Final Payment under this Agreement, or for such longer period as may be required by law. Design/Build Entity agrees to allow the City auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, and not withhold relevant information. Further, Design/Build Entity agrees to include a similar right of the City to audit records and interview staff in any subcontract related to performance of this Agreement.

14.10 Deliverables.

The Design/Build Entity is responsible for delivery to the City certain drawings, schedules, reports, samples and other documents as described in the Contract Documents.

14.11 Waiver.

No waiver of any condition, requirement, or right expressed in this Agreement shall result from any forbearance of the City to declare a default.

14.12 Brokerage or Contingent Fees.

Design/Build Entity warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon understanding or agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by Design/Build Entity for the purpose of securing business. For breach or violation of this warranty, the City shall, in addition to other remedies

provided by law, have the right to terminate this Agreement without liability, paying only for the work actually performed, or otherwise recover the full amount of such commission, brokerage or contingent fee.

14.13 Computer Software.

Design/Build Entity certifies it has appropriate systems and controls in place to ensure City funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

14.14 Independent Capacity.

Design/Build Entity, and agents and employees of Design/Build Entity, in the performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of the City.

14.15 Air or Water Pollution Violations.

By signing this agreement, the Design/Build Entity swears, under penalty of perjury, that the Design/Build Entity is not: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

14.16 No Uncertainty Protection.

This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code section 1654, any uncertainty in this Agreement shall not be construed against the drafter.

14.17 PWCR Number.

Design/Build Entity, in the space provided on the signature page shall provide Design/Build Entity's public works registration (PWCR) number for City to complete the PWC 100 Form.

14.18 Effective Date.

The effective date of this Agreement is the date it is signed on behalf of City provided it has also been signed on behalf of Design/Build Entity.

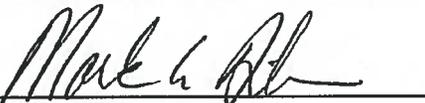
ARTICLE 15 – EXECUTION OF THE AGREEMENT

OVERLAND CONTACTING INC, dba KS OVERLAND CONTRACTING INC., a Delaware corporation

By: 
A. Blake Childress
Its Attorney in Fact

AND

J.R. FILANC CONSTRUCTION COMPANY, INC., a California corporation

By: 
Mark E. Filanc
Its Chief Executive Officer

Acting together as FBV Morro Bay Joint Venture
PWCR # 947773– Classification A

CITY OF MORRO BAY, a municipal corporation

By: _____
Jamie Irons, Mayor

Date: _____, 2018

APPROVED AS TO FORM:

Joseph W. Pannone,
City Attorney

ATTEST:

Dana Swanson,
City Clerk

Exhibit A

Project Milestone Schedule

The Project Milestones for the Water Reclamation Facility Project (Project) are defined below. The Project is composed of two (2) phases:

- Design Phase
- Construction Phase

Separate Notices to Proceed (NTPs) will be issued for each phase of the Project. If the NTP dates change, the subsequent dates may change accordingly.

Project Milestones

Project Milestones	Milestone Date
Design NTP	November 5, 2018
Construction NTP	April 29, 2019
Substantial Completion	August 5, 2021
Final Completion	October 1, 2021

**EXHIBIT B
SCOPE OF WORK
(The [number] pages Immediately behind this page)**

Click [HERE](#) to view Exhibit B on the City website.

EXHIBIT C
SCHEDULE OF COSTS
(The six (6) pages immediately behind this page)

EXHIBIT C
SCHEDULE OF COSTS

1. The term Cost of the Work shall mean costs necessarily incurred by Design/Build Entity in the proper performance of the Work. The Cost of the Work shall include only the following:
 - .1 Wages of direct employees of Design/Build Entity or its members and their affiliated entities performing the Work at Site or at locations off-Site.
 - .1 Craft Labor
 - a. Craft Labor working at the project site for OCI will be billed at the actual hourly wages or salary paid to such labor plus the following actual costs:
 - i. all actual costs for employer-owed Federal, State and Local Taxes;
 - ii. all actual costs for fringe benefits provided by OCI to its employees including health insurance, retirement benefits, vision, dental, FSA/DFSA, GTL/AD&D and related insurance broker fees etc.; and
 - iii. all actual costs incurred for workers compensation insurance premiums.
 - b. In addition, OCI will be paid a G&A amount of 3.5% of the total monthly costs calculated in 1.1.1.a above monthly. This multiplier shall be subject to adjustment effective January 1 of each successive year during the term of this Agreement, such changes being subject to approval of the Management Committee.
 - c. Craft Labor working at the project site for FILANC will be billed for all hours worked on the project at the employee's actual hourly or salaried cost plus the following costs:
 - i. all actual costs for employer-owed Federal, State and Local Taxes;
 - ii. all actual costs for fringe benefits provided by Filanc to its employees including health insurance, retirement benefits, vision, dental, FSA/DFSA, GTL/AD&D and related insurance broker fees etc.;
 - iii. all actual costs incurred for workers compensation insurance premiums;
 - iv. A charge of \$2.00/hour for the long-term potential workers compensation risk.

.2 Wages or salaries of Design/Build Entity's or its members and their affiliated entities supervisory and administrative personnel engaged in the performance of the Work and who are located at Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

.1 Field Management Staff (other than Craft Labor) shall be billed as actual salary cost per hour for personnel performing field management services or work on the Project at Site times the multiplier shown below:

a. FILANC Field Management Staff costs shall be calculated for all hours worked on the project at the employee's actual hourly or salaried cost plus the following costs:

1. all actual costs for employer-owned Federal, State and Local Taxes;
2. all actual costs for fringe benefits provided by Filanc to its employees including health insurance, retirement benefits, vision, dental, FSA/DFSA, GTL/AD&D and related insurance broker fees etc.;
3. all actual costs incurred for workers compensation insurance premiums;
4. A charge of \$2.00/hour for long term worker's compensation risk.

.b OCI Field Management Staff (excludes direct hire labor) shall be billed at actual salary cost per hour for personnel performing services or work on the Project times a multiplier of 2.3. This multiplier shall be subject to adjustment effective January 1 of each successive year during the term of this Agreement.

- .3 Wages or salaries of Design/Build Entity's or its member's and/or their affiliated entities' personnel stationed at Design/Build Entity's principal or any branch offices regardless of location and performing the following functions.

All Project related engineering, procurement, construction management, startup, commissioning, training, and administration services.

- .1 Office staff shall be billed as shown below:

a. FILANC office staff costs shall be calculated for all hours worked on the Project at the employee's actual hourly or salaried cost plus the following costs:

i. all actual costs for employer-owed Federal, State and Local Taxes;

ii. actual costs for fringe benefits provided by Filanc to its employees including health insurance, retirement benefits, vision, dental, FSA/DFSA, GTL/AD&D and related insurance broker fees etc.;

iii. actual costs incurred for workers compensation insurance premiums;

b. OCI and its affiliated entities office staff (Home, Project or Other Location-Excluding India) shall be billed at actual salary cost per hour for personnel performing services or work on the Project times a multiplier of 2.7. This multiplier shall be subject to adjustment effective January 1 of each successive year during the term of this Agreement.

.1 OCI and its affiliated entities India Based Office Staff Rate: Flat rate of US \$86.00 per hour for all India-based office staff with no multiplier. The OCI India Office Based staff flat billing rate shall increase by an escalation rate of 10% effective January 1 of each successive year during the term of this Agreement.

- .4 Costs incurred by Design/Build Entity or its members and their affiliated entities for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design/Build Entity, to the extent such costs are based on wages and salaries paid to employees of Design/Build Entity, or its members and their affiliated entities covered under Sections 1.1 through 1.3 hereof. Note that if not separately called out in Sections 1.1 through 1.3 above, such costs have been included in the multipliers.

- .5 Cost incurred by Design/Build Entity or its members and their affiliated entities for Project related office-based personnel to cover the cost of personal computers; CAD workstations; computer & communication systems administration, maintenance, and operation; software, maintenance, and supplies; plotting

supplies; long-distance telephone charges; faxes; postage; photocopies; and other miscellaneous supplies.

.6 The reasonable portion of the cost of travel, accommodations and meals for Design/Build Entity's or its members and their affiliated entities personnel necessarily and directly incurred in connection with the performance of the Work.

.7 Payments properly made by Design/Build Entity or its members and/or their affiliated entities to Subcontractors and Design Consultants for performance of portions of the Work and including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

.1 In the event of any Change Orders in which all or part of the additional Work is performed by a Subcontractor, and if such Subcontractor's portion of such additional Work is not priced as a lump sum, then the following markups on Subcontractor's own cost of work shall be allowed for all of Subcontractor's overhead and profit for the additional Work:

.1	Labor	20%
.2	Materials	15%
.3	Equipment Rental	15%
.4	Other Items and Expenditures	15%

.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated in or necessary for completing the Work.

.9 Costs less salvage value of materials, supplies, temporary facilities that are not fully consumed in the performance of the Work and machinery, equipment and hand tools not customarily used or owned by the workers that and which do not remain the property of Design/Build Entity or its members and/or their affiliated entities, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

.10 Costs of removal of debris and waste from the Site.

.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design/Build Entity at the Site, whether rented from Design/Build Entity or others, and incurred in the performance of the Work.

.13 Premiums for insurance and bonds maintained by the Design/Build Entity or its members and/or their affiliated entities for the performance of the Work.

- .14 All fuel and utility costs incurred in the performance of the Work.
- .15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
- .16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design/Build Entity's or its members and/or their affiliated entities' performance of the Work, provided such costs do not arise from disputes between Owner and Design/Build Entity, or disputes among partners, affiliates, or subsidiaries of the Design/Build Entity.
- .17 Costs for permits, royalties, licenses, tests and inspections incurred by Design/Build Entity or its members and/or their affiliated entities as a requirement of the Contract Documents and arising solely due to the Work.
- .18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design/Build Entity or its members and/or their affiliated entities resulting from such suits or claims, and paying settlements made with Owner's consent.
- .19 Deposits which are lost, except to the extent caused by Design/Build Entity's or its members and/or their affiliated entities negligence.
- .20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property not caused by the Design/Build Entity, its officers, employees, subcontractors or agents.
- .21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- .22 Any escalation costs provided for in accordance with this Agreement or the Contract Documents.
- .23 Design/Build Entity's Contingency.

2. Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

- .1 The cost of Design/Build Entity's capital used in the performance of the Work.
- .2 If the parties have agreed on a Cost Plus with Guaranteed Not to Exceed Amount, costs that would cause the Guaranteed Not to Exceed Amount, as adjusted in accordance with the Contract Documents, to be exceeded.

3. Fee

Design/Build Entity's Fee shall be:

- .1 Four percent (4%) of the Cost of the Work.

4. Overhead Rate

Design/Build Entity shall be paid the following Overhead Rate:

- .1 Six percent (6%) of the Cost of Work.

EXHIBIT D – NOT USED

EXHIBIT E – FORM OF PAYMENT & PERFORMANCE BONDS

SEE FOLLOWING PAGES FOR PAYMENT & PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, _____ (hereinafter called the “Principal”) as Principal and _____ a corporation organized and existing under the laws of the State of California (hereinafter called the Surety”), as Surety, are held and firmly bound to CITY OF MORRO BAY (hereinafter called the “City”), as Obligee, in the sum of _____ Million Dollars, for the payment of which sum well and truly be made, the said Principal and Surety bind themselves, and their respective heirs, subcontractors, contractors, successors and assigns, jointly and severally, thereby by these presents.

WHEREAS, the Design/Build Entity has entered into a Design/Build Agreement (hereinafter called the “Design/Build Agreement”) with the City for the design and construction of the Morro Bay Water Reclamation Facility Design-Build Project (hereinafter called the “Project”); and

WHEREAS, the Principal has submitted a bid for the work on the Project.

NOW THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal shall well and truly perform all of the undertakings, covenants, terms, conditions and agreements of the Contract Documents within the time provided therein and any extensions thereof that may be granted by the Authority, as applicable, and during the life of any guaranty or warranty required under the Contract Documents and shall also well and truly perform all of the undertakings, covenants, terms conditions and agreements of any and all duly authorized modifications of the Contract Documents that may be made, and shall indemnify and save harmless the obligee of and from any and all loss, damage, and expense, including costs and reasonable attorney’s fees, from which the said obligee may sustain by reason of failure to do so, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract Documents or in the work to be performed with respect to the Project, or in the specifications of plans, or by any change or modification of any terms or payment or extension of any time for any payment pertaining or relating to the Contract Documents, or by rescission or attempted rescission of the Contract Documents, or this Bond, or by any condition precedent or subsequent in this Bond attempting to limit the right of recovery of obligee otherwise entitled to recover under this Bond, or by any fraud practiced by any person other than the obligee seeking to recover on this Bond, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions or other modifications. The Surety agrees that to the extent that payment of sums pursuant to the Contract Documents undertaken by the Surety, and the payment obligation could be construed as an obligation under this Bond or the payment bond issued by the Surety contemporaneously with the issuance of the Bond, such payment shall be treated solely as the discharge of an obligation under the payment bond and shall not reduce or impact on the Surety’s obligations under this Bond.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this _____ day of _____, 20____, the names and corporate seals of the corporate parties being hereto affixed and those presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

WITNESS:

PRINCIPAL (DESIGN/BUILD ENTITY)

By: _____
Name: Title: Address:

SURETY:

By: _____
Name: Title: Address:

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City (herein after called the "City") has awarded a Design/Build Agreement (hereinafter called the "D-B Agreement") to

_____, the Design/Build Entity (hereinafter called the "Design/Build Entity") for the design and construction of the City Design-Build Project (hereinafter called the "Project"); and

WHEREAS, the Design/Build Entity is required to furnish a payment bond in connection the Contract Documents, to secure the payment of claims of Design/Build Entity laborers, mechanics, material men and other persons as provided by law.

NOW THEREFORE, we the undersigned Principal (Design/Build Entity) and Surety are held and firmly bound unto the Authority obligee in the sum of _____ Million Dollars (\$_____) 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, or its heirs, executors, administrators, successors or assigns or subcontractors, shall fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld and paid over the California Franchise Tax Board from the wages of employees of the Principal and/or its subcontractors pursuant to Section 18306 of the California Revenue and Taxation Code, with respect to such work and labor, then the surety or sureties will pay such amounts in an amount not to exceed the sum specified in this bond, otherwise the above obligation shall be void. If a suit is brought to enforce this bond, the surety will pay City's reasonable attorney's fees to prosecute or defend that suit.

This bond shall inure to the benefit of any of the persons named in California Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Notwithstanding the number of claimants on this bond or any underlying law to the contrary, the Sureties shall not be liable under this bond for an amount greater than the aggregate penal sum designated above.

The said Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract Documents, or in the work to be performed with respect to the Project, or in the specifications or plans, or by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to the Contract Documents, or by any recession or attempted recession of the Contract Documents, or this Bond, or by any conditions precedent or subsequent in this Bond attempting to limit the right of recover of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any person other than the claimant seeking to recover on this Bond, shall in any way affect its obligations on this Bond, and it does waive notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

01181.0001/512629.1 City of Morro Bay - Design/Build Agreement
WRF Design-Build Project
DB Agreemen 11 Oct 2018

When this Bond had been furnished to comply with a statutory or other legal requirement in the location where the construction is to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall deemed incorporated in it. The intent is that this Bond shall be construed as a statutory bond and not a common law bond.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their several seals this ____ day of _____, 20____, the names and corporate seals of the corporate parties being affixed and those presents duly signed by their undersigned representatives, pursuant to authority of their governing bodies.

WITNESS:

PRINCIPAL (DESIGN/BUILD ENTITY)

By: _____
Name: Title: Address:

SURETY:

By: _____
Name: Title: Address

EXHIBIT G– FEDERAL CONDITIONS & CROSS-CUTTERS

The Design/Build Entity (sometimes noted below at “the Recipient”) agrees to comply with the following federal conditions:

A. Federal Award Conditions

1. American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase “iron and steel products” produced outside of the United States on this project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies all “iron and steel products” used in the project were or will be produced in the United States. For purposes of this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. “Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
2. EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:

- a. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension”. The Recipient shall not subcontract with any individual or organization on USEPA’s List of Violating Facilities. The Recipient shall certify it and its principals, and shall obtain certifications from its contractors they and their principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants it has or will include a term or conditions requiring

compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.

- b. Copyright. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
 - c. Credit. The Recipient agrees any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:
 - “This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document.”
 - d. Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Planning.
 - e. Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands failure to comply with this provision may subject the State Water Board to loss of federal funds in the amount of \$101,065,000. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full payment will be due immediately, if a Recipient or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.
- B. Super Cross-Cutters - Civil Rights Obligations. The Recipient must comply with the following federal non-discrimination requirements:
- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (EPH XC HB)
 - Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (EPH XC HB)

- The Age Discrimination Act of 1975, which prohibits age discrimination. (EPH XC HB)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex. (EPH XC HB)
- 40 CFR Part 7, as it relates to the foregoing (EPH XC HB)

C. WRRDA Conditions

- Architectural and engineering contracts. Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- Fiscal sustainability. The Recipient certifies it has developed and is implementing a fiscal sustainability plan for the System that includes an inventory of critical assets that are a part of the System, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification the Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing any SRF-funded project and a plan for funding such activities.

D. Cross-Cutters

- a) Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Planning the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- b) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. The Recipient shall comply with and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)



Guidelines for Meeting the California State Revolving Fund (CASRF) Programs (Clean Water and Drinking Water SRF) Disadvantaged Business Enterprise Requirements

The Disadvantaged Business Enterprise (DBE) Program is an outreach, education, and objectives program designed to increase the participation of DBEs in the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Programs.

How to Achieve the Purpose of the Program

Recipients of CWSRF/DWSRF financing that are subject to the DBE requirements (recipients) are required to seek, and are encouraged to use, DBEs for their procurement needs. Recipients should award a "fair share" of sub-agreements to DBEs. This applies to all sub-agreements for equipment, supplies, construction, and services.

The key functional components of the DBE Program are as follows:

- Fair Share Objectives
- DBE Certification
- Six Good Faith Efforts
- Contract Administration Requirements
- DBE Reporting

Disadvantaged Business Enterprises are:

- Entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- Minority Business Enterprise (MBE) - entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively;
- Women Business Enterprise (WBE) - entities that are at least 51% owned and/or controlled by women;
- Small Business Enterprise (SBE);
- Small Business in a Rural Area (SBRA);
- Labor Surplus Area Firm (LSAF); or
- Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Certifying DBE Firms:

Under the DBE Program, entities can no longer self-certify and contractors and sub-contractors must be certified at bid opening. Contractors and sub-contractors must provide to the CASRF recipient proof of DBE certification. Certifications will be accepted from the following:

- The U.S. Environmental Protection Agency (USEPA)
- The Small Business Administration (SBA)
- The Department of Transportation's State implemented DBE Certification Program (with U.S. citizenship)
- Tribal, State and Local governments
- Independent private organization certifications

If an entity holds one of these certifications, it is considered acceptable for establishing status under the DBE Program.

Six Good Faith Efforts (GFE)

All CWSRF/DWSRF financing recipients are required to complete and ensure that the prime contractor complies with the GFE below to ensure that DBEs have the opportunity to compete for financial assistance dollars.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities. For Tribal, State and Local Government Recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs. Posting solicitations for bids or proposals for a minimum of 30 calendar days in a local newspaper, before the bid opening date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a group of DBEs when a contract is too large for one firm to handle individually.
5. Use the services of the SBA **and/or** Minority Business Development Agency (MBDA) of the US Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

The forms listed in the table below and attached to these guidelines; must be completed and submitted with the GFE:

FORM NUMBER	FORM NAME	REQUIREMENT	PROVIDED BY	COMPLETED BY	SUBMITTED TO
SWRCB Form 4500-2 or EPA Form	DBE Sub-Contractor Participation Form	As Needed to Report Issues	Recipient	Sub-contractor	EPA DBE Coordinator
SWRCB Form 4500-3 or EPA Form	DBE Sub-Contractor Performance Form	Include with Bid or Proposal Package	Prime Contractor	Sub-Contractor	SWRCB by Recipient
SWRCB Form 4500-4 or EPA Form	DBE Sub-Contractor Utilization Form	Include with Bid or Proposal Package	Recipient	Prime Contractor	SWRCB by Recipient

The completed forms must be submitted with each Bid or Proposal. The recipient shall review the bidder’s documents closely to determine that the GFE was performed **prior** to bid or proposal opening date. Failure to complete the GFE and to substantiate completion of the GFE before the bid opening date could jeopardize CWSRF/DWSRF financing for the project. The following situations and circumstances require action as indicated:

1. If the apparent successful low bidder was rejected, a complete explanation must be provided.
2. Failure of the apparent low bidder to **perform** the GFE **prior** to bid opening constitutes a non-responsive bid. The construction contract may then be awarded to the next low, responsive, and responsible bidder that meets the requirements or the Recipient may re-advertise the project.
3. If there is a bid dispute, all disputes shall be settled **prior** to submission of the Final Budget Approval Form.

Administration Requirements

- A recipient of CWSRF/DWSRF financing must require entities receiving funds to create and maintain a Bidders List if the recipient of the financing agreement is subject to, or chooses to follow, competitive bidding requirements.
- The Bidders list must include all firms that bid or quote on prime contracts, or bid or quote on subcontracts, including both DBEs and non-DBEs.

- Information retained on the Bidder's List must include the following:
 1. Entity's name with point of contact;
 2. Entity's mailing address and telephone number;
 3. The project description on which the entity bid or quoted and when;
 4. Amount of bid/quote; and
 5. Entity's status as a DBE or non-DBE.
- The Bidders List must be kept until the recipient is no longer receiving funding under the agreement.
- The recipient shall include Bidders List as part of the Final Budget Approval Form.
- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Recipient.
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor by the prime contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six GFEs if soliciting a replacement subcontractor.
- A recipient must require its prime contractor to employ the six GFEs even if the prime contractor has achieved its fair share objectives.

Reporting Requirements

For the duration of the construction contract(s), the recipient is required to submit to the State Water Resources Control Board DBE reports annually by October 10 of each fiscal year on the attached Utilization Report form (UR-334). Failure to provide this information as stipulated in the financial agreement language may be cause for withholding disbursements.

CONTACT FOR MORE INFORMATION

SWRCB, CASRF – Barbara August (916) 341-6952 barbara.august@waterboards.ca.gov

US EPA, Region 9 – Joe Ochab (415) 972-3761 ochab.joe@epa.gov

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**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

A Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid / Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.

Please use the space below to report any concerns regarding the above funded project:

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Do not send the completed form to this address.

Send completed Form 4500-2 to:
Mr. Joe Ochab, DBE Coordinator
US EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

FORM 4500-2 (DBE Subcontractor Participation Form)



**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. A Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid / Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity	

Contract Item Number	Description of Work Submitted from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____		Meets/exceeds EPA certification standards? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.
² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Do not send the completed form to this address.

FORM 4500-3 (DBE Subcontractor Performance Form)



Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractor's² and the estimated dollar amount of each subcontract. A Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid / Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity			

I have identified potential DBE certified subcontractors. ___ YES ___ NO If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address / Phone / Email	Estimated Dollar Amount	Currently DBE Certified?

--Continue on back if needed--

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.2015 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Do not send the completed form to this address.

FORM 4500-4 (DBE Subcontractor Utilization Form)



**STATE WATER RESOURCES CONTROL BOARD – DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS (CASRF)
FORM UR-334**

1. Grant/Finance Agreement Number:		2. Annual Reporting Period 10/1/___ through 09/30/___		3. Purchase Period of Financing Agreement:	
4. Total Payments Paid to Prime Contractor or Sub-Contractors During Current Reporting Period: \$					
5. Recipient's Name and Address:			6. Recipient's Contact Person and Phone Number:		
7. List All DBE Payments Paid by Recipient or Prime Contractor During Current Reporting Period:					
Payment or Purchase Paid by Recipient or Prime Contractor	Amount Paid to Any DBE Contractor or Sub-Contractor For Service Provided to Recipient		Date of Payment (MM/DD/YY)	Procurement Type Code** (see below)	Name and Address of DBE Contractor of Sub-Contractor or Vendor
	MBE	WBE			
8. Initial here if no DBE contractors or sub-contractors paid during current reporting period:					
9. Initial here if all procurements for this contract are completed:					
10. Comments:					
11. Signature and Title of Recipient's Authorized Representative				12. Date	

Email Form UR-334 to:

DrinkingWaterSRF@waterboards.ca.gov OR CleanWaterSRF@waterboards.ca.gov

Questions may be directed to:

Barbara August, SWRCB
Barbara.August@waterboards.ca.gov
 Phone: (916) 341-6952
 Fax: (916) 327-7469

****Procurement Type:**

1. Construction
2. Supplies
3. Services (includes business services; professional services; repair services and personnel services)
4. Equipment

**STATE WATER RESOURCES CONTROL BOARD - DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS**

INSTRUCTIONS FOR COMPLETING FORM UR-334

- Box 1** Grant or Financing Agreement Number.
- Box 2** Annual reporting period.
- Box 3** Enter the dates between which you made procurements under this financing agreement or grant.
- Box 4** Enter the total amount of payments paid to the contractor or sub-contractors during this reporting period.
- Box 5** Enter Recipient's Name and Address.
- Box 6** Enter Recipient's Contact Name and Phone Number.
- Box 7** Enter details for the **DBE purchases only** and be sure to limit them to the current period.
1) Use either an "R" or a "C" to represent "Recipient" or "Contractor." 2) Enter a dollar total for DBE and total the two columns at the bottom of the section. 3) Provide the payment date. 4) Enter a product type choice from those at the bottom of the page. 5) List the vendor name and address in the right-hand column
- Box 8** Initial here if no DBE contractors or sub-contractors were paid during this reporting period.
- Box 9** Initial this box only if all purchases under this financing agreement or grant have been completed during this reporting period or a previous period. If you initial this box, we will no longer send you a survey.
- Box 10** This box is for explanatory information or questions.
- Box 11** Provide an authorized representative signature.
- Box 12** Enter the date form completed.

American Iron and Steel Requirements



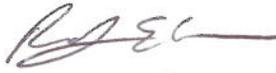
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,
Consolidated Appropriations Act, 2014

FROM: For Andrew D. Sawyers, Director 
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director 
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS)” requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

12) What does the term ‘primarily iron or steel’ mean?

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does ‘produced in the United States’ mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of ‘municipal castings’?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

Meter Boxes;
Service Boxes;
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings;
Trash receptacles;
Tree Grates;
Tree Guards;
Trench Grates; and
Valve Boxes, Covers and Risers.

20) What is ‘structural steel’?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a ‘construction material’ for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a ‘construction material’ for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

26) How should a State ensure assistance recipients are complying with the AIS requirement?

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: http://water.epa.gov/grants_funding/aisrequirement.cfm
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient’s efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> – Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products – Relevant excerpts from the bid documents used by the contractors to complete the comparison – A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Availability Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? <ul style="list-style-type: none"> – Supplier information or other documentation indicating availability/delivery date for materials – Project schedule – Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? • Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) • Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> – Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State – Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States – Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 5: Sample Certifications

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

EXHIBIT H – DAVIS-BACON REQUIREMENTS

SECTION A

The City will review all subcontracts subject to the Davis-Bacon Act entered into by the Design/Build Entity to verify the Design/Build Entity has required its subcontractors to include the applicable wage determinations.

Contract and Subcontract provisions.

The City shall insure the Design/Build Entity and subcontractors insert in full in any contract in excess of \$2,000, which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) MINIMUM WAGES.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Design/Build Entity and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4) of (29 CFR part 5). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Design/Build Entity and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. City, Design/Build Entity, and Subcontractors may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)

(A) The City, on behalf of EPA, shall require any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under this Agreement shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Design/Build Entity and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City agrees on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the City to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA Davis-Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the Design/Build Entity, the laborers or mechanics to be employed in the classification or their representatives, and the City do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Davis-Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in this Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Design/Build Entity shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Design/Build Entity does not make payments to a trustee or other third person, the Design/Build Entity may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Design/Build Entity, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Design/Build Entity to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) WITHHOLDING.

The City, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Design/Build Entity under this Agreement or any other Federal contract with the same prime Design/Build Entity, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Design/Build Entity, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Design/Build Entity or any subcontractor the full amount of wages required by this Agreement. In the event of failure to

pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by this Agreement, the (Agency) may, after written notice to the Design/Build Entity, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) PAYROLLS AND BASIC RECORDS.

(i) Payrolls and basic records relating thereto shall be maintained by the Design/Build Entity during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Design/Build Entity shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Design/Build Entities employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The Design/Build Entity shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the City, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the City shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The Design/Build Entity is responsible for the submission of copies of payrolls by all subcontractors. Design/Build Entities and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City for transmission to the State or EPA if requested by EPA, the State, the Design/Build Entity, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for the Design/Build Entity to require a subcontractor to provide addresses and social security numbers to the Design/Build Entity for its own records, without weekly submission to the City.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Design/Build Entity or subcontractor or his or her agent who pays or supervises the payment of the persons employed under this Agreement and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) Each laborer or mechanic (including each helper, apprentice, and trainee) employed on this Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into this Agreement.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Design/Build Entity or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Design/Build Entity or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Design/Build Entity or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the Design/Build Entity, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) APPRENTICES AND TRAINEES

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Design/Build Entity's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **COMPLIANCE WITH COPELAND ACT REQUIREMENTS.** The Design/Build Entity shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Agreement.

(6) **SUBCONTRACTS.** The Design/Build Entity or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Design/Build Entity shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all this Agreement clauses in 29 CFR 5.5.

(7) **CONTRACT TERMINATION;** debarment. A breach of any of this Agreement's clauses in 29 CFR 5.5 may be grounds for termination of this Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

(9) **DISPUTES CONCERNING LABOR STANDARDS.** Disputes arising out of the labor standards provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes

between the Design/Build Entity (or any of its subcontractors) and City, State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) CERTIFICATION OF ELIGIBILITY.

(i) By entering into this Agreement, the Design/Build Entity certifies neither it nor any person or firm who has an interest in the Design/Build Entity's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

SECTION B

Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The City shall insert the following clauses set forth in paragraphs (1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by SECTION A, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **OVERTIME REQUIREMENTS.** No Design/Build Entity or subcontractor contracting for any part of the Project's work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.** In the event of any violation of the clause set forth in paragraph (a)(1) of this section the Design/Build Entity and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Design/Build Entity and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.** The City, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Design/Build Entity or and of its subcontractors under any such contract or any other Federal contract with the same Design/Build Entity, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Design/Build Entity, such sums as may be determined to be necessary to satisfy any liabilities of Design/Build Entity or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **SUBCONTRACTS.** The Design/Build Entity or each of its subcontractors shall insert in each of its subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include those clauses in any lower tier subcontracts. The Design/Build

Entity shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) **RECORD RETENTION** The Design/Build Entity and each of its subcontractors shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by Design/Build Entity and each of its applicable subcontractors for inspection, copying, or transcription by authorized representatives of the USEPA and the Department of Labor and the State Water Board, and Design/Build Entity or subcontractor will permit such representatives to interview employees during working hours on the job.

(5) Compliance Verification

(a) The City shall periodically interview a sufficient number of employees entitled to Davis-Bacon prevailing wages (covered employees) to verify the Design/Build Entities or each of its subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The City must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The City shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by Design/Build Entity or any of its subcontractors and the duration of this Agreement or subcontract associated therewith. City must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk the Design/Build Entity or subcontractor is not complying with Davis-Bacon. City shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The City shall periodically conduct spot checks of a representative sample of weekly payroll data to verify Design/Build Entities and its subcontractors are paying the appropriate wage rates. The City shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis-Bacon posed by Design/Build Entity or any of its subcontractors and the duration of this Agreement or subcontract associated therewith. At a minimum, if practicable, the City should spot check payroll data within two weeks of each Design/Build Entity and each of its subcontractor's submission of its initial payroll data and two weeks prior to the completion date this Agreement and each of the subcontracts associated therewith. City must conduct more frequent spot checks if the initial spot check or other information indicates there is a risk the Design/Build Entity or any of its subcontractors is not complying with Davis-Bacon. In addition, during the examinations the City shall verify evidence of fringe benefit plans and payments thereunder by Design/Build Entity and subcontractors who claim credit for fringe benefit contributions.

(d) The City shall periodically review the Design/Build Entity and each subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and the neither the Design/Build Entity nor any of its subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. Those reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) The City must immediately report potential violations of the Davis-Bacon prevailing wage requirements to the EPA Davis-Bacon contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

Current Davis-Bacon Wage Determinations as of 4/27/2018^{*}

Note: Most current wage determinations will be used

San Diego.....	\$ 7.85	
San Joaquin.....	\$ 11.39	3.82
San Luis Obispo.....	\$ 7.25	
San Mateo.....	\$ 10.36	1.65
Santa Barbara.....	\$ 7.57	
Santa Clara.....	\$ 8.39	2.65
Santa Cruz.....	\$ 8.39	2.65
Shasta.....	\$ 9.63	1.36
Sonoma.....	\$ 10.57	2.03
Tehama.....	\$ 10.36	1.65
Trinity.....	\$ 9.63	1.36
Tuolumne.....	\$ 7.50	.72
Ventura.....	\$ 11.00	1.48

Water Well Driller

Alameda.....	\$ 10.00	.36
Alpine.....	\$ 9.60	
Amador.....	\$ 9.60	
Butte.....	\$ 7.25	
Calaveras.....	\$ 7.50	
Colusa.....	\$ 11.07	2.03
Contra Costa.....	\$ 9.50	
Del Norte.....	\$ 8.00	.31
El Dorado.....	\$ 9.60	
Fresno.....	\$ 13.37	1.45
Glenn.....	\$ 7.25	
Humboldt.....	\$ 8.00	.31
Imperial.....	\$ 8.70	.36
Inyo.....	\$ 7.29	1.13
Kern.....	\$ 7.25	.06
Kings.....	\$ 7.25	1.21
Lake.....	\$ 11.07	2.03
Lassen.....	\$ 7.25	.43
Los Angeles.....	\$ 9.65	
Madera.....	\$ 7.50	.72
Marin.....	\$ 11.07	2.03
Mariposa.....	\$ 7.50	.72
Mendocino.....	\$ 11.07	2.03
Merced.....	\$ 7.25	.13
Modoc.....	\$ 10.50	
Mono.....	\$ 10.00	
Monterey.....	\$ 12.50	
Napa.....	\$ 8.00	.81
Nevada.....	\$ 7.25	.13
Orange.....	\$ 11.00	1.48
Placer.....	\$ 9.60	
Plumas.....	\$ 10.00	
Riverside.....	\$ 7.25	.36
Sacramento.....	\$ 10.00	
San Benito.....	\$ 8.39	2.65
San Bernardino.....	\$ 10.20	.37
San Diego.....	\$ 8.18	
San Francisco.....	\$ 10.00	
San Joaquin.....	\$ 7.25	.13
San Luis Obispo.....	\$ 7.25	1.02
San Mateo.....	\$ 10.00	.81
Santa Barbara.....	\$ 7.98	
Santa Clara.....	\$ 8.39	2.65
Santa Cruz.....	\$ 8.39	2.65
Shasta.....	\$ 7.25	
Sierra.....	\$ 7.25	.13
Siskiyou.....	\$ 8.00	.31
Solano.....	\$ 9.15	
Sonoma.....	\$ 10.07	1.70
Stanislaus.....	\$ 7.25	.13

Sutter.....	\$ 7.25	
Tehama.....	\$ 10.00	
Trinity.....	\$ 7.25	
Tulare.....	\$ 7.29	1.13
Tuolumne.....	\$ 7.50	.72
Ventura.....	\$ 11.00	1.48
Yolo.....	\$ 10.36	1.65
Yuba.....	\$ 7.25	.13

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1,

2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: CA180006 01/05/2018 CA6

Superseded General Decision Number: CA20170006

State: California

Construction Type: Heavy Hopper Dredge Work

Counties: California Statewide.

HOPPER DREDGE CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number 0 Publication Date 01/05/2018

SUCA1985-002 01/01/1985

	Rates	Fringes
Self-Propelled Hopper Dredge		
Drag tender.....\$	8.78	4.23

FOOTNOTE: Nine paid holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Paul Hall's Birthday (Aug. 20th), Veterans Day, Thanksgiving Day and Christmas Day.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is

like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: CA180019 01/26/2018 CA19

Superseded General Decision Number: CA20170019

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: San Luis Obispo County in California.

BUILDING, DREDGING (does not include hopper dredge work), HEAVY (does not include water well drilling, AND HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018
1	01/12/2018
2	01/19/2018
3	01/26/2018

ASBE0005-002 07/03/2017

	Rates	Fringes
Asbestos Workers/Insulator (Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....	\$ 39.72	20.81
Fire Stop Technician (Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....	\$ 26.96	17.81

ASBE0005-004 07/03/2017

	Rates	Fringes
Asbestos Removal worker/hazardous material		

handler (Includes preparation, wetting, stripping, removal, scrapping, vacuuming, bagging and disposing of all insulation materials from mechanical systems, whether they contain asbestos or not)....\$ 19.26 11.27

BOIL0092-004 10/01/2012

Area within a 25 mile radius of City of Santa Maria

	Rates	Fringes
BOILERMAKER.....	\$ 41.17	28.27

BOIL0549-007 10/01/2016

Remainder of County outside a 25 mile radius of City of Santa Maria

	Rates	Fringes
BOILERMAKER.....	\$ 39.68	35.71

* BRCA0004-006 05/01/2017

	Rates	Fringes
BRICKLAYER; MARBLE SETTER.....	\$ 38.69	14.45

*The wage scale for prevailing wage projects performed in Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine Palms, Needles and 1-15 corridor (Barstow to the Nevada State Line) will be Three Dollars (\$3.00) above the standard San Bernardino/Riverside County hourly wage rate

BRCA0018-008 07/01/2017

	Rates	Fringes
MARBLE FINISHER.....	\$ 30.93	12.95
TILE FINISHER.....	\$ 25.98	11.23

BRCA0018-011 07/01/2017

	Rates	Fringes
TILE LAYER.....	\$ 37.76	16.37

CARP0409-001 07/01/2016

	Rates	Fringes
CARPENTER		
(1) Carpenter, Cabinet Installer, Insulation Installer, Hardwood Floor Worker and acoustical installer.....	\$ 39.83	15.50
(2) Millwright.....	\$ 40.90	15.50
(3) Piledrivermen/Derrick		

Bargeman, Bridge or Dock Carpenter, Heavy Framer, Rock Bargeman or Scowman, Rockslinger, Shingler (Commercial).....	\$ 40.53	15.50
(4) Pneumatic Nailer, Power Stapler.....	\$ 40.09	15.50
(5) Sawfiler.....	\$ 39.83	15.50
(6) Scaffold Builder.....	\$ 31.60	15.50
(7) Table Power Saw Operator.....	\$ 40.93	15.50

FOOTNOTE: Work of forming in the construction of open cut sewers or storm drains, on operations in which horizontal lagging is used in conjunction with steel H-Beams driven or placed in pre- drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): \$0.13 per hour additional.

 CARP0409-005 07/01/2015

	Rates	Fringes
Drywall		
DRYWALL INSTALLER/LATHER....	\$ 40.40	15.03
STOCKER/SCRAPPER.....	\$ 10.00	7.17

 CARP0409-008 08/01/2010

	Rates	Fringes
Modular Furniture Installer.....	\$ 17.00	7.41

 * ELEC0639-001 01/01/2018

	Rates	Fringes
Electricians		
Wireman/Technician.....	\$ 42.00	20.79

FOOTNOTES:

CABLE SPLICER: 10% additional per hour above Wireman/Technician basic hourly rate.

Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance of fifty (50) feet to ninety (90) feet: to be paid time and one-half. Work from trusses, swinging scaffolds, open ladders, scaffolds, bosun chairs, stacks or towers, where subject to a direct fall from the ground floor or support structure from a distance over ninety (90) feet: to be paid double the regular straight time rate of pay. Where workers are required to work under compressed air or in areas where injurious gases, dust or fumes are present in amounts necessitating the use of gas masks or self-contained breathing apparatus (particle masks are not considered self-contained breathing apparatus) or where workers work on poles at a distance of seventy-five (75) feet or more from the ground: to be paid a bonus of straight time pay. This shall be at a minimum of one hour, and thereafter, each succeeding hour or fraction thereof

shall constitute an hour at the bonus rate. Tunnel work: to be paid at the time and one-quarter hourly rate.

All employers may request workmen to report direct to a job within a free zone to include everything west of ten (10) miles east of Highway 101, as the crow flies, and then (10) miles north and south of Highway 46, as the crow flies, to the junction of Highway 41 and Highway 46. Everything outside this area shall be paid at full subsistence provide said job is of five (5) days duration or more and provide there is storage on the job for the Employee's tools. The Employer will be responsible for loss of tools under such circumstances. (Road: The most direct route on a surfaced road).

On all jobs or projects outside the free zone, as stated above, Employees may be required to report to the job site in their own transportation at the regular starting time and remain on the job site until the regular quitting time and these shall be paid at fifty dollars (\$50.00) per day or fifty-one cents (\$0.51) per mile for each road mile from shop to job and job to shop (round trip). (Day worked shall mean at least four (4) hours on the job unless sent home on account of weather, emergency, sickness, or injury).

The Employer shall pay for traveling time and furnish transportation from shop to job, job to job, and job to shop. Travel time shall be at the appropriate rate of pay for that day of the week. (Monday through Friday, straight time, Saturday and Sunday, double time.)

ELEC0639-003 12/26/2016

COMMUNICATIONS AND SYSTEMS WORK

SAN LUIS OBISPO COUNTY

	Rates	Fringes
Communications System		
Installer.....	\$ 32.50	11.66
Technician.....	\$ 30.89	11.66

SCOPE OF WORK: Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background - foreground music, intercom and telephone interconnect, microwave transmission, multi-media, multiplex, nurse call systems, radio page, burglar alarms and fire alarm (see last paragraph below).

Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems.

Fire alarm work shall be performed at the current inside electrician total cost package.

ELEC1245-001 06/01/2017

	Rates	Fringes
LINE CONSTRUCTION		
(1) Lineman; Cable splicer..	\$ 55.49	16.62
(2) Equipment specialist (operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead & underground distribution line equipment).....	\$ 44.32	3%+17.65
(3) Groundman.....	\$ 33.89	3%+17.65
(4) Powderman.....	\$ 49.55	3%+17.65

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,
Independence Day, Labor Day, Veterans Day, Thanksgiving Day
and day after Thanksgiving, Christmas Day

ELEV0008-003 01/01/2018

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 65.45	32.645

FOOTNOTE:

PAID VACATION: Employer contributes 8% of regular hourly
rate as vacation pay credit for employees with more than 5
years of service, and 6% for 6 months to 5 years of service.
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day,
Labor Day, Veterans Day, Thanksgiving Day, Friday after
Thanksgiving, and Christmas Day.

ENGI0012-003 07/01/2017

	Rates	Fringes
OPERATOR: Power Equipment (All Other Work)		
GROUP 1.....	\$ 44.00	24.25
GROUP 2.....	\$ 44.78	24.25
GROUP 3.....	\$ 45.07	24.25
GROUP 4.....	\$ 46.56	24.25
GROUP 5.....	\$ 47.66	24.25
GROUP 6.....	\$ 46.78	24.25
GROUP 8.....	\$ 46.89	24.25
GROUP 9.....	\$ 47.99	24.25
GROUP 10.....	\$ 48.01	24.25
GROUP 11.....	\$ 48.11	24.25
GROUP 12.....	\$ 47.18	24.25
GROUP 13.....	\$ 47.28	24.25
GROUP 14.....	\$ 47.31	24.25
GROUP 15.....	\$ 47.39	24.25
GROUP 16.....	\$ 47.51	24.25
GROUP 17.....	\$ 47.68	24.25
GROUP 18.....	\$ 47.78	24.25
GROUP 19.....	\$ 47.89	24.25
GROUP 20.....	\$ 48.01	24.25
GROUP 21.....	\$ 48.18	24.25

GROUP 22.....	\$ 48.28	24.25
GROUP 23.....	\$ 48.39	24.25
GROUP 24.....	\$ 48.51	24.25
GROUP 25.....	\$ 48.68	24.25

OPERATOR: Power Equipment
(Cranes, Piledriving &
Hoisting)

GROUP 1.....	\$ 45.35	24.25
GROUP 2.....	\$ 46.13	24.25
GROUP 3.....	\$ 46.42	24.25
GROUP 4.....	\$ 46.56	24.25
GROUP 5.....	\$ 46.78	24.25
GROUP 6.....	\$ 46.89	24.25
GROUP 7.....	\$ 47.01	24.25
GROUP 8.....	\$ 47.18	24.25
GROUP 9.....	\$ 47.35	24.25
GROUP 10.....	\$ 48.35	24.25
GROUP 11.....	\$ 49.35	24.25
GROUP 12.....	\$ 50.35	24.25
GROUP 13.....	\$ 51.35	24.25

OPERATOR: Power Equipment
(Tunnel Work)

GROUP 1.....	\$ 41.80	23.35
GROUP 2.....	\$ 42.58	23.35
GROUP 3.....	\$ 42.87	23.35
GROUP 4.....	\$ 43.01	23.35
GROUP 5.....	\$ 43.23	23.35
GROUP 6.....	\$ 43.34	23.35
GROUP 7.....	\$ 43.46	23.35

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar

type (Skid steer); Equipment greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter radioman (ground); Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (gunite work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grader operator; Grade checker; Gradall operator; Grouting machine operator;

Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Self-propelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bendng machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe ram or similar with compressor; Mass excavator operator less tha 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth- moving equipment operator (multiple engine, Euclid, Caterpillar

and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator;

Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator

ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1S, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN LUIS OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to

the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a thin strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:

That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada state border at the point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Then continue NW along the state line to the starting point, which is the center of Section 18, T10N, R22E, MDM.

REMAINING AREA NOT DEFINED ABOVE RECEIVES BASE RATE

 ENGI0012-004 08/01/2015

	Rates	Fringes
OPERATOR: Power Equipment		
(DREDGING)		
(1) Leverman.....	\$ 49.50	23.60
(2) Dredge dozer.....	\$ 43.53	23.60
(3) Deckmate.....	\$ 43.42	23.60
(4) Winch operator (stern winch on dredge).....	\$ 42.87	23.60
(5) Fireman-Oiler, Deckhand, Bargeman, Leveehand.....	\$ 42.33	23.60
(6) Barge Mate.....	\$ 42.94	23.60

 IRON0377-002 01/01/2017

	Rates	Fringes
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Ironworkers:

Fence Erector.....	\$ 29.58	21.59
Ornamental, Reinforcing and Structural.....	\$ 36.00	30.15

PREMIUM PAY:

\$6.00 additional per hour at the following locations:

China Lake Naval Test Station, Chocolate Mountains Naval Reserve-Niland, Edwards AFB, Fort Irwin Military Station, Fort Irwin Training Center-Goldstone, San Clemente Island, San Nicholas Island, Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB

\$4.00 additional per hour at the following locations:

Army Defense Language Institute - Monterey, Fallon Air Base, Naval Post Graduate School - Monterey, Yermo Marine Corps Logistics Center

\$2.00 additional per hour at the following locations:

Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

LAB00220-001 07/03/2017

	Rates	Fringes
LABORER (TUNNEL)		
GROUP 1.....	\$ 39.04	18.24
GROUP 2.....	\$ 39.36	18.24
GROUP 3.....	\$ 39.82	18.24
GROUP 4.....	\$ 40.51	18.24
LABORER		
GROUP 1.....	\$ 33.19	18.24
GROUP 2.....	\$ 33.74	18.24
GROUP 3.....	\$ 34.29	18.24
GROUP 4.....	\$ 35.84	18.24
GROUP 5.....	\$ 36.19	18.24

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger

mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and trench bracing, hand-guided lagging hammer; Head rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all

other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Changehouse person; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.);

GROUP 2: Bull gang mucker, track person; Chucktender, Cabletender; Concrete crew, including rodder and spreader; Loading and unloading agitator cars; Vibrator person, jack hammer, pneumatic tools (except driller)

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

LAB00220-004 07/01/2017

	Rates	Fringes
Brick Tender.....	\$ 31.36	17.82

LAB00300-005 01/01/2018

	Rates	Fringes
Asbestos Removal Laborer.....	\$ 33.19	17.78

SCOPE OF WORK: Includes site mobilization, initial site cleanup, site preparation, removal of asbestos-containing material and toxic waste, encapsulation, enclosure and disposal of asbestos- containing materials and toxic waste by hand or with equipment or machinery; scaffolding, fabrication of temporary wooden barriers and assembly of decontamination stations.

LAB00345-001 07/02/2017

	Rates	Fringes
LABORER (GUNITE)		
GROUP 1.....	\$ 41.08	17.39
GROUP 2.....	\$ 40.13	17.39
GROUP 3.....	\$ 36.59	17.39

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour

above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

GROUP 1: Rodmen, Nozzlemen

GROUP 2: Gunmen

GROUP 3: Reboundmen

LAB01184-001 07/01/2017

	Rates	Fringes
Laborers: (HORIZONTAL DIRECTIONAL DRILLING)		
(1) Drilling Crew Laborer...	\$ 34.65	13.20
(2) Vehicle Operator/Hauler.	\$ 34.82	13.20
(3) Horizontal Directional Drill Operator.....	\$ 36.67	13.20
(4) Electronic Tracking Locator.....	\$ 38.67	13.20
Laborers: (STRIPING/SLURRY SEAL)		
GROUP 1.....	\$ 35.86	16.21
GROUP 2.....	\$ 37.16	16.21
GROUP 3.....	\$ 39.17	16.21
GROUP 4.....	\$ 40.91	16.21

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and

equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment

LAB01414-001 08/02/2017

	Rates	Fringes
LABORER		
PLASTER CLEAN-UP LABORER....	\$ 32.50	18.29
PLASTER TENDER.....	\$ 35.05	18.29

Work on a swing stage scaffold: \$1.00 per hour additional.

PAIN0036-007 01/01/2018

	Rates	Fringes
Painters:		
(1) Repaint Including Lead Abatement.....	\$ 24.40	14.11
(2) High Iron & Steel.....	\$ 30.70	12.83
(3) Journeyman Painter including Lead Abatement....	\$ 29.04	14.11
(4) Industrial.....	\$ 32.52	14.39
(5) All other work.....	\$ 29.04	14.11

REPAINT of any previously painted structure. Exceptions: work involving the aerospace industry, breweries, commercial recreational facilities, hotels which operate commercial establishments as part of hotel service, and sports facilities.

HIGH IRON & STEEL:
Aerial towers, towers, radio towers, smoke stacks, flag poles (any flag poles that can be finished from the ground with a ladder excluded), elevated water towers, steeples and domes in their entirety and any other extremely high and hazardous work, cooning steel, bos'n chair, or other similar devices, painting in other high hazardous work shall be classified as high iron & steel

PAIN0036-008 10/01/2017

	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 38.58	18.57

* PAIN0169-002 01/01/2018

	Rates	Fringes
GLAZIER.....	\$ 35.00	26.26

PAIN1247-002 01/01/2018

	Rates	Fringes
SOFT FLOOR LAYER.....	\$ 32.35	14.56

PLAS0200-001 08/02/2017

	Rates	Fringes
PLASTERER.....	\$ 41.26	14.46

PLAS0500-002 07/01/2016

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 33.30	23.33

PLUM0016-001 07/01/2017

	Rates	Fringes
PLUMBER/PIPEFITTER Plumber and Pipefitter All other work except work on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space and work on strip malls, light commercial, tenant improvement and remodel work.....	\$ 49.28	21.61
Work ONLY on new additions and remodeling of bars, restaurant, stores and commercial buildings not to exceed 5,000 sq. ft. of floor space.....	\$ 47.76	20.63
Work ONLY on strip malls, light commercial, tenant improvement and remodel work.....	\$ 36.91	18.96

PLUM0345-001 07/01/2017

	Rates	Fringes
PLUMBER Landscape/Irrigation Fitter.	\$ 32.30	21.00
Sewer & Storm Drain Work....	\$ 33.24	17.13

ROOF0036-002 08/01/2017

	Rates	Fringes
ROOFER.....	\$ 37.07	16.17

FOOTNOTE: Pitch premium: Work on which employees are exposed to pitch fumes or required to handle pitch, pitch base or pitch impregnated products, or any material containing coal tar pitch, the entire roofing crew shall receive \$1.75 per hour "pitch premium" pay.

SFCA0669-014 04/01/2017

Rates	Fringes
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SPRINKLER FITTER.....\$ 37.20 15.84

SHEE0273-002 08/01/2017

Rates Fringes

SHEET METAL WORKER.....\$ 42.28 28.33

HOLIDAYS: New Year's Day, Martin Luther King Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day,Thanksgiving Day & Friday after, Christmas Day

TEAM0011-002 07/01/2017

Rates Fringes

TRUCK DRIVER

GROUP 1.....	\$ 29.59	27.74
GROUP 2.....	\$ 29.74	27.74
GROUP 3.....	\$ 29.87	27.74
GROUP 4.....	\$ 30.06	27.74
GROUP 5.....	\$ 30.09	27.74
GROUP 6.....	\$ 30.12	27.74
GROUP 7.....	\$ 30.37	27.74
GROUP 8.....	\$ 30.62	27.74
GROUP 9.....	\$ 30.82	27.74
GROUP 10.....	\$ 31.12	27.74
GROUP 11.....	\$ 31.62	27.74
GROUP 12.....	\$ 32.05	27.74

WORK ON ALL MILITARY BASES:

PREMIUM PAY: \$3.00 per hour additional.

[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB, El Centro Naval Facility, Fort Irwin, Marine Corps Logistics Base at Nebo & Yermo, Mountain Warfare Training Center, Bridgeport, Point Arguello, Point Conception, Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver

GROUP 2: Driver of vehicle or combination of vehicles - 2 axles; Traffic control pilot car excluding moving heavy equipment permit load; Truck mounted broom

GROUP 3: Driver of vehicle or combination of vehicles - 3 axles; Boot person; Cement mason distribution truck; Fuel truck driver; Water truck - 2 axle; Dump truck, less than 16 yds. water level; Erosion control driver

GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete truck, less than 6-1/2 yds. water level

GROUP 5: Water truck, 3 or more axles; Truck greaser and tire person (\$0.50 additional for tire person); Pipeline and utility working truck driver, including winch truck and plastic fusion, limited to pipeline and utility work; Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck,

6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - \$1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION



AGENDA NO: C-2

MEETING DATE: October 23, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: October 17, 2018

FROM: Scott Collins, City Manager
Jennifer Little, Tourism Manager

SUBJECT: Consideration and Approval of TBID Accumulation Fund Support for Hosting Amgen Tour of California Stage Finish in Morro Bay

RECOMMENDATION

Staff recommends the City Council approve hosting the of the 2019 Amgen "Tour of California" Highway 1 stage finish in Morro Bay and approve use of between \$55,000 to \$65,000 in TBID Accumulation Funds to support the associated hosting costs.

SUMMARY

The Amgen "Tour of California" is a 7-day, 750-mile professional bicycle race across California. Considered the premier American bike race, the Amgen Tour is viewed by millions of people worldwide, providing exceptional tourism marketing opportunities for the communities that host stages of the event. AEG, the owners and operators of the Tour of California, have proposed to the City that Morro Bay host a stage finish in 2019. AEG is particularly excited about this opportunity, as they envision the world class riders racing down the majestic and incomparable California coastal Highway 1, beginning in Monterey and concluding with a sprint finish in Downtown Morro Bay.

There are many important considerations to factor into a decision about hosting a large-scale event like Amgen in Morro Bay. Considerations include City costs to host the event, staff time to coordinate logistics and volunteer support, and disruptions to businesses and residents from road closures. Those considerations are balanced against the fact the race presents a rare opportunity to display our quaint seaside fishing and arts community to millions of people from over 200 countries through Amgen exposure. Staff believes the tourism marketing potential provided by hosting Amgen outweigh the other considerations and, as such, is recommending the use of TBID accumulation funds in the amount of \$55,000 to \$65,000 to host the Highway 1 stage finish in Morro Bay. The report below provides background on the Amgen event, and a discussion of hosting requirements, costs and benefits.

FISCAL IMPACT

Hosting a stage finish could cost a total of \$85,000 - \$95,000. Visit SLOCAL, the countywide tourism bureau, has allocated \$50,000 towards the start and finish and will divide these funds as they feel is appropriate for each host city (Morro Bay and Pismo Beach). It is likely the City would receive at least

Prepared By: ___JL___

Deputy City Manager Review: ___ SC ___

\$30,000 from Visit SLOCAL for a stage finish.

With a possible \$95,000 total cost for hosting the Amgen finish, minus an estimated \$30,000 contribution from Visit SLOCAL, a total fiscal impact of \$65,000 to the City is possible. Given the nexus between hosting this event and potential benefit to the tourism industry and marketing potential from hosting Amgen, staff recommends use of TBID accumulation funds in an amount up to \$65,000. In the unlikely event the full amount is needed, it would draw down the TBID Accumulation Fund from \$270,000 to \$205,000. That remaining amount is above the 20% minimum reserve level that is recommended by staff for the draft TBID Accumulation Fund Reserve Policy presented for Council approval at this meeting. City fundraising efforts and sponsorship opportunities can further reduce the overall fiscal impact. Any funds raised by the City would be used to replenish the TBID Accumulation Fund, up to the full amount utilized by the City to host the event.

Overall, immediate return from hosting the event is modest, with several hundred hotel night stays and local meal purchases from the Amgen staff and race participants, as well as hotel stays and trips to local restaurants and retail outlets by fans visiting Morro Bay to observe the race finish. Staff anticipates the greater return will come to the City post-event over time through the worldwide exposure of Morro Bay as a recreation tourist destination.

BACKGROUND/DISCUSSION

Amgen Race Overview

Visit California, the statewide tourism agency, reports that the 7-day race has an overall economic impact of \$100 million or more on the state. Amgen is comprised of world-class male and female cyclists representing 34 countries and gives equal pay for women and men stage winners.

In addition, they report 3.8 million visitors to California include biking as part of their trip. With that in mind, hosting an Amgen finish provides a platform to gain worldwide exposure, create economic impact and provide positive experiences for local and regional residents, businesses, supporters and bike enthusiasts. The 2018 Amgen race was broadcast to an estimated global audience of 15.92 million viewers, with another 125 million reached during race week via social media (see attachment #2 for a recap of the 2018 Amgen Tour). Amgen provides the opportunity for millions to “see” Morro Bay as a host city, a major tourism marketing and promotions opportunity. Morro Bay hosted an Amgen start in 2016 and finish in the 2017 race.

Morro Bay has been selected by AEG to host the finish for the 2019 Amgen Central Coast/Highway 1 stage. The Tour bypassed Highway 1 in 2017 and 2018 due to the road closure. With Highway 1 reopening after the 2018 Amgen race concluded, organizers anticipate marketing the reopening of the Highway heavily during the lead up to the Morro Bay stage in 2019. That stage will begin in Monterey, CA and follow Highway 1 and end in Morro Bay. AEG proposes to start the next stage of the race in Pismo Beach the day following the Morro Bay finish. As a result of multiple cities within San Luis Obispo County hosting portions of the race, Visit SLOCAL is prepared to provide financial support to both Morro Bay and Pismo Beach.

Staff has negotiated a tentative finish route with Amgen that maximizes time in Morro Bay while avoiding as many key traffic arteries as possible (see attachment #1 for map of the proposed route). As currently planned, riders will arrive at the intersection of South Bay Boulevard and Main Street coming from the North on Highway 1. From there they will travel through the State Park, on Main Street. They will follow Main Street toward downtown, then turn left on Marina and right on the

Embarcadero. The race will finish with a three-block sprint on the Embarcadero, then right on Harbor street for two blocks uphill to the finish line. This route is similar to the 2017 route with the exception of the racers are starting from the north on Highway 1 -vs- 2017 they started from the South on Highway 1.

City Hosting Responsibilities and Associated Costs

Similar to the 2017 Amgen effort, the City would be responsible for providing hotel rooms and food for the Amgen participants and staff, in addition to other logistical support. Below is a high-level summary of costs that the City will incur, as well as direct income to the City and community from hosting the finish of the stage. These numbers are conservative estimates of costs:

AMGEN EXPENSES TO CITY (2019 Estimate)	
350- 400 Amgen Team room nights	(\$40,000)
Amgen Team Meals	(\$17,000)
Media Meals	(\$4,000)
Porta-potties	(\$3,000)
Communications	(\$5,250)
Event Planner	(\$12,000)
Miscellaneous	(\$5,000)
Subtotal	(\$86,250)
(Visit SLOCAL Financial Support)	\$30,000
Total Expenses Less Visit SLOCAL Support	(\$56,750)
INCOME TO COMMUNITY (2017 Numbers)	
Amgen 2017 (Team rooms only)	\$72,982
Room tax & fees	\$10,217
Estimated VIP packages (58 tickets)	\$10,017
Room tax & fees	\$1,402
General room bookings	\$34,629
Room tax & fees	\$4,848

As noted above in the table, the costs for providing rooms and meals is estimated to be \$57,000, equating to approximately covering 350 to 400 room nights and several hundred meals for the Amgen team. In addition, the City is responsible for two meals for the media covering the event, equating to

about a \$4,000 expense. In the 2017 race, the team and media meals were paid for by the City and catered by local restaurants. The same approach is proposed for 2019.

The City is also responsible for trash, porta-potties, communications, signage, road closures and permitting. While the City does not incur any costs for permitting, it does lose out on permit fees by underwriting those. The Tourism Manager will be primarily responsible for performance of the City's hosting obligations. In addition, the City will assign an operations director to oversee all of the daily management of the event. Staff is proposing hiring an event planner to assist with coordination and fundraising activities. Based on 2017 expenses plus inflation and some contingencies, staff estimates the cost for trash, porta-potties and event planning to be \$25,250.

In total, as discussed in the fiscal impact section of this report, the City anticipates \$85,000 - \$95,000 in total costs. With Visit SLOCAL contribution of \$30,000, that reduces the overall impact to \$55,000 to \$65,000.

Fundraising and sponsorship opportunities can further reduce the overall impact. Any funds raised by the city would be used to replenish the TBID Accumulation Fund, up to the full amount utilized by the City to host the event.

Benefits of Hosting Amgen Finish

Along with the prestige that comes from hosting an international event and the long-term exposure, businesses will benefit from the overnight hotel stays and restaurant visits of the race teams, AEG staff and race observers coming from out of town. This will provide hoteliers, restaurants and retail businesses a nice shot in the arm in the shoulder season.

The City is currently engaged in the development of a strategic tourism plan for Morro Bay, which is slated for review by the TBID and for formal consideration and approval by Council in late 2018/early 2019. The City hired a consultant to facilitate the strategic plan. According to his initial analysis of opportunities, he believes the City can make far greater utility of the exposure Amgen brings Morro Bay in terms of tourism, by viewing the Amgen not as a one-day event, but as a long-term strategy. Many Amgen host cities, including Morro Bay, have in the past failed to follow-up post Amgen event to connect the event to the existing bicycle culture present in Morro Bay and SLO County. We are a recreation destination, though perhaps, we are not marketing that strength sufficiently. A strategic action plan will be put into place for post event to continue the growth in the cycling & outdoor recreation markets. Hosting Amgen can extend that message to the rest of the world and draw foreign tourists, who typically spend more days and money compared to domestic visitors. Marketing with a purpose and shift perception of the destination is a primary goal of our strategic plan that is currently underway. Amgen can help catapult that.

With that in mind, Amgen can be used to launch Morro Bay as the road bike "hub" of San Luis Obispo County. This would include media outreach, development of a website presence for road biking, including interesting routes and itineraries that showcase Morro Bay as the place to be, center of the county, perfect start and end-point for any ride. This can be communicated through our media channels and can be ongoing providing content to support Morro Bay's recreation strategic positioning within the county. It also creates an opportunity to feature different related elements within the city. Feature local road bike enthusiasts, favorite routes, etc.

In addition, there are the intangible benefits that come from hosting a world renown event. There is the community pride with that comes from hosting, the extension of the spirit of volunteerism that

pervades the Morro Bay community, and the opportunity that comes with hosting Amgen to connect the young children of Morro Bay to biking through coordinated Amgen activities with the local schools.

Based upon the immediate modest return realized from hosting an Amgen stage finish, and potential long-term benefit to local tourism, City staff recommends the City Council authorize use of up to \$65,000 in TBID accumulation funds to cover the hosting costs not paid for by Visit SLOCAL. Staff anticipates it will not need that full amount, as we refine costs, negotiate with AEG, and develop a fundraising plan.

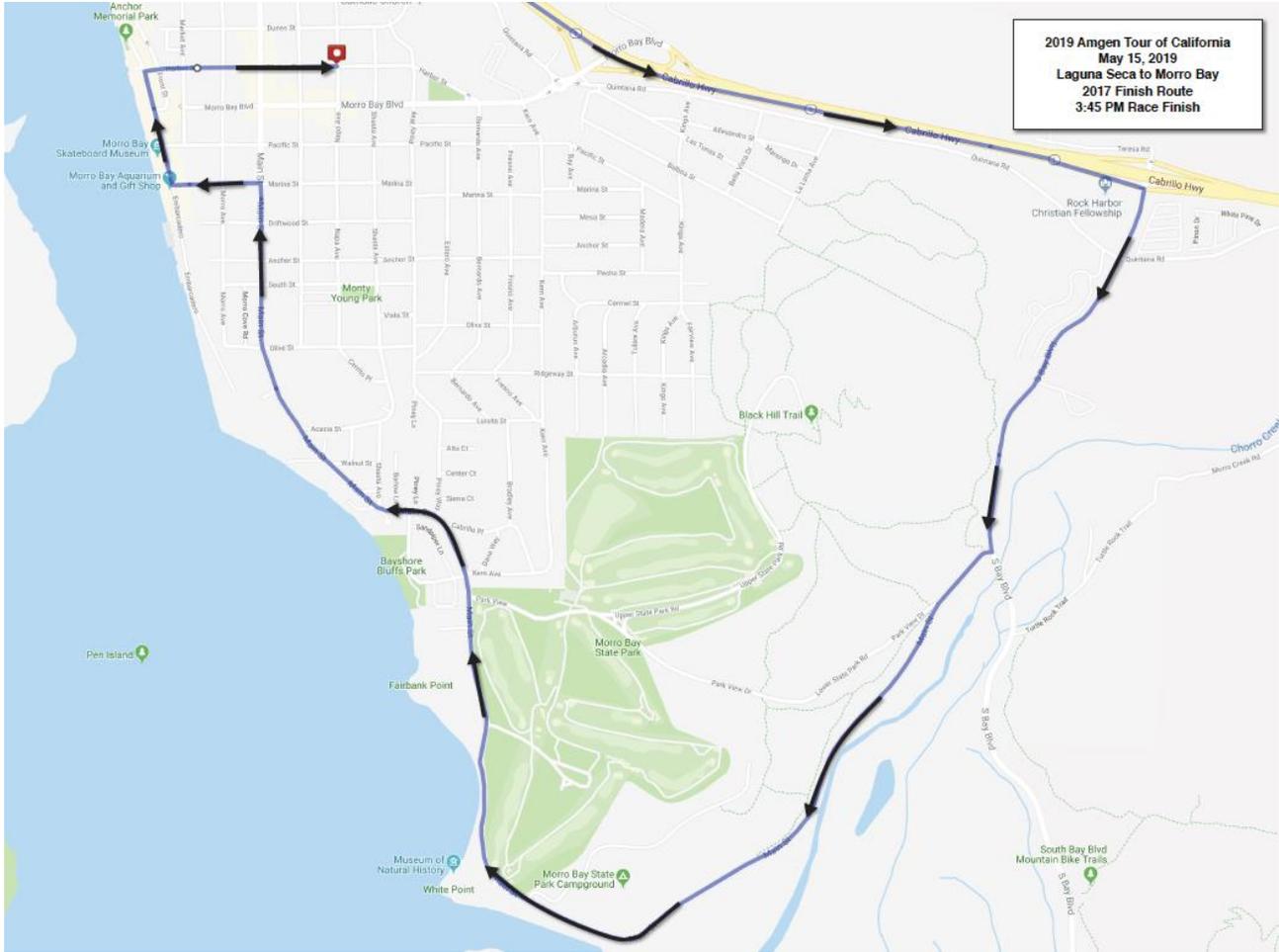
The TBID Board reviewed this information and staff's recommendation at their October 18, 2018 meeting. The recommendations stemming from that Board discussion will be provided to City Council during the oral presentation for this item at the October 23, 2018 Council meeting.

CONCLUSION

Hosting Amgen represents a big opportunity for Morro Bay for worldwide exposure to millions of people across the globe. Further, staff believes this exposure to potential future tourists is worth the expense that the City will incur to host the Amgen finish in Morro Bay. Finally, as there is a strong connection between hosting the event and long-term exposure for tourism locally, staff believes using TBID Accumulation Funds is a logical funding source for Amgen hosting costs.

ATTACHMENTS

1. Map of Planned Amgen Route through Morro Bay
2. Recap of 2018 Amgen





**AMGEN
TOUR of
CALIFORNIA**

**2018
OVERVIEW**



KEY METRICS

LARGEST ANNUAL SPECTATOR SPORTING EVENT IN **CALIFORNIA**



AND LARGEST CYCLING EVENT IN **NORTH AMERICA**

TOTAL MILES RACED



NUMBER OF CYCLISTS



TOTAL TIME SPENT RACING
(Men + Women Overall Winner Race Time)



12
Host
Cities

WORLD CLASS
MALE & FEMALE RIDERS
REPRESENTING **34 COUNTRIES**
IN 2018



WINNERS

WOMEN
KATIE HALL

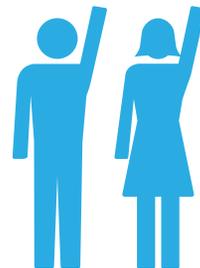
WON THE 2018 AMGEN TOUR OF CALIFORNIA
WOMEN'S RACE AFTER LOSING BY JUST
1 SECOND IN 2017

MEN
EGAN BERNAL

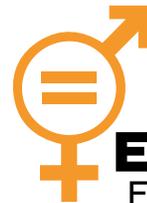
FIRST WINNER FROM COLOMBIA



HOTEL ROOMS
BOOKED ANNUALLY
(100+ HOTELS)



2,000+
LOCAL VOLUNTEERS



EQUAL PAY
FOR WOMEN AND
MEN STAGE WINNERS



AEG & Amgen
extend partnership to continue a
more than decade-long title
sponsorship of Amgen Tour of California



BEHIND THE SCENES







BROADCAST

MORE THAN
17
 HOURS
 OF LIVE
 BROADCAST
 COVERAGE



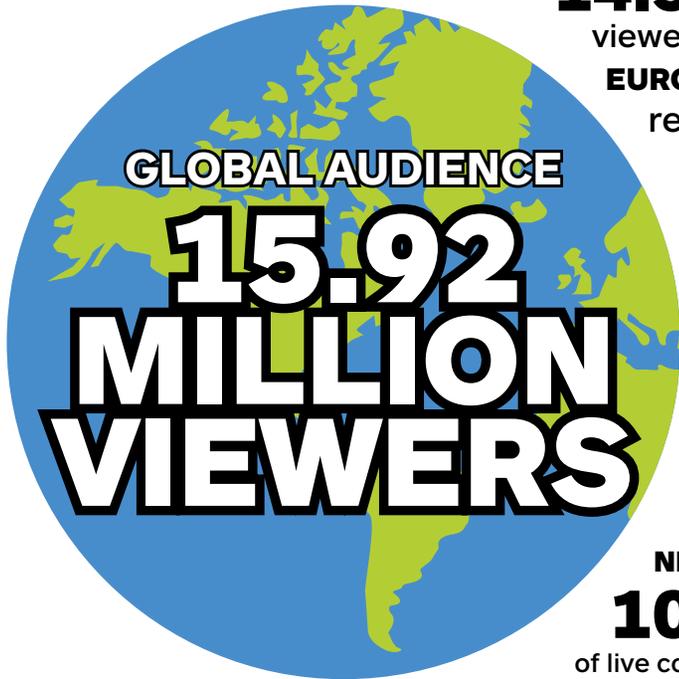
MAJOR BROADCAST PARTNERS



WORLDWIDE NEWS OUTLETS







14.5 MILLION

viewers attracted by
EUROSPORT from live and
replay coverage

- Largest audience of **1.8 million** viewers for the final stage

696,000 VIEWERS

for final Saturday's live
coverage by **NBC**
(+12.6% from 2017, best performance on NBC)

NBCSN (6 shows) delivered an average of

105,000 VIEWERS

of live coverage of the Amgen Tour of California

The Amgen Tour of California is proud to provide global live coverage to the Armed Forces Network, which is accessible to United States military personnel posted on active duty around the globe







TOUR TRACKER

- 112,132 hours streamed; Average of 51 minutes per video session
- Website Tour Tracker Platform:
 - 46,173 users
 - 96,370 sessions
 - 461,284 page views
- Mobile App:
 - 35,159 active users
 - 202,759 sessions
 - 3,191,711 screen views
- Women's Tour Tracker:
 - 13,356 views on web tracker
 - 211,039 views on mobile
- 72 Terabytes of data delivered

WEBSITE

- Website Traffic 2.3 million page views / 578,799 visitors (June 2017 – May 2018)
- Website Traffic during Race Week: 1.3 million page views / 305,295 visitors
- Average Time on Site: 2 minutes, 13 seconds

NEWSLETTERS:

- Total Emails = 81 (+31% from 2017)
- Total Subscribers = 83,070
- Total Distribution = 5,052,295 (+41% from 2017)

MARKETING NOTABLES:

- | | |
|-----------------------------------|-----------------------------------|
| • Program Guide: | • SoCal News Group |
| Printed = 7,500 copies | Total Impressions = 428,923 |
| Digital = 64,356 Total Page Views | |
| • Spectator Guide: | • ClearChannel Digital Billboards |
| Printed = 20,000 copies | Total Impressions = 15,777,311 |

AT&T Wi-Fi 2:19 PM 78%

Live Coverage

Stats News Profile Map Video

LEADERS

Rank	Name	Time
01	C. HOFFMAN	+16:34
04	L. GARRISON	+16:40
03	R. CARPENTER	+16:40

OVERALL: Ruben Guerreiro

LEXUS visit California

Live Standings Stages Riders Fantasy More

AMGEN TOUR OF CALIFORNIA

LONG BEACH CIRCUIT RACE

Time Elapsed: 40
 Distance Ridden: 29.6 km
 Distance Remaining: 100.0 km
 Average Speed: 42.5 km/h
 Total Climb: 70 m
 Climbing Remaining: 260 m
 Distance To Long Beach: 14.4 km

PELTON +1:40

10:16 The riders are looking their way around the circuit at about 10 minutes to go with an average of 40 km left to ride.

10:16 Alexey Vlasov (RUS) and Simon Pelt (GER) are passing through the gap between the two and another lap of the 11.2 km circuit. Not to get for the start.

10:16 The 11.2 km circuit will start and finish on Riverside Drive near Sherman Plaza and the Long Beach Convention Center. The 11 days will take its position as Riverside Drive. "Riverside" is a historic street in Long Beach, California and has been used for the sport in that way into the 1950s and after the finish.

10:16 The last time Long Beach hosted the annual race was in 2007. The race joins the group of other major events in the area.

MAY 13 - 19, 2018

Attend the 2018 Race in Style!

visit California LEXUS EXPERIENCE AMAZING

2018 Cities Announced WP Photos WP Video

ONE OBSESSION

TREK

AMGEN TOUR OF CALIFORNIA 2018 JERSEYS

AMGEN RACE LEADER JERSEY BUY NOW

AMGEN RACING JERSEY BUY NOW

LEXUS RACING JERSEY BUY NOW

CAJON RACING JERSEY BUY NOW

TAGHEUER RACING JERSEY BUY NOW

AMGEN RACING JERSEY BUY NOW

LEXUS TAGHEUER



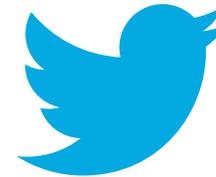
OVER
125 MILLION
TOTAL REACH



8.4 MILLION
FANS REACHED DURING RACE WEEK



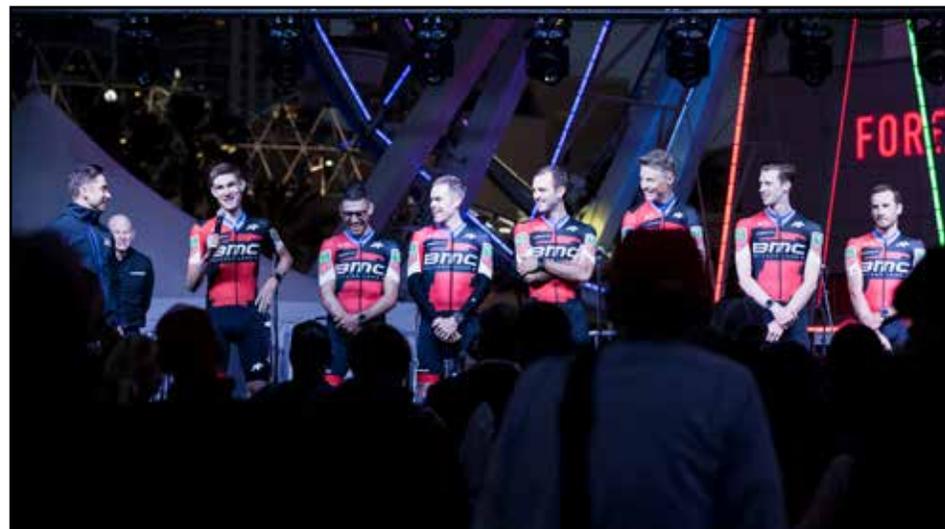
1.4 MILLION
FANS REACHED DURING RACE WEEK



60.5 MILLION
FANS REACHED DURING RACE WEEK



TEAM PRESENTATIONS







RIDER SIGN-IN







VIP HOSPITALITY







RACE WEEK







RACE WEEK





AMGEN TOUR of CALIFORNIA

UCI  WORLD TOUR

TAGHeuer OFFICIAL TIMEKEEPER

STAGE 1

ACH - LON

LONG BEACH

+0:46

AMGEN

visit California


LEXUS

TAG
HEUER

Heuer

AMGEN

25

50

MAXXIS
TIRES

AMGEN
TOUR of CALIFORNIA

AMGENTOUROFCALIFORNIA.COM



AGENDA NO: C-3

MEETING DATE: October 23, 2018

Staff Report

TO: Honorable Mayor and City Council

DATE: October 18, 2018

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 86-18 Approving Amendment #4 to the New Master Lease Agreement Between the City of Morro Bay and Boatyard LLC for Lease Site 89/89W, Located at 845 Embarcadero, and Commonly Known as “The Boatyard,” and Amendment #2 to the New Master Lease Agreement Between the City of Morro Bay and Fair Sky Properties LLC for Lease Site 90/90W, Located at 885 Embarcadero, and Commonly Known as “Otter Rock Café”

RECOMMENDATION

Staff recommend the City Council adopt Resolution No. 86-18, approving Amendment #4 to the new Master Lease Agreement for Lease Site 89/89W, and Amendment #2 to the new Master Lease Agreement for Lease Site 90/90W, as directed, depending on the option chosen.

OPTIONS

1. Approve Resolution No. 86-18 for the Amendments to the Master Lease Agreements as-written and proposed by Boatyard LLC.
2. Approve the Resolution, but delete the portion of Amendment #4 that provides the additional 6-month rent concession.

FISCAL IMPACT

Under the subject proposals, the Harbor Fund would not receive \$22,500, since payment of any rent for the Boatyard site would be postponed for an additional 6 months.

BACKGROUND

In 2015, a large portion of the seawall at the Boatyard site suffered a major failure, the cause of and legal responsibility for which is of significant dispute. After over two years of discussions with the Boatyard tenant, staff negotiated a cooperative and beneficial “package” to deal with the seawall failure and provide a global resolution of all legal claims resultant of that failure and other disputed lease management issues, with the end result being on October 11, 2016 the City Council approved a new MLA.

In addition, the City negotiated a new MLA on the adjacent lease site, 90/90W (Otter Rock Café) with Boatyard LLC for Boatyard LLC’s contingent and pending purchase of that site and significant repair and redevelopment proposal for the site to cure a backlog of deferred maintenance and other issues with that site’s structures and other elements. A contingency of the new MLA on 89/89W is the successful purchase by Boatyard LLC of 90/90W.

On July 10, 2018, the City Council approved Amendment #2 to the MLA for Lease Site 89/89W to provide for additional rent concessions (\$9,700 per year over a ten-year period) for the additional

01181.0024/514585.3

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: JWP

cost of the walkway expansion requirement by the Coastal Commission. In addition, Amendment #2 contained the requirement for the City to remove or cause to be removed the deck that encroaches the Boatyard lease site by 24" from the Off the Hook lease site to the south.

On August 29, 2018, the Council approved Amendment #3 for the MLA for Lease Site 89/89W and Amendment #1 for the MLA for Lease Site 90/90W. Due to several issues that arose after Amendment #2 to the MLA for Lease Site 89/89W was approved, Amendment #3 was approved (i) to clarify the boundaries of the Least Site, (ii) incorporate changes required by the Coastal Commission, which include expending the current 8-foot Harborwalk to 10-feet, dealing with an encroachment by the Off the Hook deck into Lease Site 89/89W, (iii) limit the amount of fees to be charged for plan review, and (iv) the MLA for Lease Site 89/89W could no longer be terminated if the escrow for the purchase of the current lease for and business at Lease Site 90/90W by Fair Sky Properties LLC was terminated.

In addition, Amendment #1 to the MLA for Lease Site 90/90W was approved on August 29, 2018. That amendment was to authorize assignment of the MLA for Lease Site 90/90W to Fair Sky Properties, LLC, which is owned and controlled by the same individuals who own and control Boatyard LLC and was to accommodate those owners for accounting purposes. Also, (i) the lease boundaries outlined above are included in Amendment #2, (ii) as are acknowledgements the existing land/water use approvals on the Otter Rock lease site with respect to the water lease shall also pertain to the amended water lease area being transferred to the Boatyard lease, as previously outlined, (iii) the amount of fees to be charged for plan review were limited and (iv) the City agreed to cooperate with and assist transfer of the ABC liquor license currently held by the Otter Rock Café business to the new subtenant, Willow Market LLC, proposed to take over, and likely purchase, the Otter Rock lease site and lease.

DISCUSSION

During the second week of October, the City's plan checking firm noted various items in the building plans submitted for both lease sites. One of the contingencies for both MLAs to stay in effect is for building permits to be issued before October 31, 2018. Due to the deficiencies, that deadline cannot be met. The Boatyard LLC and Fair Sky Properties, LLC, are willing to extend that deadline to November 23, 2018.

In addition, Boatyard LLC is willing to establish November 30 as the specific date by which Boatyard LLC and its predecessors-in-interest could seek recovery for damages allegedly caused by the failing seawall at Lease Site 89/89W. That tolling period currently ends 6-months after the building permits are issued for the work to be done on both lease sites.

Lastly, due to the increases in costs resulting from unanticipated changes in the plans and additional time for the work to commence, Boatyard LLC is seeking another monetary concession from the City regarding Lease Site 89/89W. That concession would extend, for an additional 6 months, the time period during which Boatyard would not be required to pay rent for Lease Site 89/89W, which amounts to \$22,500. That period is currently 12 months.

CONCLUSION

Approval of Amendment #4 to the new Boatyard MLA and Amendment #2 to the new Otter Rock MLA will continue to ensure the global resolution and settlement of numerous issues and potential litigation resulting from the failure of a significant portion of a seawall and other matters related to the adjoining sites, including integration of the two individual site rehabilitation projects into one cohesive project. When completed, the adjoining sites will be significantly improved, and in the

long run should generate significantly more revenues than are currently produced.

ATTACHMENTS

1. Amendment #4 to the new Master Lease Agreement for Boatyard lease site 89/89W.
2. Amendment #2 to the new Master Lease Agreement for Otter Rock lease site 90/90W.
3. Resolution No. 86-18.

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**AMENDMENT #4 TO THE LEASE AGREEMENT FOR
LEASE SITE 89/89W, LOCATED AT 845
EMBARCADERO**

This Amendment (this Amendment #4) is made and entered into as of this ____ day of _____, 2018, by and between the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Boatyard, LLC, a California limited liability company, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties".)

WHEREAS, effective October 11, 2016, the Parties entered into that certain lease for Lease Sites 89/89W (Master Lease);

WHEREAS, the Parties amended the Master Lease by executing Amendment #1, effective December 12, 2017, (Amendment #1), Amendment #2, effective July 10, 2018, (Amendment #2) and Amendment #3, effective August 29, 2018, (Amendment #3);

WHEREAS, the Master Lease, Amendment #1, Amendment #2 and Amendment #3 are hereafter called the "Amended Master Lease;"

WHEREAS, the Parties again desire to amend the Amended Master Lease to make certain modifications thereto.

NOW THEREFORE, Tenant and City agree, as follows:

1. Unless expressly stated herein, words used in this Amendment #3 shall have the same meaning as stated in the Amended Master Lease, except to the extent the context requires otherwise.
2. The foregoing recitals are incorporated into this Amendment #3 as true and correct.
3. The Parties acknowledge and agree the Amended Master Lease and all of the terms, conditions and contingencies of the Amended Master Lease are in full force and effect.
4. Section 1.02 of the Amended Master Lease is amended to change the date of October 31, 2018, to November 23, 2018.
5. Section 2.01 of the Amended Master Lease is modified so neither Minimum Rent nor Percentage Rent is payable until the 366th day after the Commencement Date.
6. Section 7.10 of the Amended Master Lease is amended to establish November 30, 2018, as the date certain for the potential maximum time the tolling period shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #4 as of the date written above.

CITY OF MORRO BAY

BOATYARD, LLC

By: _____
Jamie L. Irons, Mayor

By: _____
Cliff Branch, Manager

APPROVED AS TO FORM:

Joseph W. Pannone, City Attorney

ATTEST:

Dana Swanson, City Clerk

DRAFT

**AMENDMENT #2 TO AND ASSIGNMENT AND
ASSUMPTION OF THE LEASE AGREEMENT
FOR LEASE SITE 90/90W, LOCATED AT 885
EMBARCADERO**

This Amendment (this Amendment #2) is made and entered into as of this _____ day of _____, 2018, by and between among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Fair Sky Properties, a California general partnership, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

WHEREAS, the current tenant of Lease Site 90/90W (commonly the "Otter Rock") (Premises) is Joseph Steinmann (Steinmann) and Boatyard LLC (Tenant's Assignor) is the current tenant of the adjacent leasehold interest Lease Site 89/89W;

WHEREAS, with Steinmann's permission and acknowledgment, City and Tenant's Assignor executed and entered into that certain Master Lease Agreement effective as of December 13, 2017 (the "Master Lease") for the Premises;

WHEREAS, City, Tenant's Assignor and Tenant amended the Master Lease by Amendment #1, effective August 29, 2018 (Amendment #1);

WHEREAS, the Master Lease and Amendment #1 are hereafter called the "Amended Master Lease;" and

WHEREAS, City and Tenant desire to make certain additional modifications to the Amended Master Lease.

NOW THEREFORE, Tenant and City agree as follows:

1. Unless expressly stated herein, words used in this Amendment #2 shall have the same meaning as stated in the Amended Master Lease, except to the extent the context requires otherwise.
2. The foregoing recitals are incorporated into this Amendment #2 as true and correct.
3. Section 1.02 of the Amended Master Lease is amended to change the date of October 31, 2018, to November 23, 2018.
4. The Parties acknowledge and agree the Amended Master Lease and all of the terms, conditions and contingencies of the Amended Master Lease are in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment #2 as of the date written above.

CITY OF MORRO BAY

FAIR SKY PROPERTIES

Smith Family Trust, dated September 13, 2004, General Partner

By: _____
Jaime Irons, Mayor

By: _____
James Edmund Smith, Trustee

APPROVED AS TO FORM:

By: _____
Beverly Elder Smith, Trustee

Joseph W. Pannone, City Attorney

Clifford Branch Trust dated January 11, 2006, General Partner

ATTEST:

By: _____
Clifford Branch, Trustee

Dana Swanson, City Clerk

DRAFT

RESOLUTION NO. 86-18

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING AMENDMENT #4 TO THE NEW MASTER LEASE AGREEMENT
FOR LEASE SITE 89/89W, LOCATED AT 845 EMBARCADERO,
AND APPROVING AMENDMENT #2 TO THE NEW MASTER LEASE AGREEMENT
FOR LEASE SITE 90/90W, LOCATED AT 885 EMBARCADERO**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay (“City”) is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

WHEREAS, Boatyard LLC (“Tenant”) has been the lessee of Lease Site 89/89W since 2006 and is a tenant in good standing; and

WHEREAS, on October 11, 2016, Tenant and City entered into that certain new master lease agreement for Lease Site 89/89W (the “New Master Lease Agreement for Lease Site 89/89W”); and

WHEREAS, Tenant is in escrow to purchase the leasehold interest in Lease Site 90/90W, where after Tenant intends to undertake significant renovation project on the Lease Site; and

WHEREAS, on December 13, 2017, Tenant and City entered into that certain new master lease agreement for Lease Site 90/90W (the “New Master Lease Agreement for Lease Site 90/90W”) contingent upon close of said site purchase escrow; and

WHEREAS, City and Tenant wish to resolve issues over a failing portion of the seawall on Lease Site 89/89W, cure certain site deficiencies on Lease Site 90/90W, and modify various provisions of the two New Master Lease Agreements, including the contingency and tolling provisions, by approving Amendment #4 of the New Master Lease Agreement for the Lease Site 89/89W and Amendment #2 of the New Master Lease Agreement for Lease Site 90/90W.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

1. The attached Amendment #4 to the New Master Lease Agreement for Lease Site 89/89W is hereby approved.
2. The attached Amendment #2 to the New Master Lease Agreement for Lease Site 90/90W is hereby approved.
3. The Mayor is hereby authorized to execute said Amendments #4 and #2.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 23rd day of October, 2018 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk