

Meeting Date: 4/9/2013

Report Type: Staff/Discussion

Report ID: 2013-00196



Title: Contract/Agreements: Water Treatment Plants Rehabilitation Project (Z14006000)

Location: District 3

Issue: Some of the treatment plants structures and equipment have exceeded their useful life and need to be rehabilitated or replaced.

Recommendation: Pass: 1) a Resolution approving a Mitigated Negative Declaration Addendum and Mitigation Reporting Program for modifications to the Water Treatment Plants Rehabilitation Project; 2) a Resolution increasing the City Manager's authority to approve single change orders on the Project from \$100,000 to \$500,000; 3) a Motion approving the contract plans and specifications for the Project; 4) a Motion (a) adopting the findings of fact issued by the Hearing Examiner on the bid protest filed by Balfour Beatty Infrastructure Inc., without hearing evidence from any party, (b) adopting the Hearing Examiner's recommended determination to deny the bid protest and find the low bid submitted by C. Overaa and Company to be responsive, (c) denying the bid protest and waiving as a minor irregularity any deviation in the Bid Form of C. Overaa and Company, and (d) awarding the contract to C. Overaa and Company as the lowest responsive and responsible bidder, for an amount not to exceed \$113,776,000; and 5) a Motion authorizing the City Manager or the City Manager's designee to sign the following agreements: (a) a professional services agreement with Carollo Engineers to provide engineering services during construction, for an amount not-to-exceed \$7,728,644;(b) a professional services agreement with MWH Americas to provide construction management services, for an amount not-to-exceed \$8,259,514; (c) a professional services agreement with JSP to provide PLC and HMI programming services, for an amount not-to-exceed \$889,625; and (d) an Emergency Water Service Agreement with Sacramento Suburban Water District, to provide a backup emergency water supply during Project construction.

Contact: Bill Busath, Engineering Manager, (916) 808-1434; Dan Sherry, Supervising Engineer, (916) 808-1419, Department of Utilities

Presenter: Dave Brent, Director, (916) 808-1420; Dan Sherry, Supervising Engineer, (916) 808-1419, Department of Utilities

Department: Department Of Utilities

Division: Cip Engineering

Dept ID: 14001321

Attachments:

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City Attorney Review

Approved as to Form
Joe Robinson
4/2/2013 5:36:35 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Janelle Gray
3/18/2013 1:02:58 PM

Approvals/Acknowledgements

Department Director or Designee: Dave Brent - 4/2/2013 4:19:28 PM

Description/Analysis

Issue:

The City received four bids from pre-qualified contractors for the Water Treatment Plants Rehabilitation Project, with C. Overaa & Company submitting the lowest bid, in the amount of \$113,776,000. The attorney for the second low bidder, Balfour Beatty Infrastructure, Inc., filed a bid protest contending that the low bid was not responsive and should be rejected. In accordance with the City's bid protest procedures, City staff investigated the bid protest and prepared a response, and a bid protest hearing was held before an independent Hearing Examiner. After the hearing, the Hearing Examiner issued Findings of Fact finding the Overaa bid to be responsive, and a Recommended Determination that the bid protest be denied. After receiving the Hearing Examiner's decision, Balfour Beatty's attorney notified the City that Balfour Beatty would not pursue the bid protest further. More information regarding the bid protest is provided in the Rationale for Recommendations section of this report, below. Staff is recommending that the City Council adopt the Hearing Examiner's Findings of Fact and Recommended Determination, deny the bid protest, and award the contract to C. Overaa & Company, as the lowest responsive and responsible bidder.

Due to the size and complexity of this project, City staff also is requesting approval of: 1) professional services agreements to provide engineering, construction management, and programming services during the construction; 2) an agreement to provide a standby emergency water supply during Project construction; and 3) an increase in the City Manager's authority to approve any single change order from \$100,000 to \$500,000.

Policy Considerations: The requested action is in conformance with City Code Section 3.60, Articles I and III, which provide for the award of competitively bid contracts to the lowest responsive, responsible bidder. This project is consistent with the Department's Capital Improvement Plan to rehabilitate and replace critical infrastructure.

Economic Impacts: The rehabilitation work on the City's water treatment plants is expected to create 455 total jobs (262 direct jobs and 193 jobs through indirect and induced activities) and create \$70.2 million in total economic output (\$44.2 million of direct output and another \$26 million of output through indirect and induced activities).

The indicated economic impacts are estimates calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). CSER utilized the IMPLAN input-output model (2009 coefficients) to quantify the economic impacts of a hypothetical \$1million of spending in various construction categories within the City of Sacramento in an average one-year period. Actual impacts could differ significantly

from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.

Environmental Considerations: On March 20, 2012, the City Council adopted the Water Treatment Plants Rehabilitation Mitigated Negative Declaration and Mitigation Reporting Program (Resolution No. 2012-067). Since that time, the Project has been modified to include four separate locations for construction parking and staging. The Community Development Department, Environmental Planning Services has reviewed the Project and these Project modifications and has prepared an Addendum to the previously adopted Mitigated Negative Declaration (MND), in accordance with the CEQA Guidelines Section 15164. Because no substantial changes have occurred that would require the preparation of a subsequent MND, this report recommends adopting a MND addendum and the mitigation reporting program for these modifications to the Water Treatment Plants Rehabilitation Project (Z14006000).

The adopted Mitigated Negative Declaration for the Water Treatment Plants Rehabilitation Project, the Addendum to the adopted MND, the Mitigation Reporting Program, and Resolution No. 2012-067 are available at the Community Development Department's webpage located at the following link:

<http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>

Sustainability: The Project is consistent with the City's Sustainability Master Plan by providing a safe and reliable water supply for the Sacramento Region.

Commission/Committee Action: Not applicable.

Rationale for Recommendations:

1. The Construction Contract:

On December 3, 2012, plans and specifications were formally advertised to solicit public bids. On January 30, 2013, the City Clerk opened four bids, with C. Overaa & Company submitting the lowest bid.

After bids were opened, bidders were advised of the Department of Utilities' intention to recommend award of the contract to C. Overaa & Company, as the lowest responsive, responsible bidder. A bid protest was filed by the attorney for the second low bidder, Balfour Beatty Infrastructure, Inc. (**see Attachment 1**). The Balfour Beatty bid protest contended that the Overaa Bid Form contained an arithmetical error that rendered the bid nonresponsive and could not be waived; requiring the rejection of Overaa's bid.

Following receipt of the Balfour Beatty bid protest, in accordance with the bid protest procedures specified in the City Code, Department staff investigated the bid protest and

prepared a response (**see Attachment 2**). The City's bid protest response concluded that the Overaa bid was responsive, did not include any arithmetical error, and that the bid protest should be rejected. Overaa also submitted a response to the bid protest, which is included as **Attachment 3**.

In accordance with the City's bid protest procedures, a bid protest hearing was scheduled before an independent Hearing Examiner at the Institute for Administrative Justice at McGeorge Law School. Following a hearing, the Hearing Examiner issued a written decision, dated March 28, 2013, setting forth the Hearing Examiner's findings of fact, and a recommended determination of the bid protest based on the Hearing Examiner's findings (**see Attachment 4**). In summary, the Hearing Examiner: 1) determined that the Overaa bid was responsive; 2) determined that the Overaa bid did not contain an arithmetical error, and that the City could waive any deviation by Overaa with regard to the way Overaa presented its bid price; and 3) recommended that Balfour Beatty's bid protest be denied, and that the Overaa bid be found responsive.

On April 1, 2013, the City was notified by Balfour Beatty's attorney that Balfour Beatty did not intend to pursue the bid protest further.

Under Section 3.60.540 of the City Code, the City Council may in its discretion take any of the following actions prior to taking final action on the bid protest:

- A. *Adopt the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or*
- B. *Review the recording of the hearing, or a transcript thereof, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or*
- C. *In addition to or in lieu of reviewing the recording of the hearing, or a transcript thereof, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner.*

In taking final action on the bid protest, the City Council may take any action that is authorized by law, including adoption of the Hearing Examiner's recommended determination, or adoption of a determination that is different from that recommended by the Hearing Examiner. The City Council also is authorized to waive any minor irregularities in the bid.

City staff concurs with the Hearing Examiner's findings and recommendation, which wholly support the bid protest response previously prepared by the Department. Staff recommends that the City Council follow the Hearing Examiner's decision and deny the bid protest. Staff also recommends waiving as a minor irregularity any

deviation in the Overaa Bid Form, consistent with the Hearing Examiner's decision, and awarding the construction contract to C. Overaa & Company, as the lowest responsive and responsible bidder.

Professional Services During Construction: Carollo Engineers, MWH Americas, and JSP were all selected to provide engineering, construction management, and programming services, respectively, during construction of the Project, through competitive Request for Qualification processes. Each firm was evaluated by a selection committee and determined to be the highest ranking firm from among the firms submitting Statements of Qualifications (SOQs) for the requested services, based on their submitted SOQs and interviews. Both Carollo Engineers and MWH Americas have provided professional services for prior phases of the Project, and the proposed agreements cover completion of the final phase of services to be performed by both of these firms through project completion.

Emergency Water Supply Agreement: City staff negotiated an Emergency Water Service Agreement with Sacramento Suburban Water District that can provide emergency water to the City during an unplanned water supply outage during construction of the Project. There is no cost to the City unless emergency water is received.

Increase in City Manager Change Order Authority: City Code section 3.60.210 establishes cumulative limits on the City Manager's authority to approve construction contract change orders based on the contract amount, and also does not allow the City Manager to approve any single change order that exceeds \$100,000, without City Council approval. City Code section 3.60.240 allows the City Council to increase the limitations on the City Manager's change order authority for a specified contract where the City Council finds that a variance is appropriate. Due the amount of this contract, staff believes that a variance is appropriate and will better allow City staff to address construction change orders in a timely manner. City staff recommends that the City Council increase the City Manager's authority to approve any single contract change order on this Project from \$100,000 to \$500,000. The cumulative limitation on the City Manager's change order authority in City Code section 3.60.210(A) would remain unchanged.

Financial Considerations: On February 26, 2013 City Council approved the issuance and sale of Water Revenue Bonds to finance improvements of approximately \$239.5 million for the City's water system. Approximately \$161 million of these bonds will be used for the rehabilitation of the Water Treatment Plants.

The total cost for this rehabilitation project, including design, environmental, construction, construction management, and contingencies is estimated to be \$171

million. There is sufficient funding in Z14006000 (Water Funds (6005) of \$10.6 million and Water Bond Funds (6310) of \$161 million) to award the construction contract and agreements. This action has no impact on the General Fund.

Emerging Small Business Development (ESBD): Due to the size and complexity of this project, staff anticipated that it would be difficult for bidders on the Water Treatment Plants Rehabilitation Project to meet the City's standard 20% participation goal for emerging and small business enterprises (ESBEs). For this reason, a reduction of the participation goal to 10% was approved by the Director of Economic Development on November 27, 2012. However, the lowest bidder, C. Overaa & Company, exceeds both the 10% and 20% participation goals, with an ESBE participation level of 28.5%.

BACKGROUND

Much of the existing infrastructure at the City's water treatment plants has exceeded its service life and is at risk of failing. The Sacramento River Water Treatment Plant (SRWTP) and E. A. Fairbairn Water Treatment Plant (EAFWTP) were constructed in 1923 and 1964 respectively. Plant expansions at both of these facilities were completed in 2005, but much of the existing infrastructure was not rehabilitated or replaced as part of those projects.

The plant expansion projects included:

- EAFWTP Intake Structure Modification Project (ZF47) completed in 2003. This project extended the existing intake to provide additional low lift pumping capacity.
- SRWTP Replacement Intake Project (ZF57) completed in 2004. This project constructed a new intake structure to replace the existing intake that was constructed in the early 1920's.
- SRWTP Plant Expansion Project (ZF52) completed in 2004. This project added treatment facilities that increased the treatment capacity by approximately 70 million gallons per day (mgd).
- EAFWTP Plant Expansion Project (ZF43) completed in 2005. This project added treatment facilities that increased the treatment capacity by approximately 80 mgd.

In 2007 the Department of Utilities (DOU) commissioned a study to evaluate the condition and performance of the City's surface water treatment facilities. The study assessed the existing facility conditions, conducted operational tests to evaluate plant performance, assessed the reliability of the facilities, and developed a capital improvement program for rehabilitation and/or replacement of existing facilities. The study was completed in February 2009 and concluded that both treatment facilities require substantial rehabilitation work in order to provide reliable water treatment capabilities.

The following tables list the existing facilities requiring rehabilitation or improvements as part of the Water Treatment Plants Rehabilitation Project.

Sacramento River WTP		
Existing Facility	Identified Need	Project Solution
Sedimentation Basin 1	<ul style="list-style-type: none"> • Constructed in 1920's, basin is past service life. • Severe deterioration of concrete and steel walls, columns, and roof. • Parts of the structure are falling off and deep cracks and holes have developed • Facility is unreliable 	<ul style="list-style-type: none"> • Decommission basin and replace capacity with new basin.
Sedimentation Basin 2	<ul style="list-style-type: none"> • Constructed in the 1930's, basin is past service life • Water quality challenges meeting current regulations, including algae growth 	<ul style="list-style-type: none"> • Demolish and replace with basin referenced under "Sedimentation Basin 1" solution
High Service Pump Station	<ul style="list-style-type: none"> • Constructed in 1920's, station is past service life. • Significant structural and mechanical issues including settling and leaking. • Walls are severely cracked. • Pumps are original to plant construction. Facility is unreliable due to age. 	<ul style="list-style-type: none"> • Replace with new Pump Station meeting current operating criteria, energy efficiency standards, and safety requirements.
Original Filters	<ul style="list-style-type: none"> • Constructed in 1920s and 1930s. Significant settling and cracking of walls and filter boxes is evident. • Manual operation is required, and is unreliable. • On-going repair is difficult and parts are hard to locate. 	<ul style="list-style-type: none"> • Decommission and replace with expansion to 2003 filters meeting current design and automation standards.
Solids Dewatering Facilities	<ul style="list-style-type: none"> • Existing solar drying beds cannot support current and planned future production rates. 	<ul style="list-style-type: none"> • Add mechanical dewatering system to increase solids handling capacity. • Continue use of solar drying beds to reduce required size and cost of new mechanical facility.
Main Electrical Switchgear	<ul style="list-style-type: none"> • Existing gear is approaching end of service life. • Reliability and condition are not ideal. • Current location may be vulnerable to Homeland Security concerns. 	<ul style="list-style-type: none"> • Replace with new substation in safer location meeting current safety standards, increased efficiency, and improved reliability.
Yard Piping	<ul style="list-style-type: none"> • Much of the plant piping is original and at the end of its service life. • Additional support piping is needed to support the planned new facilities. 	<ul style="list-style-type: none"> • Replace and add yard piping to increase reliability, flexibility, and connect new facilities.

E.A. Fairbairn WTP		
Existing Facility	Identified Issues	Proposed Solution
Solids Dewatering Facilities	<ul style="list-style-type: none"> Existing solar drying beds cannot support current production rates. Contract dewatering is currently required multiple times each year and is not as cost effective as constructing a dewatering facility on plant site. 	<ul style="list-style-type: none"> Add mechanical dewatering system to increase solids handling capacity. Continue use of solar drying beds to reduce required size and cost of new mechanical facility.

The following table summarizes potential impacts of not performing the necessary rehabilitation project.

Proposed Rehabilitation Work	Impact of Not Performing the Work
<ul style="list-style-type: none"> Replace the SRWTP facilities that are at the end of their service life. 	<ul style="list-style-type: none"> Failure of the treatment facility would result in pressure reduction throughout the City for months or years. <ol style="list-style-type: none"> Water system doesn't meet fire protection code. May cause unsafe drinking water, require boiling treated water. Reduce pressure may trigger emergency water conservation measures. Restrict development.
<ul style="list-style-type: none"> Add solids handling systems at both WTPs to reduce long-term solids handling costs and improve reliability. 	<ul style="list-style-type: none"> Continue payments to contractors removing solids at higher overall cost and lower reliability.

PROJECT DESIGN PHASE

On April 13, 2010, after Carollo Engineers was selected through a Request for Qualifications (RFQ) process, the City Council approved a Professional Service Agreement with Carollo that provided for the first of three phases of engineering services for the replacement of the aged facilities at the treatment plants. The three phases of engineering services are Phase 1 – Preliminary Design, Phase 2 – Final Design, and Phase 3 – Engineering Services During Construction.

Phase 1 was authorized when the Professional Services Agreement was approved, and was completed in March 2011. The Phase 1 services analyzed facility options and prepared preliminary design drawings and cost estimates for all facilities needing

replacement, as identified in the prior Condition Assessment Study.

The Phase 2 - Final Design services were authorized by supplemental agreement on April 21, 2011 and were completed January 30, 2013. The work performed for the design phase included preparing drawings and specifications for bidding based on the preliminary design work, engineers construction cost estimate, and responding to questions from contractors during the bid period. The total cost for Carollo's Phase 1 and Phase 2 engineering services was \$8,791,781.

As a supplemental effort to the Phase 2 Design, City staff recommended that an independent peer review be conducted to determine if all cost saving alternatives had been considered. A Request for Qualifications for Value Engineering Support Services and Design Document quality assurance/quality control (QA/QC) was issued, and HDR Engineering, Inc. (HDR) was selected as the most qualified firm to provide these services and awarded a contract by Council on March 13, 2012.

Phase 3 – Engineering Services during Construction will be performed by Carollo through a separate professional services agreement, as indicated below.

PROJECT CONSTRUCTION PHASE

SUMMARY OF AGREEMENTS FOR COUNCIL APPROVAL

Contractor/Agency	Purpose	Contract Amount \$
C. Overaa & Company	General Construction Contractor	\$113,776,000
Carollo Engineers	Engineering Services during Construction	\$7,728,644
MWH Americas	Construction Management Services	\$8,259,514
JSP	Programming PLC/HMI	\$889,625
Sacramento Suburban Water Agency	Emergency Water Service Agreement	Payment for emergency water service only

CONSTRUCTION CONTRACT

The City prequalified General Contractors, Electrical Subcontractors, and Sheet Pile Subcontractors to ensure that contractors bidding this project have sufficient experience constructing projects similar in type and size as the Water Treatment Plants Rehabilitation Project. Nine general contractors, 12 electrical subcontractors and three structural pile subcontractors met the City's minimum qualifications and were

prequalified to participate in the bidding process.

Four bids were received from prequalified bidders and opened by the City Clerk on January 30, 2013. The bids are summarized below:

Contractor	Bid Amount
C. Overaa & Company	\$113,776,000
Balfour Beatty Infrastructure, Inc	\$116,705,118
Walsh Construction	\$118,265,281
Shimmick Construction Co, Inc.	\$124,860,000

The engineer's estimate was \$144,000,000.

ENGINEERING SERVICES DURING CONSTRUCTION

Engineering Services during Construction (ESDC) will include resolving design questions and issues during construction, reviewing and commenting on equipment and product submittals, maintaining the as-built drawings, and cataloging the operating and maintenance manuals. A detailed scope of work has been developed for Carollo and their subconsultants to perform this phase of work for a not to exceed amount of \$7,728,644.

The ESDC scope of work will include:

Task 1 – Project Management: Administer and guide the execution of the construction support services. The Project Manager will work closely with the Contractor's Project Engineer and the City's Project Manager and Construction Manager.

Task 2 – Project Implementation Support: Prepare drawings and specification originals that incorporate changes made by addenda into the Technical Specifications and Drawings. Engineer will attend preconstruction conference, concrete conference, and electrical pre-submittal meeting.

Task 3 – Construction Contract Support: Engineer will provide shop drawing review, respond to Requests For Information (RFIs), evaluate substitution requests, review change orders, attend constructions meetings, and prepare record contract documents (As-Built Drawings).

Task 4 – Design Discipline Visits and Observation: Provide site visits by members of the design team to assist the CITY’s on-site construction management team and provide design geotechnical engineer to serve as a resource for the City.

Task 5 – Operation and Maintenance (O&M) and Startup Training Services: Review construction contractor-furnished or vendor-furnished O&M submittals, provide technical assistance during equipment testing and facility startup, and prepare and conduct presentations, field orientation, and question and answer sessions for City operations staff.

Task 6 – Project Closeout: Assist the City with implementing project closeout procedures required by the Contract Documents.

CONSTRUCTION MANAGEMENT

The Department of Utilities issued Requests for Qualifications for Construction Management Services (CMS) for the Water Treatment Plants Rehabilitation Project. On July 19, 2012 Statements of Qualifications were received from 6 different firms, and MWH Americas (MWH) was selected to perform the CMS for this project in two Phases. On October 4, 2012 the Director of Utilities executed a contract for Phase 1 CMS that included review of construction documents, bid evaluations and preparation for preconstruction meeting. On February 26, 2013, the City Council authorized the performance of certain early Phase 2 CMS by supplemental agreement. The total cost for MWH’s Phase 1 and early Phase 2 CMS was \$189,841.

The remainder of the Phase 2 CMS scope of work will be performed by MWH through a separate professional service agreement, and will include the following tasks:

Task 1 – Project Management Services: Coordinate and administer project tasks through the assigned project manager. The project manager will focus on completing tasks and submitting deliverables according to the project schedule and budget, managing staff assignments, facilitating QA/QC reviews, and identifying and communicating issues affecting CMS cost, schedule and quality.

Task 2 – Pre-Construction Services: Provide pre-construction services consisting of the execution of subconsultant agreements, setup up the project management system for cost and schedule management, staff training for the project’s document management control system, development of the construction management plan, performing pre-project planning, familiarity and preparation for scheduling review, and preparation for preconstruction conference preparation meeting activities.

Task 3 – Construction Management Services: Provide construction management services for the project, consisting of mobilization and organization of the project field offices, review of the initial baseline CPM schedule from the construction

contractor, review of monthly schedule updates, and services consisting of meetings, communications, site observation, and progress reporting. The Construction Manager will be Neil Mann.

Task 4 – Field Administrative Services: Provide field office administrative staff to document project meetings, process reviews of submittal and clarifications, prepare project reports, and control and manage project documents during the construction phase.

Task 5 – Field Quality Management Services: Provide field quality management services consisting of resident engineer and project closeout services.

Task 6 – Field Observation Services: Provide Field Inspectors for routine field observation to verify construction progress and compliance with contract documents. Field Inspection staff will prepare daily reports depicting a general overview of construction activities, including weather conditions, construction equipment and labor, work performed, materials used, observed delays, and deficiencies. Field Testing and Special Inspection Technicians will be provided for field testing and observation of soil compaction and concrete placement and compliance with contract documents.

Task 7 – Testing, Training, and Startup Services: Provide a full-time Field Inspector at the project site for 12 consecutive months from March 2015 through February 2016 to provide testing, training, and startup support services. The services shall consist of the testing activities described as General Startup & Testing Procedures, Functional Testing, Training of Owner's Personnel, and the Final Punch List and Substantial Completion processes.

The negotiated fee for the above scope of work is a not to exceed amount of \$8,259,514.

PLC/HMI PROGRAMMING

Both water treatment plants have numerous processes that need to be automated such as: intake systems, coagulation, flocculation and sedimentation, disinfection, sludge dewatering, high service pump stations (HSPS), filtration, filter backwash systems, filter backwash water return, and solids handling

The City issued a Request for Qualifications (RFQ) to solicit firms for programming services for the Sacramento Water Treatment Plants Rehabilitation Project. The programming services include programming Programmable Logic Controllers (PLCs) and the Human Machine Interfaces (HMI). The PLC programming includes programming for multiple Schneider Electric Modicon Quantum Unity processors with hot standby using IEC ladder and function block programming and the Unity Pro software package. The HMI portion will consist of communication driver configuration,

database configuration and screen development/programming for various water plant processes using the latest version of Trihedral VTScada.

The City received a Statement of Qualifications (SOQ) from the following three firms on January 24, 2013: Westin Engineering Inc., Black & Veatch, and JSP Automation.

City staff reviewed each SOQ and interviewed each firm to select the most qualified firm for the project. JSP Automation was selected by City Staff as being the most qualified firm to perform these programming services. City Staff is recommending approval of a Professional Services Agreement with JSP Automation for the PLC and HMI programming services.

A detailed scope of work has been developed for JSP to perform this work for a not-to-exceed amount of \$889,625.

EMERGENCY WATER SERVICE AGREEMENT

The City and Sacramento Suburban Water District (SSWD) currently have a wholesale water supply agreement that allows SSWD to purchase surface water from the City's Fairbairn Water Treatment Plant at a service intertie near Northrup Avenue and Howe Avenue. City and SSWD staff have negotiated an agreement to allow the City to purchase water from SSWD at the existing intertie if there is an unexpected water treatment plant outage during the City's rehabilitation project. The proposed unit cost of emergency water to the City is the same unit cost that the City charges SSWD for wholesale water. This agreement will not cost the City anything unless emergency water is received from SSWD during an unplanned water supply outage.

PROJECT FUNDING

The cost estimate for design, construction, CMS, ESDC, contingencies, and related administration of the Water Treatment Plants Rehabilitation Project is \$171 million. On February 26, 2013 City Council approved the issuance and sale of Water Revenue Bonds to finance improvements of approximately \$239.5 million for the City's water system. Approximately \$161 million of these bonds will be used for the rehabilitation of the Water Treatment Plants. The balance of the funding for the City's water treatment plants will come from Water funds (6005) of \$10.6 million that have been budgeted for this project.

The project cost breakdown is as follows:

Construction Low Bid:	\$113.78 M
Construction Contingency	<u>\$ 17.06 M</u>
Subtotal:	\$130.84 M
Costs during Design:	\$10.87 M

Costs during Construction:	<u>\$29.32 M</u>
Subtotal	\$40.19 M

Total Project Cost: \$171 M

PROJECT SCHEDULE

Key project milestone dates:

Award Construction Contract:	April 2, 2013
Notice to Start Construction:	April 22, 2013
Complete Construction:	June 2016



RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

ADOPTING THE MITIGATED NEGATIVE DECLARATION ADDENDUM AND THE MITIGATION REPORTING PROGRAM FOR MINOR MODIFICATIONS TO THE WATER TREATMENT PLANTS REHABILITATION PROJECT (Z14006000)

BACKGROUND

- A. On March 20, 2012, pursuant to the California Environmental Quality Act (“CEQA”), the CEQA Guidelines, and the City of Sacramento environmental guidelines, the City Council adopted a mitigated negative declaration (MND) and a mitigation reporting program for the City Water Treatment Plants Rehabilitation Project (Project) (Resolution 2012-067).
- B. Since that time, the Water Treatment Plants Rehabilitation Project has been modified to include four, not previously identified, property locations surrounding the Project site for the purposes of construction employee parking and staging areas (the “Project Modification”).
- C. An initial study prepared for the Project Modification has determined that the proposed changes to the original Project do not require the preparation of a subsequent environmental impact report or negative declaration. An addendum to the previously adopted MND was then prepared to address the Project Modification.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council has reviewed and considered the information contained in the previously adopted MND for the Project, the addendum, and all oral and documentary evidence received during public meetings held on the Project. The City Council has determined that the previously adopted MND and the addendum constitute an adequate, accurate, objective, and complete review of the proposed Project Modification and finds that no additional environmental review is required for the reasons set forth below:

- A. No substantial changes are proposed by the Project Modification that will require major revisions of the previously adopted MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- B. No substantial changes have occurred with respect to the circumstances under which the Project Modification will be undertaken which will require major revisions to the previously adopted MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- C. No new information of substantial importance has been found that shows any of the following:

1. The Project Modification will have one or more significant effects not discussed in the previously adopted MND;
2. Significant effects previously examined will be substantially more severe than shown in the previously adopted MND;
3. Mitigation measures previously found to be infeasible would in fact be feasible and would substantially reduce one or more significant effects of the Project Modification; or
4. Mitigation measures which are considerably different from those analyzed in the previously adopted MND would substantially reduce one or more significant effects on the environment.

Section 2. Based on its review of the previously adopted MND for the Project, the addendum, and all oral and documentary evidence received during public meetings on the Project, the City Council finds that the MND and addendum reflect the City Council's independent judgment and analysis and adopts the MND and the addendum for the Project Modification and readopts the findings of fact in support of the MND.

Section 3. The mitigation reporting program for the Project is adopted for the Project Modification, and the mitigation measures shall be implemented and monitored as set forth in the program, based on the following findings of fact:

- A. The mitigation reporting program has been adopted and implemented as part of the Project;
- B. The addendum to the MND does not include any new mitigation measures, and has not eliminated or modified any of the mitigation measures included in the mitigation reporting program;
- C. The mitigation reporting program meets the requirements of CEQA section 21081.6 and CEQA Guidelines section 15074.

Section 4. Pursuant to CEQA Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Section 5. Exhibit A and B are made a part of this Resolution.

Table of Contents:

- Exhibit A: Addendum to Adopted Mitigated Negative Declaration
Exhibit B: Mitigation Reporting Program



RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

INCREASING CHANGE ORDER AUTHORITY FOR THE WATER TREATMENT PLANTS REHABILITATION PROJECT

BACKGROUND

- A. The Sacramento River Water Treatment Plant was constructed in the 1920's and the E.A. Fairbairn Water Treatment Plant was constructed in the early 1960's. Many of the older structures at these facilities have reached the end of their service life and need to be rehabilitated or replaced.
- B. The low bid for the construction contract for the Water Treatment Plants Rehabilitation Project (Z14006000), to rehabilitate and replace these facilities, is approximately \$114 million, and the Project is scheduled to take approximately three years to complete.
- C. City Code section 3.60.210 establishes cumulative limits on the City Manager's authority to approve construction contract change orders based on the contract amount, and also does not allow the City Manager to approve any single change order that exceeds \$100,000, without City Council approval.
- D. City Code section 3.60.240 allows the City Council by Resolution to increase the limit on the City Manager's change order authority for a specified contract, where the City Council finds that the circumstances are such that a variance is appropriate. City staff has recommended that the City Council increase the City Manager's authority to approve single change orders on this Project from \$100,000 to \$500,000, with no change in the cumulative change order limitations.
- E. Due to the amount of the contract for construction of the Project, and the duration of construction, a variance is appropriate and will better allow City staff to address construction change orders in a timely manner.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager's authority to approve single change orders without Council authorization on the Water Treatment Plants Rehabilitation Project, specified in City Code section 3.60.210(B), is increased from \$100,000 to \$500,000. The cumulative limitations on the City Manager's change order authority specified in City Code section 3.60.210(A) are not changed.



MARKS, FINCH, THORNTON & BAIRD, LLP

ROBERT J. MARKS, APC *
P. RANDOLPH FINCH JR.
JASON R. THORNTON
JEFFREY B. BAIRD
CHAD T. WISHCHUK
LOUIS J. BLUM
DAVID S. DEMIAN
DANIELLE C. HUMPHRIES
DAVID W. SMILEY
NOWELL A. LANTZ
STEPHEN J. SCHULTZ +
MARK T. BENNETT +
BERNARD F. KING III
JUSTIN M. STOGER
ALLISON N. COOPER

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE (858) 737-3100
FACSIMILE (858) 737-3101
INTERNET www.mftb.com
E-MAIL pfinch@mftb.com

ANDREA L. PETRAY
JON F. GAUTHIER, APC *
CHRISTOPHER R. SILLARI
DUSTIN R. JONES
LAURA B. MACNEEL
RODRIGO F. MOREIRA
DANIEL P. SCHOLZ
RYAN P. KENNEDY
ADAM C. WITT
BRETT T. WALKER
M. KATY ROSS
J. PATRICK HICKS
RICHARD J. PINTO II
KELLY A. FLOYD

February 12, 2013

+ OF COUNSEL via MERRILL,
SCHULTZ & BENNETT, LTD.

* OF COUNSEL

OUR FILE NUMBER

1439.001

URGENT BID PROTEST

**VIA FEDERAL EXPRESS
AND FACSIMILE (916) 808-7672**

VIA ELECTRONIC MAIL ONLY

City Clerk
City of Sacramento
915 I Street, Room 304
Sacramento, California 95814

Mr. Ian Pietz, P.E.
City of Sacramento
1395 35th Avenue
Sacramento, California 95822
IPietz@cityofsacramento.org

Re: *Project: City of Sacramento Water Treatment Plants Rehabilitation*
Contract No.: Z14006000
Bid Date: January 30, 2013
Protestor: Balfour Beatty Infrastructure, Inc.

Dear Sir or Madam and Mr. Pietz:

1. Introduction

We represent Balfour Beatty Infrastructure, Inc. ("Balfour Beatty"), in connection with the bid for the referenced project. This is Balfour Beatty's protest against the potential award of the project by the City of Sacramento ("City") to C. Overaa & Co. ("Overaa"). Summarily, there is an \$8,818,406.00 arithmetical error in Overaa's bid. As set forth below, this arithmetical mistake renders Overaa's bid non-responsive and gave Overaa an unfair competitive advantage over other bidders because it afforded Overaa the option to pull its bid after the bid opening (i.e., a "second look"). California law precludes the City from accepting Overaa's bid. Balfour Beatty respectfully requests it be awarded the project as the lowest responsive and responsible bidder.

2. The Project And The Bid Form

The City issued a call for bids for a project consisting of work at two water treatment plants, the Sacramento River Water Treatment Plant and the E.A. Fairbairn Water Treatment Plant (the "Project"). The City's bid documents included a nine page

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Bid Form (enclosed at Tab 1). Item B of Article 6.01 of the Bid Form specified bids (the "Lump Sum Bid Price") were to be calculated based on the "sum of the work" for each of the two water treatment plants, and included a space for bidders to list a price for each plant. (Tab 1, P. 4.) In other words, Item B controls how the Lump Sum Bid Price is to be calculated (i.e., you add the two line items in Section B to arrive at your lump sum price). Item C of the Bid Form includes space for bidders to provide lump sum and unit prices for particular work at each of the two plants. The Bid Form directed bidders to include these items within the price for each plant listed in Item B.

3. Overaa's Bid

The City accepted bids for the Project on January 30, 2013. Overaa's bid at Item B offered to perform the work at each plant as follows: (1) \$16,957,594.00 for E.A. Fairbairn; and (2) \$88,000,000.00 for Sacramento River. A copy of page 4 of Overaa's Bid Form is enclosed at Tab 2. Per Item B, Overaa's Lump Sum Bid Price is \$104,957,594.00 (the sum of the prices for each plant). However, Overaa listed its Lump Sum Bid Price as \$113,776,000.00. Contrary to the express instructions in Item B, Overaa calculated its Lump Sum Bid Price based on the sum of the work for the E.A. Fairbairn plant, the Sacramento River plant, and the unit prices in Item C (i.e., items of work within the two plants which were supposed to be included in the two plant prices). Overaa's miscalculation of its Lump Sum Bid Price resulted in Overaa overstating its Lump Sum Bid Price by \$8,818,406.00.

4. Overaa's Bid Is Non-Responsive And Must Be Rejected

A. Overaa's Bid Is Non-Responsive Because It Did Not Calculate The Lump Sum Bid Price In Accordance With Item B of Article 6.01

It is a basic rule of competitive bidding that bids must conform to the specifications, and if a bid does not conform, it is may not be accepted. (*Cypress Sec., LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1015; *Taylor Bus. Service, Inc. v. San Diego Bd. Of Education* (1987) 195 Cal.App.3d 1331, 1339.) Bids which are not strictly responsive can only be accepted if the deviation could not have affected the amount of the bid or given a bidder an advantage or benefit not afforded other bidders. (*Konica Business Machines, U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454-455.)

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Here, Overaa's bid clearly did not conform to the instructions for calculating the Lump Sum Bid Price as set forth in the Bid Form. Item B of Article 6.01 of the Bid Form expressly required the Lump Sum Bid Price to be calculated based only on the sum of the work for the Fairbairn and Sacramento River plants. According to the City's bid summary, every bidder other than Overaa calculated its Lump Sum Bid Price in accordance with the clear instructions of Item B. (Tab 3 [City bid tabulation with notes added].)

Overaa priced the Fairbairn project at \$16,597,594.00 and the Sacramento River project at \$88,000,000.00. These prices total \$104,957,594.00. However, Overaa included an additional \$8,818,406.00 in its Lump Sum Bid Price for the particular work in Item C. Overaa's failure to calculate its Lump Sum Bid Price in accordance with the instructions in the Bid Form renders its bid non-responsive.

B. California Law Precludes The City From Waiving The Deviation In Overaa's Bid Because The Arithmetic Error Gave Overaa The Opportunity To Withdraw Its Bid After Bids Were Opened

Public Contract Code section 5103 provides that when a bidder's bid contains a "typographical or arithmetic" error which makes the bid materially different than intended, the bidder may withdraw its bid without forfeiting its bid bond. (See e.g., *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1441.) When a bidder has the opportunity to withdraw its bid after bid opening without forfeiting its bid bond, that bidder has an unfair competitive advantage over other bidders (i.e., the option not to honor its bid after seeing all other bids at bid opening), and renders the bid invalid. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1178-1179.) Whether or not the bidder actually seeks relief from the mistake in its bid is irrelevant; it is the opportunity to withdraw its bid without penalty which creates the unfair competitive advantage other bidders do not have. (*Valley Crest Landscape, Inc. v. City Council, supra*, 41 Cal.App.4th at p. 1442.)

In ruling that a subcontractor listing percentage error precluded acceptance of a misstated bid, the local Sacramento based Third District Court of Appeal in *Valley Crest*, stated the rule and rationale as follows:

Misstating the correct percentage of work to be done by a subcontractor is in the nature of a typographical or arithmetical error. It makes the bid materially different and is a mistake in filling out the bid. As such, under Public Contract Code section 5103, [the low bidder] could have sought

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relief by giving the City notice of the mistake within five days of the opening of the bid. That [the low bidder] did not seek such relief is of no moment. The key point is that such relief was available. Thus, [the low bidder] had a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an “irregularity.”

(*Id.* at p. 1442.) Here, Item B of Article 6.01 of the Bid Form clearly instructed bidders to calculate the Lump Sum Bid Price by adding only the individual prices of the Fairbairn and Sacramento River plants. Overaa’s pricing for the Fairbairn and Sacramento River plants do not add up to its Lump Sum Bid Price. (Cf. all other bidders at Tab 3.) Overaa priced Fairbairn at \$16,597,594.00 and Sacramento River at \$88,000,000.00, a total of \$104,957,594.00. This is an \$8,818,406.00 difference between its Lump Sum Bid Price of \$113,776,000.00.

Based on Item B of Article 6.01, Overaa’s bid must be construed as an offer to perform both plants for \$104,957,594.00, not the \$113,776,000.00 it listed as its Lump Sum Bid Price. In other words, Overaa’s arithmetical error made its bid materially different than it intended, such that Overaa could have withdrawn its bid without forfeiting its bid bond. It is this opportunity for a “second look,” without penalty, which created an unfair competitive advantage for Overaa over other bidders. (See *Valley Crest Landscape, Inc. v. City Council, supra*, 41 Cal.App.4th at p. 1442 [whether or not a bidder actually seeks relief from the mistake in its bid is irrelevant; it is the opportunity to withdraw its bid without penalty which creates the unfair competitive advantage other bidders do not have].)

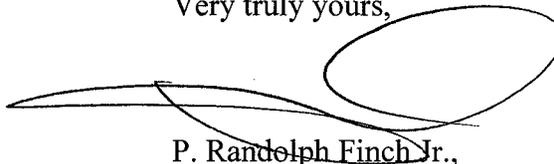
5. Conclusion

Every bidder other than Overaa priced their bids for the Project by summing up the individual prices for the Fairbairn and Sacramento River plants as instructed by the Bid Form. Either (a) Overaa must perform the project for \$104,957,594.00, or (b) Overaa deviated from the bid instructions and submitted a bid with a clear arithmetical error. That error gave Overaa an unfair advantage over other bidders because it had the opportunity to withdraw its bid after bids were opened without forfeiting its bid bond. California law precludes the City from waiving the error in Overaa’s bid. As a result, Balfour Beatty is the lowest responsive and responsible bidder. Balfour Beatty respectfully requests the City award it the project.

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Pursuant to Sacramento City Code section 3.60.490, enclosed is a check in the amount of \$750.00 for the protest fee. We request notice of any hearings or proceedings related to this protest and copies of any response submitted by Overaa. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, consisting of a long horizontal stroke followed by a large, loopy flourish that loops back to the right.

P. Randolph Finch Jr.,
Partner of
MARKS, FINCH,
THORNTON & BAIRD, LLP

Enclosures

PRF:kek/34L6655

cc: Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Crandall Bates, Vice President Western Region (via e-mail only)
Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Chris Rutherford, Project Sponsor (via e-mail only)
Balfour Beatty Infrastructure, Inc. - West Covina
Attn: Mr. Dan Dischner, Chief Estimator (via e-mail only)

TAB “1”

DOCUMENT 00410

BID FORM

PROJECT IDENTIFICATION:

City of Sacramento
Water Treatment Plants Rehabilitation Project
Contract Number Z14006000

THIS BID IS SUBMITTED BY:

(Bidder)

(Bidder Address)

THIS BID IS SUBMITTED TO:

City of Sacramento
Clerk's Office, 1st Floor
915 I Street
Sacramento, CA 95814

ARTICLE 1 - BID RECIPIENT

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents within the specified time and for the price indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGMENT

2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

ADDENDA

No. _____	Dated _____

A Bid that fails to acknowledge all Addenda issued by Owner as required above may be rejected as nonresponsive.

- B. Bidder has visited the Site and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Federal, state, and local Laws and Regulations and Permits that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions and which are described in paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of a Hazardous Environmental Condition, if any, which have been identified in the Supplementary Conditions and which are described in paragraph 4.06 of the General Conditions as containing reliable "technical data."
- E. Bidder has carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. In accordance with Section 1861, California Labor Code, the Bidder states the following as its certification:

"I am aware of the provisions of Section 3700 of the California 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."

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder further represents that

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding;
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner; and
- E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph 4.01.E:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the Owner's detriment, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and competitive bidding process;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm persons or their property.

ARTICLE 5 - ASSIGNMENTS AND ALLOWANCES

5.01 The price of \$888,900 for MRI hoseless sludge collectors including, but not limited to, O&M manuals, all required submittals, required calculations, specified spare parts, specified control systems, and specified panels has been prenegotiated. Bidder will include such cost in the Bid and shall pay Supplier the prenegotiated price.

ARTICLE 6 - BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C below.

Lump Sum Bid Price \$ _____
(Price in Figures)

(Price in Words)

- A. In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price on the base contract without consideration of the prices on additive or deductive items per Section 00200, Article 14. The Owner will award the Contract in accordance with Section 00200, Article 19.
- B. The Bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

E.A. Fairbairn WTP \$ _____
(Price in Figures)

(Price in Words)

Sacramento River WTP \$ _____
(Price in Figures)

(Price in Words)

- C. The Bidder declares that the costs for labor, materials, equipment, and incidentals necessary for the following work are included in the Lump Sum Bid Price listed above and that such costs are as indicated below.

Bidder will complete the Work in accordance with the Contract Documents for the following prices. Quantities other than Lump Sum items indicated are not guaranteed; payment for other than Lump Sum items will be based on actual quantities.

Item Number	<i>Description</i>	Unit	Estimated Quantity	Unit Price	Total Estimated Price \$
1	Sheeting, shoring, and bracing, or equivalent method for the protection of life and limb in trenches and open excavation, pursuant to California Labor Code §6707.	LS	1		
2	Preparation and submittal of a written geotechnical report as specified in Division 2, including field investigations, soil sampling, laboratory testing, and interpretation of the data by a registered geotechnical engineer for the purpose of shoring design, dewatering, blasting and other temporary facilities.	LS	1		
3	SRWTP - Furnish, Deliver and Drive Indicator Piling, Concrete Precast, Prestressed (14 inch x 14 inch)	LS	1		
4	SRWTP - Furnish and Deliver Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	161,695		
5	SRWTP - Drive Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	161,695		
6	SRWTP - Cutoff and Remove Piling Concrete Precast, Prestressed (14 inch x 14 inch).	EA	76		
7	SRWTP - Export of Old Floc/Sed Basin 2 Material per S10C-07/A and Specification Section 02300.	CY	13,800		
8	SRWTP - Import of Select Fill Material Under and Around Basin 3/4 per S10C-07/A and Specification Section 02300.	In-place, compacted CY	59,500		
9	Assignments and Allowances for items listed in Section 00410 – Article 5 and Section 01210.	LS	1		

Unit Prices have been computed in accordance with paragraph 11.03 of the General Conditions and Section 01270.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

D. Deduct Lump Sum Prices. The Bidder will accept as adjustment to the Lump Sum Bid for the amount resulting from applying the following lump sum prices. The acceptance or rejection of any or all Bid alternates is at the option of the Owner and will not necessarily be made on the basis of price alone. The contract price shall be the net amount determined by applying the net addition or net deduction specified to the Lump Sum Bid.

1. Bid Alternate A: As part of the Lump Sum Base Bid, Contractor is instructed to remove, haul, and dispose of all Old Floc/Sed Basin 2 Material located under the existing Basin 2 (see Specification Section 02300 and Dwg S10C-07/A) in a lawful manner. Under Lump Sum Base Bid Contractor is also instructed to provide specified select fill material to meet finished grade under and around Basin 3/4 (Area 42) per Specification Section 02300 and S10C-07/A.

For this Bid Alternate, Contractor is instructed to provide a price to utilize a portion of the Old Floc/Sed Basin 2 material as fill after blending to appropriate characteristics per Specification Section 02300 up to elevation 24.75'. Backfill above elevation 24.75' with select fill not blended with Old Floc/Sed Basin 2 material, the same as in the Lump Sum Base Bid. Dispose of any unplaced Old Floc/Sed Basin 2 material offsite in a lawful manner. Assume 6,625 CY of offhaul of Old Floc/Sed Basin 2 Material at unit price listed in schedule above. Assume 53,350 in-place compacted CY of imported select fill material at unit price listed in schedule above. Prior to use, existing material is required to be moved and stockpiled to allow demolition of Basin 2 and surveying of pile caps and piles prior to blending and placement.

\$ _____
(Price in figures)

\$ _____
(Price in words)

ARTICLE 7 - TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially completed, and will be completed and ready for final payment (Final Completion) in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in Article 4, Document 00520, Agreement, including the specified number of allowance days for Owner-caused delays.

7.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in Article 4, Document 00520, Agreement.

ARTICLE 8 - ATTACHMENTS TO THIS BID

8.01 The following documents are attached to and made a condition of this Bid:

- A. Electronic Contract Documents Release (Section 00411);
- B. Required Bid security in the form of cash, a certified or bank check, or a Bid Bond issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions (Section 00432);
- C. List of Subcontractors (Section 00434), List of Equipment Manufacturers (Section 00436), and other individuals and entities required to be identified in this Bid;
- D. Non-Collusion Affidavit (Section 00456);
- E. Affirmative Action Program Certificate (Section 00452);
- F. Declaration of Compliance Equal Benefits Ordinance (Section 00455);
- G. Bid Preferences;
 - 1. Boycott of Arizona and Arizona Headquartered Businesses (Section 00457).
 - 2. ESBE Requirements (Section 00462);
- H. Bid Certification for the Payment of State & Local Taxes (Section 00454);
- I. Certification of Drug-Free Workplace Requirements (Section 00458);
- J. Debris Recycling Requirements (Section 00461);
- K. (Optional) Green Contracting Survey (Section 00459).

8.02 The Prequalification packages submitted previously by General Contractors, applicable Electrical Subcontractors, and applicable Pile Subcontractors are also made a condition of this Bid.

ARTICLE 9 - DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters or all capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 - BID SUBMITTAL

SUBMITTED on _____, 2013.

State Contractor License Number _____ (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____

(Individual's signature)

Doing business as: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

A Corporation

Corporation Name: _____

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Attest: _____
(Signature of Corporate Secretary, Acting Secretary or other officer)

Business address: _____

Phone Number: () _____ FAX Number: () _____

Date of Qualification to do business is _____

A Joint Venture

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

Phone and FAX Number, and Address for receipt of official communications:

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF DOCUMENT

TAB “2”

ARTICLE 8 - BASIS OF BID

8.01 Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price, inclusive of items A, B, and C below

Lump Sum Bid Price \$ 113,776,000
(Price in Figures)

One hundred thirteen million seven hundred seventy six thousand
(Price in Words)

A. In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price on the base contract without consideration of the prices on additive or deductive items per Section 00200, Article 14. The Owner will award the Contract in accordance with Section 00200, Article 19.

B. The Bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

E.A. Fairbairn WTP \$ 16,957,594
(Price in Figures)

Sixteen million nine hundred fifty seven thousand five hundred ninety four
(Price in Words)

Sacramento River WTP \$ 88,000,000
(Price in Figures)

Eighty eight million
(Price in Words)

The above declares that the costs for labor, materials, equipment, and incidentals necessary for the following Work are included in the Lump Sum Bid Price listed above and that such costs are so indicated below:

Bidder will complete the Work in accordance with the Contract Documents for the following prices. Quantities other than lump sum items indicated are not guaranteed; however, other than lump sum items will be based on actual quantities.

8470A11

00410-4

TAB “3”



City of Sacramento
Response to Bid Protest
February 14, 2013

Contract: Water Treatment Plants Rehabilitation Project ("Project")
Protesting Bidder: Balfour Beatty Infrastructure, Inc. ("Balfour Beatty")
Bid Protest Date: February 12, 2013

Introduction:

Balfour Beatty's bid protest (copy attached as **Exhibit A**) contends that an arithmetical error of \$8,818,406.00 in the apparent low bid submitted for the Project by C. Overaa & Co. ("Overaa"), renders the Overaa bid non-responsive, and that California law precludes the City from waiving this error in Overaa's bid.

Pursuant to Sacramento City Code section 3.60.510, Department of Utilities (DOU) staff has investigated the bid protest and has prepared this response to the bid protest. In brief, Department staff has determined that the bid protest should be rejected, because Overaa's bid is responsive and does not contain an arithmetical error. Further, even assuming, for the sake of argument, that there is an irregularity in Overaa's bid, it is a minor irregularity that may be waived by the City.

Summary of Facts:

1. Four bids for the Project were opened on January 30, 2013. Overaa was the apparent low bidder at \$113,776,000.00. Balfour Beatty was the second low bidder at \$116,705,118.00, approximately \$3 million more than Overaa's bid.
2. Bidders were required to submit their bids on Document 00410, Bid Form, with the bid prices entered in Article 6 of the Bid Form, entitled "Basis of the Bid". A copy of Overaa's Bid Form is attached as **Exhibit B**. The bid prices entered by Overaa in Article 6 of the Bid Form are set forth on pages 00410-4 through 00410-6 of the Overaa Bid Form.
3. After bid opening and issuance of the DOU's written notice of its intention to recommend that the Sacramento City Council award the contract to Overaa, Balfour Beatty submitted its bid protest, dated February 12, 2013.
4. The bidding and award of contracts for the City of Sacramento's public projects, including this Project, are governed by the provisions of Chapter 3.60 of the Sacramento City Code (copy attached as **Exhibit C**).

Department Response to Bid Protest:

The two arguments made in Balfour Beatty's bid protest are summarized below, followed by the DOU's response to each one.

1. **Balfour Beatty's First Argument:** The bid protest contends that Overaa's bid is non-responsive because it did not calculate the "Lump Sum Bid Price" in accordance with Item B of Article 6.01 of the Bid Form. According to the bid protest, Overaa's Lump Sum Bid Price should have been \$104,957,594.00, which is the sum of the two amounts entered in Item B of Section 6.01 of the Overaa Bid Form. Instead, Overaa's Lump Sum Bid Price was \$113,776,000.00, which was the sum of the two amounts entered in Item B of Section 6.01 of the Overaa Bid Form, plus the total of the amounts entered in Item C of the Overaa Bid Form (\$8,818,406.00). The bid protest contends that this renders the Overaa bid non-responsive.

DOU Response:

The DOU does not find the Overaa bid to be non-responsive, for several reasons.

First, the opening sentence of Section 6.01 of Article 6 of the Bid Form states: "Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C below." This statement is then followed by lines where the bidder is to enter its "Lump Sum Bid Price." On these lines, Overaa entered its Lump Sum Bid Price in the amount of \$113,776,000.00. As noted, the Bid Form requires the Lump Sum Bid Price amount to be inclusive of Items A, B, and C. Item A indicates how the bids will be evaluated, and does not call for any price entry by the bidder. Items B and C do call for price entries, and the sum of the amounts entered by Overaa for Items B and C is Overaa's Lump Sum Bid Price. This is responsive to the requirement that the Lump Sum Bid Price be "inclusive of Items A, B, and C below." This also is consistent with the language set forth in the first sentence of Item C, which states, in pertinent part, that the costs listed in Item C "are included in the Lump Sum Bid Price listed above...".

Second, the opening sentence of Item A in Section 6.01 of the Bid Form states that "In evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price ...". Overaa submitted the bid with the lowest Lump Sum Bid Price. Balfour Beatty is correct in noting that the two amounts listed in Item B of Section 6.01 of Overaa's Bid Form do not add up to Overaa's Lump Sum Bid Price. However, the opening sentence of Item A does not state that the lowest Bid shall be determined by adding the two amounts listed in Item B – instead it states that the lowest Bid shall be the Bid with the lowest Lump Sum Bid Price entered in the lines immediately above Item A. Because Overaa's bid has the lowest Lump Sum Bid Price, their bid is the lowest in conformance with the Bid evaluation criteria specified in Item A.

Third, Overaa's bid is not rendered non-responsive because the two amounts listed for the E.A. Fairbairn Water Treatment Plant (WTP) and the Sacramento River WTP, in Item B of Section 6.01 of Overaa's Bid Form, do not add up to Overaa's Lump Sum Bid Price. As noted above, the Bid Form provides that the bid amount shall be determined based on the Lump Sum Bid Price. The breakout of costs associated with the two WTPs in Item B was requested to show how the bidder's costs were allocated between the two plants, but this breakout is not used to determine the bid amount, because the bid amount is based on the Lump Sum Bid Price entered following the first sentence in Section 6.01. The bid protest puts the cart before the horse in arguing that the Lump Sum Bid Price is determined by adding the breakout of costs in Item B – rather, as indicated in the Bid Form, the bidder's Lump Sum Bid Price is the amount entered as the Lump Sum Bid Price in the lines following the first sentence of Section 6.01. For the same reason, the bid protest is incorrect in stating that Overaa's bid must be construed as a bid to perform the Project for the sum of the entries in Item B, rather than the Lump Sum Bid Price expressly indicated on Overaa's Bid Form.¹

Fourth, contrary to Balfour Beatty's assertion, the DOU does not find any arithmetical error in Overaa's bid. It is apparent from a cursory review that the Lump Sum Bid Price listed by Overaa is the sum of the amounts listed by Overaa in Items B and C of the Bid Form, exact and to the penny. There is no "miscalculation of [Overaa's] Lump Sum Bid Price . . . overstating its Lump Sum Bid Price by \$8,818,406.00," as claimed in the bid protest, because (1) \$8,818,406.00 is the total of the lump sum and unit prices listed by Overaa in Item C, and (2) it is readily apparent that Overaa intended this amount to be additive to the amounts listed in item B, and that the total of these amounts is Overaa's Lump Sum Bid Price. The response to the bid protest received from Overaa, dated February 13, 2013, confirms that the Lump Sum Bid Price shown on Overaa's Bid Form was intended to be the sum of the Item B and Item C amounts, and is Overaa's intended bid price.

Finally, even if the fact that the two amounts listed in Item B of Section 6.01 of Overaa's Bid Form do not add up to Overaa's Lump Sum Bid Price is considered to be a bidding irregularity, the City has the right to waive the irregularity. Sacramento City Code section 3.60.140, among other things, allows the City Council to waive any informalities or minor irregularities in a bid in awarding a contract. As noted in the bid protest, under California law, a bid irregularity can be waived so long as it could not have affected the amount of the bid or given the bidder a competitive advantage over other bidders. (*Konica Business Machines, U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454.) In this case, the cost breakout Overaa listed in Item B does not affect the amount of the bid, as

1 While the bid protest's interpretation is understandable, given that Balfour Beatty is the second low bidder, it bears noting that the competitive bidding process exists for the benefit of the public, not individual bidders. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) Given the DOU's determination that Overaa's bid is responsive, there is a clear public benefit to accepting a bid that is almost \$3 million lower than the second low bid.

already noted, because the bid amount is defined as the Lump Sum Bid Price, which is correct. Put another way, if the amounts set forth in Item B were changed so the sum of these amounts equaled the Lump Sum Bid Price, this would not have any effect on the amount of Overaa's bid, which would remain the same Lump Sum Bid Price. Nor would waiver of the irregularity give Overaa an advantage over other bidders, because Overaa is bound by its bid amount (defined as the Lump Sum Bid Price), and there is no statutory basis for Overaa to withdraw its bid (see DOU response to Balfour Beatty's second argument, below).

2. **Balfour Beatty's Second Argument:** The bid protest's second argument contends that Overaa's bid contains an arithmetical error that would provide Overaa grounds to withdraw its bid, under California's bid relief statute (Public Contract Code section 5103). The bid protest argues that because Overaa had this opportunity for a "second look," the error cannot be waived, based on cases indicating that this would provide an unfair competitive advantage over other bidders.

DOU Response:

The DOU does not find this argument to be persuasive, for several reasons.

First, and foremost, Public Contract Code section 5103 only allows a bidder to withdraw its bid without penalty when its bid contains a typographical or arithmetic error which makes the bid materially different than intended. (See *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 376-377.) The DOU does not find any such error in Overaa's bid, as already discussed. The Lump Sum Bid Price listed by Overaa is the exact sum of the amounts listed by Overaa in Items B and C of the Bid Form, and it is apparent on the face of the bid that this is what Overaa intended. Overaa also has confirmed its intent in its response to the bid protest. Accordingly, neither of the preconditions specified in Public Contract Code section 5103 for bid withdrawal are met. In other words, if Overaa were to request bid withdrawal, pursuant to Public Contract Code section 5103, the City would not allow the bid to be withdrawn because the statutory criteria are not met. Accordingly, Overaa did not have any opportunity for a "second look" that would provide an unfair competitive advantage over other bidders.

Second, even if the reasoning of the bid protest's argument is accepted, the opportunity that Overaa would have had would have been to request bid withdrawal because its bid was *too high*, and should have been approximately \$9 million lower. Such a request would make no sense, and the DOU certainly has never seen a bidder assert that its low bid was too high. If the DOU had determined that Overaa's bid should properly be construed as a bid to perform the Project for the lower amount (\$104,957,594.00), the City could require Overaa to do so or forfeit its bid bond. However, the DOU has determined that the Lump Sum Bid Price indicated in Overaa's Bid Form (\$113,776,000.00) is correct, for the reasons already provided.

Conclusion:

Based on the foregoing analysis, it is the DOU's determination that Overaa's bid is responsive and does not contain an arithmetical error. Further, even if Overaa's bid is considered to contain an irregularity, it is a minor irregularity that may be waived by the City, because it did not affect Overaa's bid amount (the Lump Sum Bid Price) and did not provide Overaa any unfair competitive advantage over other bidders. For these reasons, the DOU has determined that the bid protest should be rejected.

- Exhibit A: Balfour Beatty Bid Protest Letter
- Exhibit B: Overaa Bid Form
- Exhibit C: City Code Chapter 3.60

EXHIBIT A

Bid Protest

MARKS, FINCH, THORNTON & BAIRD, LLP

ROBERT J. MARKS, APC *
P. RANDOLPH FINCH JR.
JASON R. THORNTON
JEFFREY B. BAIRD
CHAD T. WISHCHUK
LOUIS J. BLUM
DAVID S. DEMIAN
DANIELLE C. HUMPHRIES
DAVID W. SMILEY
NOWELL A. LANTZ
STEPHEN J. SCHULTZ +
MARK T. BENNETT +
BERNARD F. KING III
JUSTIN M. STOGER
ALLISON N. COOPER

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE (858) 737-3100
FACSIMILE (858) 737-3101
INTERNET www.mftb.com
E-MAIL pfinch@mftb.com

ANDREA L. PETRAY
JON F. GAUTHIER, APC *
CHRISTOPHER R. SILLARI
DUSTIN R. JONES
LAURA B. MACNEEL
RODRIGO F. MOREIRA
DANIEL P. SCHOLZ
RYAN P. KENNEDY
ADAM C. WITT
BRETT T. WALKER
M. KATY ROSS
J. PATRICK HICKS
RICHARD J. PINTO II
KELLY A. FLOYD

February 12, 2013

+ OF COUNSEL via MERRILL,
SCHULTZ & BENNETT, LTD.

* OF COUNSEL

OUR FILE NUMBER

1439.001

URGENT BID PROTEST

**VIA FEDERAL EXPRESS
AND FACSIMILE (916) 808-7672**

VIA ELECTRONIC MAIL ONLY

City Clerk
City of Sacramento
915 I Street, Room 304
Sacramento, California 95814

Mr. Ian Pietz, P.E.
City of Sacramento
1395 35th Avenue
Sacramento, California 95822
IPietz@cityofsacramento.org

Re: *Project: City of Sacramento Water Treatment Plants Rehabilitation*
Contract No.: Z14006000
Bid Date: January 30, 2013
Protector: Balfour Beatty Infrastructure, Inc.

Dear Sir or Madam and Mr. Pietz:

1. **Introduction**

We represent Balfour Beatty Infrastructure, Inc. ("Balfour Beatty"), in connection with the bid for the referenced project. This is Balfour Beatty's protest against the potential award of the project by the City of Sacramento ("City") to C. Overaa & Co. ("Overaa"). Summarily, there is an \$8,818,406.00 arithmetical error in Overaa's bid. As set forth below, this arithmetical mistake renders Overaa's bid non-responsive and gave Overaa an unfair competitive advantage over other bidders because it afforded Overaa the option to pull its bid after the bid opening (i.e., a "second look"). California law precludes the City from accepting Overaa's bid. Balfour Beatty respectfully requests it be awarded the project as the lowest responsive and responsible bidder.

2. **The Project And The Bid Form**

The City issued a call for bids for a project consisting of work at two water treatment plants, the Sacramento River Water Treatment Plant and the E.A. Fairbairn Water Treatment Plant (the "Project"). The City's bid documents included a nine page

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Bid Form (enclosed at Tab 1). Item B of Article 6.01 of the Bid Form specified bids (the "Lump Sum Bid Price") were to be calculated based on the "sum of the work" for each of the two water treatment plants, and included a space for bidders to list a price for each plant. (Tab 1, P. 4.) In other words, Item B controls how the Lump Sum Bid Price is to be calculated (i.e., you add the two line items in Section B to arrive at your lump sum price). Item C of the Bid Form includes space for bidders to provide lump sum and unit prices for particular work at each of the two plants. The Bid Form directed bidders to include these items within the price for each plant listed in Item B.

3. Overaa's Bid

The City accepted bids for the Project on January 30, 2013. Overaa's bid at Item B offered to perform the work at each plant as follows: (1) \$16,957,594.00 for E.A. Fairbairn; and (2) \$88,000,000.00 for Sacramento River. A copy of page 4 of Overaa's Bid Form is enclosed at Tab 2. Per Item B, Overaa's Lump Sum Bid Price is \$104,957,594.00 (the sum of the prices for each plant). However, Overaa listed its Lump Sum Bid Price as \$113,776,000.00. Contrary to the express instructions in Item B, Overaa calculated its Lump Sum Bid Price based on the sum of the work for the E.A. Fairbairn plant, the Sacramento River plant, and the unit prices in Item C (i.e., items of work within the two plants which were supposed to be included in the two plant prices). Overaa's miscalculation of its Lump Sum Bid Price resulted in Overaa overstating its Lump Sum Bid Price by \$8,818,406.00.

4. Overaa's Bid Is Non-Responsive And Must Be Rejected

A. Overaa's Bid Is Non-Responsive Because It Did Not Calculate The Lump Sum Bid Price In Accordance With Item B of Article 6.01

It is a basic rule of competitive bidding that bids must conform to the specifications, and if a bid does not conform, it is may not be accepted. (*Cypress Sec., LLC v. City and County of San Francisco* (2010) 184 Cal.App.4th 1003, 1015; *Taylor Bus. Service, Inc. v. San Diego Bd. Of Education* (1987) 195 Cal.App.3d 1331, 1339.) Bids which are not strictly responsive can only be accepted if the deviation could not have affected the amount of the bid or given a bidder an advantage or benefit not afforded other bidders. (*Konica Business Machines, U.S.A., Inc. v. Regents of the University of California* (1988) 206 Cal.App.3d 449, 454-455.)

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Here, Overaa's bid clearly did not conform to the instructions for calculating the Lump Sum Bid Price as set forth in the Bid Form. Item B of Article 6.01 of the Bid Form expressly required the Lump Sum Bid Price to be calculated based only on the sum of the work for the Fairbairn and Sacramento River plants. According to the City's bid summary, every bidder other than Overaa calculated its Lump Sum Bid Price in accordance with the clear instructions of Item B. (Tab 3 [City bid tabulation with notes added].)

Overaa priced the Fairbairn project at \$16,597,594.00 and the Sacramento River project at \$88,000,000.00. These prices total \$104,957,594.00. However, Overaa included an additional \$8,818,406.00 in its Lump Sum Bid Price for the particular work in Item C. Overaa's failure to calculate its Lump Sum Bid Price in accordance with the instructions in the Bid Form renders its bid non-responsive.

B. California Law Precludes The City From Waiving The Deviation In Overaa's Bid Because The Arithmetic Error Gave Overaa The Opportunity To Withdraw Its Bid After Bids Were Opened

Public Contract Code section 5103 provides that when a bidder's bid contains a "typographical or arithmetic" error which makes the bid materially different than intended, the bidder may withdraw its bid without forfeiting its bid bond. (See e.g., *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1441.) When a bidder has the opportunity to withdraw its bid after bid opening without forfeiting its bid bond, that bidder has an unfair competitive advantage over other bidders (i.e., the option not to honor its bid after seeing all other bids at bid opening), and renders the bid invalid. (*Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1178-1179.) Whether or not the bidder actually seeks relief from the mistake in its bid is irrelevant; it is the opportunity to withdraw its bid without penalty which creates the unfair competitive advantage other bidders do not have. (*Valley Crest Landscape, Inc. v. City Council, supra*, 41 Cal.App.4th at p. 1442.)

In ruling that a subcontractor listing percentage error precluded acceptance of a misstated bid, the local Sacramento based Third District Court of Appeal in *Valley Crest*, stated the rule and rationale as follows:

Misstating the correct percentage of work to be done by a subcontractor is in the nature of a typographical or arithmetical error. It makes the bid materially different and is a mistake in filling out the bid. As such, under Public Contract Code section 5103, [the low bidder] could have sought

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relief by giving the City notice of the mistake within five days of the opening of the bid. That [the low bidder] did not seek such relief is of no moment. The key point is that such relief was available. Thus, [the low bidder] had a benefit not available to the other bidders; it could have backed out. Its mistake, therefore, could not be corrected by waiving an "irregularity."

(*Id.* at p. 1442.) Here, Item B of Article 6.01 of the Bid Form clearly instructed bidders to calculate the Lump Sum Bid Price by adding only the individual prices of the Fairbairn and Sacramento River plants. Overaa's pricing for the Fairbairn and Sacramento River plants do not add up to its Lump Sum Bid Price. (Cf. all other bidders at Tab 3.) Overaa priced Fairbairn at \$16,597,594.00 and Sacramento River at \$88,000,000.00, a total of \$104,957,594.00. This is an \$8,818,406.00 difference between its Lump Sum Bid Price of \$113,776,000.00.

Based on Item B of Article 6.01, Overaa's bid must be construed as an offer to perform both plants for \$104,957,594.00, not the \$113,776,000.00 it listed as its Lump Sum Bid Price. In other words, Overaa's arithmetical error made its bid materially different than it intended, such that Overaa could have withdrawn its bid without forfeiting its bid bond. It is this opportunity for a "second look," without penalty, which created an unfair competitive advantage for Overaa over other bidders. (See *Valley Crest Landscape, Inc. v. City Council*, *supra*, 41 Cal.App.4th at p. 1442 [whether or not a bidder actually seeks relief from the mistake in its bid is irrelevant; it is the opportunity to withdraw its bid without penalty which creates the unfair competitive advantage other bidders do not have].)

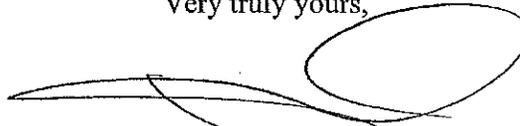
5. Conclusion

Every bidder other than Overaa priced their bids for the Project by summing up the individual prices for the Fairbairn and Sacramento River plants as instructed by the Bid Form. Either (a) Overaa must perform the project for \$104,957,594.00, or (b) Overaa deviated from the bid instructions and submitted a bid with a clear arithmetical error. That error gave Overaa an unfair advantage over other bidders because it had the opportunity to withdraw its bid after bids were opened without forfeiting its bid bond. California law precludes the City from waiving the error in Overaa's bid. As a result, Balfour Beatty is the lowest responsive and responsible bidder. Balfour Beatty respectfully requests the City award it the project.

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February 12, 2013
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Pursuant to Sacramento City Code section 3.60.490, enclosed is a check in the amount of \$750.00 for the protest fee. We request notice of any hearings or proceedings related to this protest and copies of any response submitted by Overaa. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Randolph Finch Jr.", with a large, loopy flourish extending to the right.

P. Randolph Finch Jr.,
Partner of
MARKS, FINCH,
THORNTON & BAIRD, LLP

Enclosures

PRF:kek/34L6655

cc: Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Crandall Bates, Vice President Western Region (via e-mail only)
Balfour Beatty Infrastructure, Inc. - Fairfield, CA
Attn: Mr. Chris Rutherford, Project Sponsor (via e-mail only)
Balfour Beatty Infrastructure, Inc. - West Covina
Attn: Mr. Dan Dischner, Chief Estimator (via e-mail only)

TAB “1”

DOCUMENT 00410

BID FORM

PROJECT IDENTIFICATION:

City of Sacramento
Water Treatment Plants Rehabilitation Project
Contract Number Z14006000

THIS BID IS SUBMITTED BY:

(Bidder)

(Bidder Address)

THIS BID IS SUBMITTED TO:

City of Sacramento
Clerk's Office, 1st Floor
915 I Street
Sacramento, CA 95814

ARTICLE 1 - BID RECIPIENT

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents within the specified time and for the price indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGMENT

2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Bid, Bidder represents that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

ADDENDA

No. _____	Dated _____

A Bid that fails to acknowledge all Addenda issued by Owner as required above may be rejected as nonresponsive.

- B. Bidder has visited the Site and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Federal, state, and local Laws and Regulations and Permits that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions and which are described in paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of a Hazardous Environmental Condition, if any, which have been identified in the Supplementary Conditions and which are described in paragraph 4.06 of the General Conditions as containing reliable "technical data."
- E. Bidder has carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. In accordance with Section 1861, California Labor Code, the Bidder states the following as its certification:

"I am aware of the provisions of Section 3700 of the California 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."

ARTICLE 4 - BIDDER'S CERTIFICATION

4.01 Bidder further represents that

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding;
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner; and
- E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph 4.01.E:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the Owner's detriment, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and competitive bidding process;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm persons or their property.

ARTICLE 5 - ASSIGNMENTS AND ALLOWANCES

5.01 The price of \$888,900 for MRI hoseless sludge collectors including, but not limited to, O&M manuals, all required submittals, required calculations, specified spare parts, specified control systems, and specified panels has been prenegotiated. Bidder will include such cost in the Bid and shall pay Supplier the prenegotiated price.

ARTICLE 6 - BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C below.

Lump Sum Bid Price \$ _____
(Price in Figures)

(Price in Words)

- A. In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price on the base contract without consideration of the prices on additive or deductive items per Section 00200, Article 14. The Owner will award the Contract in accordance with Section 00200, Article 19.
- B. The Bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

E.A. Fairbairn WTP \$ _____
(Price in Figures)

(Price in Words)

Sacramento River WTP \$ _____
(Price in Figures)

(Price in Words)

- C. The Bidder declares that the costs for labor, materials, equipment, and incidentals necessary for the following work are included in the Lump Sum Bid Price listed above and that such costs are as indicated below.

Bidder will complete the Work in accordance with the Contract Documents for the following prices. Quantities other than Lump Sum items indicated are not guaranteed; payment for other than Lump Sum items will be based on actual quantities.

Item Number	Description	Unit	Estimated Quantity	Unit Price	Total Estimated Price \$
1	Sheeting, shoring, and bracing, or equivalent method for the protection of life and limb in trenches and open excavation, pursuant to California Labor Code §6707.	LS	1		
2	Preparation and submittal of a written geotechnical report as specified in Division 2, including field investigations, soil sampling, laboratory testing, and interpretation of the data by a registered geotechnical engineer for the purpose of shoring design, dewatering, blasting and other temporary facilities.	LS	1		
3	SRWTP - Furnish, Deliver and Drive Indicator Piling, Concrete Precast, Prestressed (14 inch x 14 inch)	LS	1		
4	SRWTP - Furnish and Deliver Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	161,695		
5	SRWTP - Drive Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	161,695		
6	SRWTP - Cutoff and Remove Piling Concrete Precast, Prestressed (14 inch x 14 inch).	EA	76		
7	SRWTP - Export of Old Floc/Sed Basin 2 Material per S10C-07/A and Specification Section 02300.	CY	13,800		
8	SRWTP - Import of Select Fill Material Under and Around Basin 3/4 per S10C-07/A and Specification Section 02300.	In-place, compacted CY	59,500		
9	Assignments and Allowances for items listed in Section 00410 – Article 5 and Section 01210.	LS	1		

Unit Prices have been computed in accordance with paragraph 11.03 of the General Conditions and Section 01270.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

December 2012

00410-5

8470A11

pw://Carollo/Documents/Client/CA/Sacramento/8470A11/Specifications/00410 (BID)

D. Deduct Lump Sum Prices. The Bidder will accept as adjustment to the Lump Sum Bid for the amount resulting from applying the following lump sum prices. The acceptance or rejection of any or all Bid alternates is at the option of the Owner and will not necessarily be made on the basis of price alone. The contract price shall be the net amount determined by applying the net addition or net deduction specified to the Lump Sum Bid.

1. Bid Alternate A: As part of the Lump Sum Base Bid, Contractor is instructed to remove, haul, and dispose of all Old Floc/Sed Basin 2 Material located under the existing Basin 2 (see Specification Section 02300 and Dwg S10C-07/A) in a lawful manner. Under Lump Sum Base Bid Contractor is also instructed to provide specified select fill material to meet finished grade under and around Basin 3/4 (Area 42) per Specification Section 02300 and S10C-07/A.

For this Bid Alternate, Contractor is instructed to provide a price to utilize a portion of the Old Floc/Sed Basin 2 material as fill after blending to appropriate characteristics per Specification Section 02300 up to elevation 24.75'. Backfill above elevation 24.75' with select fill not blended with Old Floc/Sed Basin 2 material, the same as in the Lump Sum Base Bid. Dispose of any unplaced Old Floc/Sed Basin 2 material offsite in a lawful manner. Assume 6,625 CY of offhaul of Old Floc/Sed Basin 2 Material at unit price listed in schedule above. Assume 53,350 in-place compacted CY of imported select fill material at unit price listed in schedule above. Prior to use, existing material is required to be moved and stockpiled to allow demolition of Basin 2 and surveying of pile caps and piles prior to blending and placement.

\$ _____
(Price in figures)

\$ _____
(Price in words)

ARTICLE 7 - TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially completed, and will be completed and ready for final payment (Final Completion) in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in Article 4, Document 00520, Agreement, including the specified number of allowance days for Owner-caused delays.

7.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in Article 4, Document 00520, Agreement.

ARTICLE 8 - ATTACHMENTS TO THIS BID

8.01 The following documents are attached to and made a condition of this Bid:

- A. Electronic Contract Documents Release (Section 00411);
- B. Required Bid security in the form of cash, a certified or bank check, or a Bid Bond issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions (Section 00432);
- C. List of Subcontractors (Section 00434), List of Equipment Manufacturers (Section 00436), and other individuals and entities required to be identified in this Bid;
- D. Non-Collusion Affidavit (Section 00456);
- E. Affirmative Action Program Certificate (Section 00452);
- F. Declaration of Compliance Equal Benefits Ordinance (Section 00455);
- G. Bid Preferences;
 - 1. Boycott of Arizona and Arizona Headquartered Businesses (Section 00457).
 - 2. ESBE Requirements (Section 00462);
- H. Bid Certification for the Payment of State & Local Taxes (Section 00454);
- I. Certification of Drug-Free Workplace Requirements (Section 00458);
- J. Debris Recycling Requirements (Section 00461);
- K. (Optional) Green Contracting Survey (Section 00459).

8.02 The Prequalification packages submitted previously by General Contractors, applicable Electrical Subcontractors, and applicable Pile Subcontractors are also made a condition of this Bid.

ARTICLE 9 - DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters or all capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 - BID SUBMITTAL

SUBMITTED on _____, 2013.

State Contractor License Number _____ (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____

(Individual's signature)
Doing business as: _____
Business address: _____
Phone Number: () _____ FAX Number: () _____

A Partnership

Partnership Name: _____
By: _____
(Signature of general partner -- attach evidence of authority to sign)
Name (typed or printed): _____
Business address: _____
Phone Number: () _____ FAX Number: () _____

A Corporation

Corporation Name: _____
State of Incorporation: _____
Type (General Business, Professional, Service, Limited Liability): _____
By: _____
(Signature -- attach evidence of authority to sign)
Name (typed or printed): _____
Title: _____
Attest: _____
(Signature of Corporate Secretary, Acting Secretary or other officer)
Business address: _____
Phone Number: () _____ FAX Number: () _____
Date of Qualification to do business is _____

A Joint Venture

Joint Venturer Name: _____
By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)
Name (typed or printed): _____
Title: _____
Business address: _____

Phone Number: () _____ FAX Number: () _____

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

Phone and FAX Number, and Address for receipt of official communications:

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF DOCUMENT

TAB “2”

ARTICLE 6 - BASIS OF BID

6.01. Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price, inclusive of items A, B, and C below:

Lump Sum Bid Price \$ 113,774.00
(Price in Figures)

One hundred thirteen thousand seven hundred seventy four dollars
(Price in Words)

A. In the evaluation of Bids, the lowest bid shall be the lowest Lump Sum Bid Price on the basis of the Contract without consideration of the prices on additive or deductive items per Section 06.00, Article 14. The Owner will award the Contract in accordance with Section 06.00, Article 10.

B. The bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

E.A. Fairbairn WTP \$ 14,927.57
(Price in Figures)

Sixteen thousand nine hundred twenty seven dollars and fifty seven cents
(Price in Words)

Swan Island WTP \$ 38,000.00
(Price in Figures)

Thirty eight thousand
(Price in Words)

The above prices include all materials, equipment, and incidentals required for the Work. The Lump Sum Bid Price listed above is based on actual quantities.

00410 4

0470A11

TAB “3”

WATER TREATMENT PLANTS REHABILITATION PROJECT (#Z14006000) BID SUMMARY

		ENGR EST		OVERAA		BALFOUR BEATTY		WALSH		SHIMMICK	
Lump Sum Bid Price		=	143,550,000	\$	113,776,000	\$	116,705,118	\$	118,265,281	\$	124,860,000
EAFWTP		+	17,750,000	\$	16,957,594	\$	19,000,000	\$	15,000,000	\$	18,060,000
SRWTP		+	125,800,000	\$	88,000,000	\$	97,705,118	\$	103,265,281	\$	106,800,000
		ENGR EST		OVERAA		BALFOUR BEATTY		WALSH		SHIMMICK	
Unit	EST QTY	UNIT PRICE	TOTAL EST PRICE	UNIT PRICE	TOTAL EST PRICE	UNIT PRICE	TOTAL EST PRICE	UNIT PRICE	TOTAL EST PRICE	UNIT PRICE	TOTAL EST PRICE
Sheeting/Shoring	LS	1	\$ 1,200,000	\$ 1,200,000	\$ 10,000,000	\$ 10,000,000	\$ 2,646,720	\$ 2,646,720	\$ 3,400,000	\$ 3,400,000	
Geotech Report	LS	1	\$ 25,000	\$ 25,000	\$ 50,000	\$ 50,000	\$ 100,000	\$ 100,000	\$ 40,000	\$ 40,000	
SRWTP - Indicator Piling	LS	1	\$ 672,000	\$ 672,000	\$ 672,000	\$ 672,000	\$ 2,842,800	\$ 2,842,800	\$ 662,500	\$ 662,500	
SRWTP - Furnish Piling	LF	162,114	\$ 22.00	\$ 3,566,508	\$ 22.00	\$ 3,566,508	\$ 25.30	\$ 4,101,484	\$ 22.20	\$ 3,598,931	
SRWTP - Pile Driving	LF	162,114	\$ 7.00	\$ 1,134,798	\$ 7.00	\$ 1,134,798	\$ 8.05	\$ 1,305,018	\$ 6.91	\$ 1,120,208	
SRWTP - Cutoff/Remove Piling	EA	76	\$ 325.00	\$ 24,700	\$ 325.00	\$ 24,700	\$ 373.75	\$ 28,405	\$ 328.00	\$ 24,928	
SRWTP - Export Basin 2 Mat'l	In-Piece CY	13,800	\$ 30.00	\$ 414,000	\$ 45.00	\$ 621,000	\$ 133.45	\$ 1,841,610	\$ 54.00	\$ 745,200	
SRWTP - Import Select Fill	In-Piece CY	59,500	\$ 15.00	\$ 892,500	\$ 9.25	\$ 550,375	\$ 14.93	\$ 888,335	\$ 23.00	\$ 1,368,500	
Allowances	LS	1	\$ 888,900	\$ 888,900	\$ 960,000	\$ 960,000	\$ 888,900	\$ 888,900	\$ 900,000	\$ 900,000	
TOTAL				\$ 8,818,406	\$ 17,579,381	\$ 14,643,272	\$ 11,860,267				
BID ALTERNATE A				\$ 150,000	\$ 130,000	\$ -	\$ 430,000				
BID ALTERNATE B				\$ 200,000	\$ 523,000	\$ 638,915	\$ 600,000				

EXHIBIT B

Overaa's Bid Form

DOCUMENT 00410

BID FORM

PROJECT IDENTIFICATION:

City of Sacramento
Water Treatment Plants Rehabilitation Project
Contract Number Z14006000

THIS BID IS SUBMITTED BY:

C. Overaa & Co.

(Bidder)

200 Parr Blvd.

(Bidder Address)

Richmond, CA 94801

THIS BID IS SUBMITTED TO:

City of Sacramento
Clerk's Office, 1st Floor
915 I Street
Sacramento, CA 95814

BID BOND SECURITY
 Properly Signed Improperly Signed
 Not Included Not Required
Type of Deposit
 Bid Bond Cashier/Certified Check
 Other
Initial: *[Signature]*

ARTICLE 1 - BID RECIPIENT

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents within the specified time and for the price indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 - BIDDER'S ACKNOWLEDGMENT

2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 - BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

ADDENDA

No. <u>1</u>	Dated <u>12/21/2012</u>
No. <u>2</u>	Dated <u>1/4/2013</u>
No. <u>3</u>	Dated <u>1/16/2013</u>
No. <u>4</u>	Dated <u>1/22/2013</u>
No. _____	Dated _____
No. _____	Dated _____

A Bid that fails to acknowledge all Addenda issued by Owner as required above may be rejected as nonresponsive.

- B. Bidder has visited the Site and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Federal, state, and local Laws and Regulations and Permits that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions and which are described in paragraph 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of a Hazardous Environmental Condition, if any, which have been identified in the Supplementary Conditions and which are described in paragraph 4.06 of the General Conditions as containing reliable "technical data."
- E. Bidder has carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. In accordance with Section 1861, California Labor Code, the Bidder states the following as its certification:

"I am aware of the provisions of Section 3700 of the California 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."

ARTICLE 4 - BIDDER'S CERTIFICATION

- 4.01 Bidder further represents that
- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
 - B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
 - C. Bidder has not solicited or induced any individual or entity to refrain from bidding;
 - D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner; and
 - E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph 4.01.E:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the Owner's detriment, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and competitive bidding process;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm persons or their property.

ARTICLE 5 - ASSIGNMENTS AND ALLOWANCES

5.01 The price of \$888,900 for MRI hoseless sludge collectors including, but not limited to, O&M manuals, all required submittals, required calculations, specified spare parts, specified control systems, and specified panels has been prenegotiated. Bidder will include such cost in the Bid and shall pay Supplier the prenegotiated price.

ARTICLE 6 - BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C below.

Lump Sum Bid Price \$ 113,776,000
(Price in Figures)

one hundred thirteen million seven hundred seventy six thousand
(Price in Words)

A. In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price on the base contract without consideration of the prices on additive or deductive items per Section 00200, Article 14. The Owner will award the Contract in accordance with Section 00200, Article 19.

B. The Bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

E.A. Fairbairn WTP \$ 16,957,594
(Price in Figures)

Sixteen million nine hundred fifty seven thousand five hundred ninety four
(Price in Words)

Sacramento River WTP \$ 88,000,000
(Price in Figures)

Eighty eight million
(Price in Words)

C. The Bidder declares that the costs for labor, materials, equipment, and incidentals necessary for the following work are included in the Lump Sum Bid Price listed above and that such costs are as indicated below.

Bidder will complete the Work in accordance with the Contract Documents for the following prices. Quantities other than Lump Sum items indicated are not guaranteed; payment for other than Lump Sum items will be based on actual quantities.

Item Number	Description	Unit	Estimated Quantity	Unit Price	Total Estimated Price \$
1	Sheeting, shoring, and bracing, or equivalent method for the protection of life and limb in trenches and open excavation, pursuant to California Labor Code §6707.	LS	1	1,200,000	1,200,000
2	Preparation and submittal of a written geotechnical report as specified in Division 2, including field investigations, soil sampling, laboratory testing, and interpretation of the data by a registered geotechnical engineer for the purpose of shoring design, dewatering, blasting and other temporary facilities.	LS	1	25,000	25,000
3	SRWTP - Furnish, Deliver and Drive Indicator Piling, Concrete Precast, Prestressed (14 inch x 14 inch)	LS	1	672,000	672,000
4	SRWTP - Furnish and Deliver Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	461,695 <u>162,114</u>	22	3,566,508
5	SRWTP - Drive Piling, Concrete Precast, Prestressed (14 inch x 14 inch).	LF	461,695 <u>162,114</u>	7	1,134,798
6	SRWTP - Cutoff and Remove Piling Concrete Precast, Prestressed (14 inch x 14 inch).	EA	76	325	24,700
7	SRWTP - Export of Old Floc/Sed Basin 2 Material per S10C-07/A and Specification Section 02300.	In-Place CY	13,800	30	414,000
8	SRWTP - Import of Select Fill Material Under and Around Basin 3/4 per S10C-07/A and Specification Section 02300.	In-place, compacted CY	59,500	15 LE LE	892,500 LE LE
9	Assignments and Allowances for items listed in Section 00410 - Article 5 and Section 01210.	LS	1	888,900	888,900

Unit Prices have been computed in accordance with paragraph 11.03 of the General Conditions and Section 01270.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

D. **Deduct-Lump Sum Prices.** The Bidder will accept as adjustment to the Lump Sum Bid for the amount resulting from applying the following lump sum prices. The acceptance or rejection of any or all Bid alternates is at the option of the Owner and will not necessarily be made on the basis of price alone. The contract price shall be the net amount determined by applying the net addition or net deduction specified to the Lump Sum Bid.

1. **Bid Alternate A:** As part of the Lump Sum Base Bid, Contractor is instructed to remove, haul, and dispose of all Old Floc/Sed Basin 2 Material located under the existing Basin 2 (see Specification Section 02300 and Dwg S10C-07/A) in a lawful manner. Under Lump Sum Base Bid Contractor is also instructed to provide specified select fill material to meet finished grade under and around Basin 3/4 (Area 42) per Specification Section 02300 and S10C-07/A.

For this Bid Alternate, Contractor is instructed to provide a price to utilize a portion of the Old Floc/Sed Basin 2 material as fill after blending to appropriate characteristics per Specification Section 02300 up to elevation 24.75'. Backfill above elevation 24.75' with select fill not blended with Old Floc/Sed Basin 2 material, the same as in the Lump Sum Base Bid. Dispose of any unplaced Old Floc/Sed Basin 2 material offsite in a lawful manner. Assume 6,625 CY of offhaul of Old Floc/Sed Basin 2 Material at unit price listed in schedule above. Assume 53,350 in-place compacted CY of imported select fill material at unit price listed in schedule above. Prior to use, existing material is required to be moved and stockpiled to allow demolition of Basin 2 and surveying of pile caps and piles prior to blending and placement.

\$ [150,000]
(Price in figures)

\$ one hundred fifty thousand
(Price in words)

1. **Bid Alternate B:** As part of the Lump Sum Base Bid, Contractor is instructed to provide property insurance in accordance with the requirements of the General Conditions and Supplemental Conditions, paragraph 5.06.

For this Bid Alternate, Owner will provide property insurance as described in the General Conditions and Supplemental Conditions, paragraph 5.06. Contractor is instructed to provide a price reduction for not providing said property insurance and comply with Owner's provided property insurance as described.

\$ [200,000]
(Price in figures)

\$ Two hundred thousand
(Price in words)

ARTICLE 7 - TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially completed, and will be completed and ready for final payment (Final Completion) in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in Article 4, Document 00520, Agreement, including the specified number of allowance days for Owner-caused delays.

7.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in Article 4, Document 00520, Agreement.

ARTICLE 8 - ATTACHMENTS TO THIS BID

8.01 The following documents are attached to and made a condition of this Bid:

- A. Electronic Contract Documents Release (Section 00411); ✓
- B. Required Bid security in the form of cash, a certified or bank check, or a Bid Bond issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions (Section 00432); ✓
- C. List of Subcontractors (Section 00434); List of Equipment Manufacturers (Section 00436); and other individuals and entities required to be identified in this Bid; ✓
- D. Non-Collusion Affidavit (Section 00456); ✓
- E. Affirmative Action Program Certificate (Section 00452); ✓
- F. Declaration of Compliance Equal Benefits Ordinance (Section 00455); ✓
- G. Bid Preferences;
 - 1. Boycott of Arizona and Arizona Headquartered Businesses (Section 00457); ✓
 - 2. ESBE Requirements (Section 00462); ✓
- H. Bid Certification for the Payment of State & Local Taxes (Section 00454); ✓
- I. Certification of Drug-Free Workplace Requirements (Section 00458); ✓
- J. Debris Recycling Requirements (Section 00461); ✓
- K. (Optional) Green Contracting Survey (Section 00459); ✓

8.02 The Prequalification packages submitted previously by General Contractors, applicable Electrical Subcontractors, and applicable Pile Subcontractors are also made a condition of this Bid.

ARTICLE 9 - DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters or all capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 - BID SUBMITTAL

SUBMITTED on January 30, 2013.

State Contractor License Number 106793 (If applicable)

If Bidder is:

An Individual

Name (typed or printed): N/A

By: _____
(Individual's signature)

Doing business as: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

A Partnership

Partnership Name: N/A

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

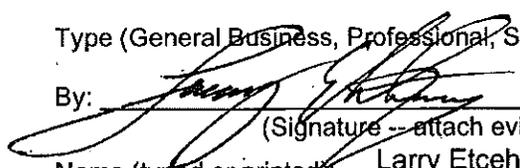
Phone Number: () _____ FAX Number: () _____

A Corporation

Corporation Name: C. Overaa & Co.

State of Incorporation: California

Type (General Business, Professional, Service, Limited Liability): General Business

By:  _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): Larry Etcheverry

Title: Vice President

Attest:  Ellen Hoffman, CFO
(Signature of Corporate Secretary, Acting Secretary or other officer)

Business address: 200 Parr Blvd., Richmond, CA 94801

Phone Number: () 510-234-0926 FAX Number: () 510-237-2435

Date of Qualification to do business is October 14, 1948

A Joint Venture

Joint Venturer Name: N/A

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone Number: () _____ FAX Number: () _____

Phone and FAX Number, and Address for receipt of official communications:

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF DOCUMENT

EXHIBIT C

City Code Chapter 3.60

Sacramento City Code

Up **Previous** **Next** **Main** **Collapse** **Search** **Print** **No Frames**

[Title 3 REVENUE AND FINANCE](#)

Chapter 3.60 CONTRACTS FOR PUBLIC PROJECTS**Article I. In General****3.60.010 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

“City manager” means the city manager of the city of Sacramento or an official specifically designated to act for the city manager. Authorization not specified in this chapter shall be made in writing by the city manager and filed with the city clerk.

“Maintenance” means recurrent, periodical, or scheduled work required to preserve a facility. It includes:

1. Work required to restore components which have deteriorated from wear and tear; and
2. Other work on a facility to prevent damage or deterioration to that facility which otherwise would be more costly to restore.

“Public project” means and includes the following:

1. A project for the erection, improvement, and remodeling of public buildings and works;
2. Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow;
3. Street, sewer or water work except maintenance or repair;
4. Furnishing supplies or materials for any such projects.

“Remodel” means alteration or conversion work on an existing facility to change its use, function, or layout.

“Repair” means restoration of a facility or components to such condition that it may be used effectively for its designated purpose, by overhaul, or replacement of constituent parts or materials that have deteriorated by action of the elements, vandalism, wear and tear which cannot be corrected through maintenance. Repair includes restoring or replacing components of facilities damaged by fire, storm, explosions, the elements, and other such disasters. (Ord. 2008-018 § 2; prior code § 58.01.101)

3.60.020 Determination of lowest responsible bidder.

Where any provision of the City Charter or this chapter requires competitive bidding and award of the contract for a public project to the lowest responsible bidder, the lowest responsible bidder shall be determined as follows:

A. In determining whether a bidder is responsible, consideration shall be given to: (1) the quality of a public project to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract; (3) the ability of the bidder to perform the contract within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (5) the quality of the bidder’s performance on previous contracts with the city.

B. The city council may by resolution, from time to time, adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If such standard minimum

qualifications are included in the bid specifications for a contract, no bidder shall be considered “responsible” unless it is determined to be responsible in consideration of the factors set forth in subsection A, and also meets such standard minimum qualifications at the time of bid opening. The adoption and use of standard minimum qualifications shall not in any way limit or affect the city’s ability to: (1) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive and/or responsible bidder; or (2) establish different and/or additional qualification requirements for specific contracts.

C. The city council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including, but not limited to, preferences to promote the participation and utilization of small and emerging business enterprises or local business enterprises in the city’s contracting for public projects. The lowest responsible bidder shall be the responsible bidder whose bid is responsive to the bid requirements, including without limitation any small and emerging business enterprise program requirements or local business enterprise program requirements included in the bid specifications, and whose bid price is the lowest, after all bid prices are calculated to include any applicable bid price preferences. (Ord. 2012-011 § 2; Ord. 2002-013 § 2; Ord. 99-007 § 3; prior code § 58.01.102)

3.60.030 Contract splitting prohibited.

It is unlawful to split or separate into smaller units any requirement for the undertaking of a public project, for the purpose of evading the provisions of this chapter.

Splitting or separating a transaction shall mean and include reducing the size of the public project to be furnished to the city under circumstances where there is a reasonable knowledge that the remaining work after such reduction will be additionally required within the same budgetary term, that there are funds available for that project, and the sole purpose is to knowingly avoid formally calling for bids. (Prior code § 58.01.103)

3.60.040 Administrative procedures.

The city manager shall prepare, subject to approval by the city council, administrative procedures sufficient to carry out the intent of this chapter. Such procedures shall include methods for the utilization of informal bidding procedures for those contracts to which the formal competitive bidding requirements of this chapter are inapplicable. (Prior code § 58.01.104)

3.60.050 Collusion with bidder.

Any officer or employee of the city, or of any department thereof, who shall aid or assist a bidder in securing a contract for a public project at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the public project called for, or who shall knowingly accept work of a quality inferior to that called for by the contract, or to the receipt of a greater amount or different kind of work than has been actually received, shall be deemed guilty of a misdemeanor. (Prior code § 58.01.105)

3.60.060 Unauthorized contracts—Exceptions.

It is unlawful for any officer or employee to contract for a public project in behalf of the city, other than as herein prescribed. Any contracts or obligations to pay made contrary to the provisions of this chapter shall be null and void. (Prior code § 58.01.106)

3.60.070 Emergency contracts.

The city manager is hereby authorized, in behalf and in the name of the city, to negotiate and contract for public projects without advertising for bids when public interest and necessity demand immediate action, repair or replacement to safeguard life, health, or property, to permit the continued conduct of city operations or services, or to mitigate further damage.

Agreements executed pursuant to the authority conferred by this section shall not individually exceed one hundred thousand dollars (\$100,000.00). The form of all such agreements shall have been approved by the city attorney.

Upon award of any contract authorized by this section, the city manager shall present a report to the city council, at the next available meeting of the council, describing the emergency, the actions taken and the number and amount of contracts let. In those emergency circumstances where the potential cost may exceed the limit established by this section, the city manager shall immediately retain a contractor for initiation of the necessary emergency services and, at the next available council meeting, shall present a report as outlined above and include the additional remedial actions that have been identified, and the currently estimated costs. The council may contract for the additional emergency services or authorize the city manager to negotiate and execute change orders to the original contract or let additional contracts within limits then established by the city council. (Prior code § 58.01.107)

3.60.075 Exemption of the City of Sacramento from various provisions of the California Public Contract Code.

A. Intent. Senate Bill 974, Chapter 832 of Statutes, 2001, added Section 1100.7 to the Public Contract Code, which provides that all provisions of the Public Contract Code of the State of California apply to charter cities unless a particular city's charter or ordinances expressly exempt the city from those provisions. It is the position of the city that notwithstanding Chapter 832, it is exempt from a majority of the provisions of the Public Contract Code by virtue of its status as a charter city and its authority over matters which are municipal affairs, including, without limitation, provisions governing the process of contracting for public works and other projects, services and supplies, irrespective of the provisions of Chapter 832. It is the further position of the city that the provisions of the Sacramento City Charter, including, but not limited to, Section 10 and Article XIV (Sections 200 through 205), exempt the city from compliance with the Public Contract Code, except to the extent that the city charter or an ordinance or resolution adopted pursuant to the City Charter expressly requires compliance with particular provisions of the Public Contract Code. Nevertheless, it is the intention of the city council in enacting this section to specifically declare itself exempt from various provisions of the Public Contract Code by ordinance. Although subsection C of this section contains a list of specific inapplicable provisions, the list is not intended to be comprehensive or exclusive; rather, the city is exempt from any and all provisions of the Public Contract Code except as the city expressly chooses to subject itself to specific provisions as specified in this section, or where a particular provision has been finally judicially declared to be a matter of statewide concern.

B. Declaration of Exemption. The city declares that it is exempt from all provisions of the Public Contract Code of the State of California including, but not limited to, those provisions specified in subsection C of this section, except for:

1. Those Public Contract Code provisions that have been judicially declared to be matters of statewide concern in a final appellate court decision;
2. Those provisions specified in subsection D of this section;
3. Those provisions that are specifically and expressly included in and made applicable to the city by a contract;
4. Those provisions that the city specifically and expressly agrees are applicable to the city as a

condition to receipt of state funding or a required state approval; and

5. Those provisions that are made expressly applicable to the city by resolution adopted by the city council.

C. Inapplicable Public Contract Code Provisions. The city is exempt from the following provisions of the Public Contract Code:

1. Division 2, Part 1, Chapter 6, Sections 6100 through 6108, inclusive;
2. Section 7102;
3. Section 7103;
4. Section 7104;
5. Section 9203;
6. Division 2, Part 2, Sections 10100 et seq.;
7. Division 2, Part 3, Chapter 1, Sections 20100 et seq., except as set forth in subsection D of this section;

8. Division 2, Part 3, Chapter 1.5, Sections 20930 et seq.;
9. Division 2, Part 3, Chapter 2, Sections 22000 et seq.;
10. Division 2, Part 3, Chapter 2.5, Sections 22050 et seq.;
11. Division 2, Part 3, Chapter 3, Sections 22101 et seq.

D. Applicable Provisions. Notwithstanding the provisions of subsection C of this section, the following provisions of Division 2, Part 3, Chapter 1 of the Public Contract Code of the State of California shall be applicable to the City of Sacramento:

1. Section 20103.5;
2. Section 20103.8;
3. Section 20104.50;
4. Section 20104.70;
5. Article 27;
6. Article 29;
7. Article 30;
8. Article 31;
9. Article 32;
10. Article 54;
11. Article 56;
12. Article 57;
13. Article 58;
14. Article 59. (Ord. 2003-020 § 1)

Article II. Authority of City Manager

3.60.080 Authority of city manager.

Subject to the availability of funds and the procedures set forth in this chapter, the city manager is authorized to bind the city, by written contract or purchase order, involving an expenditure under one hundred thousand dollars (\$100,000.00) in any one transaction, without first advertising therefor or obtaining specific authorization by the city council, for the undertaking of a public project required by the city. (Ord. 99-024 § 4; prior code § 58.02.201)

3.60.090 Award of contracts by city council.

Unless otherwise provided herein, all contracts for public projects involving an expenditure of one hundred thousand dollars (\$100,000.00) or more shall be awarded by the city council. Such contracts shall be formal written agreements executed by the city manager on behalf of the city. The signature by the city manager shall constitute his or her certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract. (Ord. 99-024 § 5; prior code § 58.02.202)

3.60.100 Control procedures—Documents required.

The city manager shall institute control procedures for the execution of contracts and purchase orders as required herein. The city attorney shall approve the form and legality of all formal written agreements prior to the execution thereof. (Prior code § 58.02.203)

Article III. Bid Procedure

3.60.110 When advertising required.

Where the cost of a public project required by the city equals or exceeds the sum of one hundred thousand dollars (\$100,000.00), the city manager shall request the city clerk to call for formal bids therefor by advertising at least once not less than fifteen (15) calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, trade journals, minority or trade oriented publications, or other media available to minority or women's business enterprises that are interested in participating in the project. The city manager, when he or she deems it to be advisable, may request more than one advertising of the call for bids. (Ord. 2001-023 § 2; prior code § 58.03.301)

3.60.120 Independent price determination.

No person submitting any bid or proposal in connection with the procurement of supplies or services by city shall:

- A. Propose or bid prices which have not been arrived at independently without consultation, communication, or agreement with any other bidder, offeror or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed;
- B. Unless otherwise required by law, prior to opening of the bids or proposals, knowingly disclose any price bid or proposed to any other bidder, offeror or to any competitor;
- C. Make any attempt to induce any other person, firm or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition;
- D. Knowingly be interested in more than one bid as the principal bidder; provided, however, subcontract bids to the principal bidders are excluded from this subsection.

In the case of joint venture bids, the joint venture and each and every member of the joint venture shall

for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any violation of this section shall be unlawful and a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Any bid received or contract awarded where there was a violation of this section shall be a nullity and the city council shall dispose of the matter in the same manner as if the bidder involved had failed to enter the contract after award. (Prior code § 58.03.302)

3.60.130 Standard specifications.

The city council shall, from time to time, adopt standard specifications setting forth procedures and controls for public project contracts and the bidding and award thereof. Such specifications shall conform to the purposes and intent of this chapter, and shall include the following:

- A. Bid forms and procedures governing the proper completion thereof by the bidder;
- B. Bid security forms, procedures for the use thereof, the forfeiture of same in certain cases, and the return thereof to the unsuccessful bidder;
- C. Faithful performance bond forms and procedures for the use thereof;
- D. Payment bond forms and procedures for the use thereof;
- E. Labor and material bond forms and procedures for the use thereof;
- F. Procedures governing the time of completion of the contract, for the extension of such time in certain cases, and for the use of liquidated damages;
- G. Procedures governing a failure of completion by the contractor, payment of the contractor for work performed in the event of such failure, and the completion of such contract in such instance. (Prior code § 58.03.303)

3.60.140 Opening of bids—Awards.

All bids shall be sealed, identified as bids on the envelope, and shall be submitted to the city clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the city clerk or designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. Within the time set forth in the specifications, the contract shall be awarded by the city council to the lowest responsible bidder, as defined herein. The city council may reject any and all bids and waive any informalities or minor irregularities in the bids. (Prior code § 58.03.304)

3.60.150 Alternative award upon failure of bidder to enter into contract.

If the bidder to whom the contract is awarded shall fail to enter into the contract as required, the council may declare the award to that bidder a nullity, and award the contract to the next lowest responsible bidder, or it may readvertise for bids, or dispense with competitive bidding, as hereinafter provided. (Prior code § 58.03.305)

3.60.160 Readvertisement.

In the event the city council rejects any and all bids, or in the event the bidder to whom a contract award is made fails to enter into the contract as required and the council does not make an award to the next lowest responsible bidder, the council may readvertise for bids, or may dispense with competitive bidding, as hereinafter provided. (Prior code § 58.03.306)

Article IV Exceptions to Competitive Bidding

3.60.170 Generally.

The restrictions and provisions of this chapter requiring the award of contracts by competitive bidding shall not apply:

- A. To any transaction where maintenance, remodel, or repair work is to be performed by city employees;
- B. When, after advertising for bids as required herein, no valid bids are received;
- C. When, after receiving bids, the city council rejects any and all of such bids, or when the bidder to whom an award is made fails to enter into the contract as required and the council does not make an award to the next lowest bidder, as provided herein;
- D. When, upon a two-thirds vote of the city council, it is determined that it is in the best interests of the city to suspend competitive bidding for any contract;
- E. When any contract is entered into pursuant to or under any special assessment proceedings wherein competitive bidding procedures are specified by laws of the state of California;
- F. When an emergency contract is entered into by the director of the department of public works pursuant to the procedures specified in Section 3.60.070 of this chapter. (Ord. 2000-017 § 4(a)(10); prior code § 58.04.401)

Article V Wages Paid Under Contract with City

3.60.180 Payment of prevailing rate of wages—Maximum hours of labor—Penalties.

Every contract for any public project to be performed within the state at the expense of the city, or paid out of city moneys, whether such work be done directly under contract award, or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or by any other arrangement whatsoever, must provide, in addition to other provisions required by law, that any person performing labor in the state in execution of such contracts, subcontract, subpartnership, day labor, station labor, piece work or any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to contracts for any public project originally awarded or executed in an amount of twenty-five thousand dollars (\$25,000.00) or less or to materials for which no manufacturing plant exists in the city, or to standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages required in contracts for public projects shall be the general prevailing rate of wages for the area in which the city is located as determined by the director of the department of industrial relations pursuant to Labor Code Section 1773. Every contract for which the payment of the general prevailing rate of wages is required shall provide that the determination of the director of the department of industrial relations in force at the time the notice to bidders is published with respect to the general prevailing rate of wages in private employment in the city for similar work shall be binding upon the parties any contract awarded as a result of such notice. If any worker is paid less than the general prevailing rate of wages for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the contract, the city may withhold contract payments equal to the amount of underpayment. In addition, the contractor shall forfeit as a penalty to the city not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the general prevailing rate of wages, as determined by the director of the department of industrial relations, for the work or craft in which the worker is employed by the contractor

or any subcontractor for any work done under the contract, and every contract shall have inserted therein a clause to that effect.

In the performance of the contract, eight hours shall be the maximum hours of labor on any calendar day, and forty (40) hours shall be the maximum hours of labor during any one calendar week. Work performed by employees of contractors in excess of eight hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. The contractor shall as a penalty forfeit twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of this section.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited and amounts due in accordance with this section, and in all cases where the contract does not provide for a money payment by the city to the contractor, the city shall provide notice of the violation to the director of industrial relations, division of labor standards enforcement, for commencement an enforcement action pursuant to California Labor Code, Section 1775.

Out of any money withheld or recovered, pursuant to this section, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers. At the expiration of ninety (90) days after the completion of the contract and the formal acceptance of the project, all penalties or forfeitures withheld or recovered pursuant to this section shall be deposited in the city's general fund.

Every contractor or subcontractor, or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest who is found by the city manager to be in willful violation of the provisions of this chapter with intent to defraud shall be ineligible to bid on or receive a contract paid out of moneys deposited in the city's treasury for a period of not more than five years from the date such determination is made by the city manager.

The officer, board, commission or council authorized to let any contract for any public project to be performed for the city shall include in the specifications setting forth the terms of performance of the contract statement that a copy of the current director of industrial relations prevailing wage determination is on file in the city clerk's office, and will be made available to any interested party on request.

Every contract falling under the terms of this section shall contain a provision that requires the contractor to insert into every subcontract or subagreement entered into, provisions identical with the provisions set forth in the contract pursuant to this chapter regarding compliance with the requirements for wage rates, hours of labor, and requirements for the employment of apprentices. The stipulations shall fix the responsibility of compliance with Sections 3.60.180 and 3.60.190 of this chapter with the prime contractor. (Prior code § 58.05.501)

3.60.190 Apprentices.

Nothing in this chapter shall prevent the employment of properly registered apprentices upon public projects whether such work be done directly under contract award, or indirectly by or under subcontract, partnership, day labor, station work, piece work, or by any other arrangement whatsoever. Every such apprentice shall be paid the applicable apprentice prevailing per diem wage rate according to an apprentice wage progression schedule available from department of apprenticeship standards (DAS). Apprentices employed, can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Only apprentices who are in training under apprenticeship standards and who have written apprentice agreements may be

employed on public projects in apprenticeable occupations.

All contractors or subcontractors who choose to employ apprentices shall comply with Section 1777.5 et seq., of the California Labor Code. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of sex, race, religion, national origin, sexual preference, physical condition, marital status, age, ancestry, or color. The prime contractor shall be responsible for complying with these provisions for all apprenticeable occupations.

In the event that a contractor or subcontractor who chooses to employ apprentices fails to comply with the provisions of this section the city may report the contractor or subcontractor to the director of industrial relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code. (Prior code § 58.05.502)

3.60.195 Volunteers.

A. Section 3.60.180 shall not apply to any of the following work:

1. Any Work Performed by a Volunteer. For purposes of this section, “volunteer” means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

a. An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

b. An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

c. An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time: (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project; or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

2. Any Work Performed by a Volunteer Coordinator. For purposes of this section, “volunteer coordinator” means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual’s primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

3. Any work performed by members of the California Conservation Corps or the Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

B. All work performed pursuant to this section for which a contractor’s license is required shall be performed under the supervision of a licensed contractor classified and qualified to engage in the type of work performed and who is present at the location of the project for which the work is performed.

C. This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted ordinance, which is enacted and effective before January 1, 2017, deletes or extends that date. (Ord. 2011-042 § 2; Ord. 2011-041 § 2; Ord. 2008-018 § 3)

Article VI. Change Orders

3.60.200 Definitions.

As used in this article:

“Change order” means an amendment to the terms of a contract for a public project.

“Contract amount” means the price for which a contract for a public project is originally awarded, as amended by any change orders. (Ord. 2010-002 § 2; prior code § 58.06.601)

3.60.210 Authority of city manager.

A. Change Orders that Increase the Contract Amount.

1. For contracts originally awarded for a price of less than one hundred thousand dollars (\$100,000.00):

a. The city manager shall have the authority to issue change orders that increase the contract amount, provided that the contract amount remains less than one hundred thousand dollars (\$100,000.00).

b. City council approval is required for a change order that increases the contract amount to one hundred thousand dollars (\$100,000.00) or more.

c. After the city council approves a change order that increases the contract amount to one hundred thousand dollars (\$100,000.00) or more, the city manager shall have the authority to issue change orders that further increase the contract amount, provided that the sum of all such change orders issued by the city manager shall not exceed twenty-five thousand dollars (\$25,000.00).

2. For contracts originally awarded for a price of at least one hundred thousand dollars (\$100,000.00), but less than two hundred fifty thousand dollars (\$250,000.00), the city manager shall have the authority to issue change orders that increase the contract amount, provided that the sum of all such change orders issued by the city manager shall not exceed twenty-five thousand dollars (\$25,000.00).

3. For contracts originally awarded for a price of at least two hundred fifty thousand dollars (\$250,000.00), but less than one million dollars (\$1,000,000.00), the city manager shall have authority to issue change orders that increase the contract amount, provided that the sum of all such change orders issued by the city manager shall not exceed ten (10) percent of the original contract price.

4. For contracts originally awarded for a price of at least one million dollars (\$1,000,000.00) but less than ten million dollars (\$10,000,000.00), the city manager shall have authority to issue change orders that increase the contract amount, provided that the sum of all such change orders issued by the city manager shall not exceed eight percent of the original contract price.

5. For contracts originally awarded for a price of ten million dollars (\$10,000,000.00) or more, the city manager shall have the authority to issue change orders that increase the contract amount, provided that the sum of all such change orders issued by the city manager shall not exceed six percent of the original contract price.

B. Notwithstanding the foregoing, any single change order that increases the contract amount by more than one hundred thousand dollars (\$100,000.00) shall require city council approval.

C. The city manager is authorized to issue change orders that increase the contract amount in excess of the limitations set forth above, to the extent that it becomes reasonably necessary in the judgment of the city manager to take such action to:

1. Prevent an interruption of work or services that would result in a substantial increase in cost to the city; or

2. Protect any person, property, equipment, materials or the environment from substantial and immediate risk of damage or injury from any cause, or, where damage or injury has occurred, prevent the

occurrence of further damage, injury or deterioration.

For any action taken pursuant to this subsection, the city manager shall present a report to the city council describing the action taken and the reason(s) for such action as soon as reasonably possible, but in any event not later than thirty (30) days after taking such action.

D. If the city manager issues one or more change orders to increase the contract amount pursuant to the city manager's authority specified in this article, and the city council subsequently ratifies the change order(s) previously issued by the city manager, the city manager's authority to issue change orders as specified in this article shall be reset.

E. In issuing a change order pursuant to the approval authority specified in this section, the city manager shall not be required to obtain city council approval for the transfer of funds necessary to pay for the change order from any contingency previously approved for the contract by the city council.

F. For contracts in any amount, the city manager shall have the authority to issue change orders that decrease or do not change the contract amount. (Ord. 2010-002 § 2; prior code § 58.06.602)

3.60.220 Limitation.

The authority of the city manager to issue change orders as specified in this article shall be limited to changes that do not exceed the general scope of the original contract unless in the judgment of the city manager a change order exceeding the general scope of the original contract is necessary to protect any person, property, equipment, materials or the environment from the risk of damage or injury, or, where damage or injury has occurred, to prevent the occurrence of further damage, injury or deterioration. (Ord. 2010-002 § 2; prior code § 58.06.603)

3.60.230 Assessment districts.

Notwithstanding anything to the contrary in the foregoing, the authority of the city manager to issue change orders for assessment district proceedings shall be governed by the provisions of any statute, ordinance or other law authorizing such proceeding. (Ord. 2010-002 § 2; prior code § 58.06.604)

3.60.240 Variance.

The city council may by resolution modify the above limitations of the city manager's authority to issue change orders for a specific identified contract or contracts where the city council finds that the circumstances are such that a variance is appropriate. (Ord. 2010-008 § 2; Ord. 2010-002 § 2; prior code § 58.06.605)

Article VII. Substitution of Securities

3.60.250 Fee for substitution of securities for withheld funds on contracts.

In any case where a contractor requests substitution of securities for withheld funds pursuant to Section 22300 of the Public Contract Code any and all costs, fees or other charges which are authorized or required shall be paid by the contractor. (Prior code § 58.07.701)

Article VIII. Participation of Small and Emerging Business Enterprises and Local Business Enterprises

3.60.260 Small and emerging business enterprise (SBE/EBE) program and local business enterprise

(LBE) program.

The city council may from time to time adopt by resolution a program or programs to promote and provide incentives for the participation of small and emerging business enterprises, local business enterprises, or both, in city contracts or agreements awarded under the provisions of Chapters 3.56, 3.60, or 3.64. For purposes of this article, the terms “SBE,” “EBE,” and “LBE” shall refer to any business entity that is defined as a SBE, EBE, and LBE, respectively. The city manager may from time to time adopt administrative procedures to implement the provisions of the program(s). (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.801)

3.60.270 SBE/EBE and LBE participation levels.

The specifications or request for bids or proposals for any contract or agreement awarded under the provisions of Chapter 3.60 or 3.64 may establish minimum level(s) for participation in the contract or agreement by one or more of the following: SBEs, EBEs, or LBEs. No bidder or proposer on the contract or agreement shall be considered a responsive bidder or proposer unless its bid or proposal meets the minimum SBE, EBE, or LBE participation level(s) established for the contract or agreement. A bidder's or proposer's compliance with this section shall be determined in accordance with applicable provisions of the SBE/EBE and LBE program(s), and their respective administrative procedures authorized by Section 3.60.260. (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.802)

3.60.280 Sheltered market program.

The SBE/EBE program(s), LBE program(s), and their respective administrative procedures authorized by Section 3.60.260 may provide for a sheltered market program that restricts bidding and awards for contracts and agreements that do not exceed the contract approval authority of the city manager under Sections 3.56.080, 3.60.080, and 3.64.030 to one or more of the following: EBEs, SBEs, or LBEs. (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.803)

3.60.290 MBE/WBE/DBE bid requirements.

Sections 3.60.260 through 3.60.280, inclusive, shall not apply to any contract or agreement awarded under or funded by any federal or state program that includes minority business enterprise (MBE), women business enterprise (WBE) and/or disadvantaged business enterprise (DBE) participation goals. Such contracts or agreements shall be awarded in accordance with the applicable MBE, WBE and/or DBE requirements and procedures. (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.804)

3.60.300 Provision of false information a misdemeanor.

- A. No person shall submit false information to the city, or to the city's agent, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a SBE, EBE, MBE, WBE, DBE, or LBE.
- B. No person shall submit false information to the city or the city's agent in connection with any bid or proposal regarding the SBE, EBE, MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the SBE, EBE, MBE, WBE, DBE, or LBE participation levels included in a city contract or agreement.
- C. Any person who violates this section is guilty of a misdemeanor punishable as provided in Section 1.28.010(A) of this code. The foregoing criminal sanctions shall be in addition to any other remedies

authorized by any other provisions of this code and/or provided for by any federal, state or local law or regulation. (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.805)

3.60.310 Information to be provided under penalty of perjury.

A. Whenever any business entity, including a sole proprietorship, submits information to the city, or to an agent of the city, for the purpose of establishing such entity's status as a SBE, EBE, MBE, WBE, DBE, or LBE, such information shall be submitted under penalty of perjury.

B. Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the SBE, EBE, MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the SBE, EBE, MBE, WBE, DBE, or LBE participation goals included in a city contract or agreement, such information shall be submitted under penalty of perjury. (Ord. 2012-011 § 3; Ord. 2010-017 § 2; Ord. 99-007 § 4; prior code § 58.08.806)

Article IX. Debarment of Contractors

3.60.320 Application.

This article shall apply to all contracts let by the city, including without limitation purchases and contracts for supplied and nonprofessional services (Chapter 3.56 of this title), contracts for public projects (this chapter), and agreements for professional services (Chapter 3.64 of this title). (Prior code § 58.09.901)

3.60.330 Definitions.

For the purpose of this article, the following definitions shall apply:

Affiliates. Persons are "affiliates" if one person has the same or substantially the same management, ownership or control or one or more of the same principal employees as the other person.

"Debarment" means any action taken by the city manager, or a hearing examiner on appeal, pursuant to this article, or by another local agency or the state or federal government, to suspend or render a person ineligible to bid upon, be awarded, or perform subcontracts on, public contracts.

"Person" means any person, individual, group, association, firm, corporation, partnership, company, or other entity.

"Predecessor-in-interest" means a person whose rights or assets and/or debts or obligations are acquired or assumed by another person.

"Principal" means any officer, director, owner, shareholder, partner, responsible managing officer or partner, responsible managing employee, or person with primary management or supervisory responsibilities, including any person who has a substantial influence or substantive control over performance of a public contract.

"Public contract" means any purchase contract or agreement, or any contract or agreement for construction of a public project or performance of professional or nonprofessional services, that is awarded or entered into by any federal, state or local agency, including the city.

"Successor-in-interest" means a person who acquires the rights or assets and/or assumes the debts or obligations of another person. (Prior code § 58.09.902)

3.60.340 Debarment—Effect.

Notwithstanding any other provision of this code:

A. The city manager, or a hearing examiner on appeal, may debar any person from bidding upon or being

awarded any contract or agreement with the city, or from being a subcontractor or supplier at any tier upon such contract or agreement, in accordance with the procedures established by this article.

B. During the time period that the debarment pursuant to this article of any person is in effect, the city shall not accept bids or proposals from, enter into contracts or agreements with, or allow performance of subcontracts or supply contracts by, such person, in accordance with the procedures established by this article.

C. During the time period that the debarment of any person by a state or federal agency is in effect, the city shall not, in conjunction with any city project receiving funds from such state or federal agency, accept bids or proposals from, contract with, or allow performance of subcontracts or supply contracts by, such person, whether or not such person has been debarred pursuant to this article. (Prior code § 58.09.903)

3.60.350 Notice.

Whenever notice is required to be given under this article, it shall be deemed effective on the day such notice is either personally delivered or deposited in the U.S. mail, first class postage prepaid and addressed to the last known address of the person to be notified. (Prior code § 58.09.904)

3.60.360 Grounds for debarment.

Debarment may be imposed on a person by the city manager, or a hearing examiner on appeal, in accordance with the procedures established by this article on any of the following grounds:

A. Commission by such person of any act of:

1. Fraud, bribery, collusion, or conspiracy;
2. Bid rigging, price fixing or any other act in violation of any federal, state or local law in connection with the bidding upon, award or performance of any public contract; or
3. Embezzlement, theft forgery, falsification or fabrication of records, or perjury.

B. Submission by such person of a bid, proposal, or other document pertaining to or required by a city contract or agreement, or pertaining to or required by any provision of this code, which is known by such person to be false or contain false information.

C. Such person knowingly doing business with a debarred third person in performance of any city contract or agreement awarded after debarment of said third person.

D. More than one occurrence of substandard performance by such person on any city contract or agreement, including, but not limited to: (1) a material breach of the contract or agreement; (2) a failure to complete work required under the contract or agreement on time and/or within budget when such failure is attributable to such person's negligent or wrongful actions or inactions; (3) substandard quality of work; or (4) any negligent or wrongful failure to cooperate with the city such that timely, satisfactory completion of the work was jeopardized. The occurrences of substandard performance described herein may occur on the same contract or agreement or on different contracts or agreements.

E. One or more serious violation by such person, during the performance of any city contract or agreement, of any labor or safety statutes, regulations or standards including, but not limited to, applicable local, state or federal statutes, regulations or standards governing prevailing wage, occupational safety and health, and

nondiscrimination requirements.

F. One or more serious violation by such person of any law or regulation governing the handling, transfer, storage or disposal of hazardous materials or hazardous waste.

G. One or more serious violation by such person of any law or regulation governing the handling, transfer, storage or disposal of solid waste generated in connection with construction or demolition.

H. A violation by such person of any law or regulation governing conflict of interest.

I. The issuance to such person, within a two year period, of three final administrative penalty orders for violating any one section of Chapter 12.20 of this code. Multiple administrative penalty orders issued for continuing violations occurring on the same calendar day shall be considered one administrative penalty order for purposes of this section. (Ord. 2002-004 § 11, 2002; Ord. 98-002 § 3; prior code § 58.09.905)

3.60.370 Existence of grounds.

A. Existence of grounds for debarment of a person as described in Section 3.60.360 of this chapter may be determined to exist by the city manager, or by a hearing examiner on appeal, if, not more than three years prior to the date that a written notice of proposed debarment is provided to such person pursuant to Section 3.60.400(A) of this chapter:

1. Such person has been convicted of a criminal charge for any act or omission described in Section 3.60.360 of this chapter, whether entered upon a verdict or a plea, including a plea of no contest;
2. A final civil judgment arising out of any act or omission described in Section 3.60.360 of this chapter has been entered against such person;
3. A significant penalty or sanction, including, but not limited to, monetary penalties and other sanctions, such as debarment, has been imposed on such person by a federal, state or local agency for any act or omission described in Section 3.60.360 of this chapter; or
4. Such person has committed one or more acts or omissions described in Section 3.60.360 of this chapter, and, based on a preponderance of evidence in the record of facts and information presented, the city manager, or a hearing examiner on appeal, finds that such grounds exist.

B. Conduct may be imputed to a person for whom debarment is being considered as follows:

1. An act or omission, as described in Section 3.60.360 of this chapter, of any principal, may be imputed to the person when the conduct occurred in connection with such principal's performance of duties for or on behalf of the person, or with the person's knowledge, approval, or acquiescence.
2. An act or omission, as described in Section 3.60.360 of this chapter, of a person may be imputed to any principal who participated in, knew of, or had reason to know of the person's conduct.
3. An act or omission, as described in Section 3.60.360 of this chapter, of one person in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of such participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

C. In determining whether to debar a person, and the duration of any debarment, the city manager, or a hearing examiner on appeal, may consider, in addition to any other relevant factors, the following:

1. The degree to which such person cooperated fully with local, state or federal authorities during any investigation and/or any administrative or judicial proceeding which forms the grounds for debarment.
2. The degree to which such person has paid or has agreed to pay all criminal, civil, and

administrative liability resulting from any of the acts or omissions set forth under Section 3.60.360 of this chapter, including any investigative or administrative costs incurred by any government agency, and has made or has agreed to make full restitution for any damages incurred as a result of any such acts or omissions.

3. Whether such person had effective standards of conduct and internal control systems in place at the time of any of the acts or omissions set forth under Section 3.60.360 of this chapter or had adopted such procedures prior to any investigation of such acts or omissions.

4. Whether such person brought any of the acts or omissions set forth under Section 3.60.360 of this chapter to the attention of the appropriate government agency or agencies in a timely manner.

5. Whether such person has fully investigated the circumstances surrounding any of the acts or omissions set forth under Section 3.60.360 of this chapter and, if so, has made the result of the investigation available to the city.

6. Whether such person has taken appropriate disciplinary action against the individuals responsible for any of the acts or omissions set forth under Section 3.60.360 of this chapter.

7. Whether such person has implemented or agreed to implement remedial measures to prevent a recurrence of any of the acts or omissions set forth under Section 3.60.360 of this chapter, including, but not limited to, new or revised review and control procedures and ethics training programs, as well as any other measures identified by any government agency.

8. Whether such person has had adequate time to eliminate the circumstances within their organization that led to any of the acts or omissions set forth under Section 3.60.360 of this chapter. (Prior code § 58.09.906)

3.60.380 Scope of debarment.

A. A debarment of a group, association, firm, corporation, partnership, company, or other entity under this article constitutes debarment of all of such entity's divisions and other organizational elements from all city contracts and agreements, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements.

B. The debarment of a person may include any existing affiliate of the person where the affiliate is specifically named and given notice of the proposed debarment and an opportunity to respond. The debarment shall automatically include any successor-in-interest or any affiliate of the debarred person formed after such debarment.

C. Debarment of any person includes debarment of any business entity, whether or not such business entity was in existence at the time of such debarment, for which the debarred person acts as a principal during the debarment period. (Prior code § 58.09.907)

3.60.390 Period of debarment.

A. Debarment shall be for a period commensurate with the seriousness of the ground(s), as determined by the city manager, or by a hearing examiner on appeal. An initial period of debarment shall not exceed three years.

B. Prior to expiration of the time period of any debarment imposed under this article, the city manager may review the record of the evidence presented during the debarment proceedings, as well as any additional facts or information relevant to a review of the debarment. The city manager may extend the existing debarment, for successive additional periods of up to two years each, if the city manager determines that such extension is necessary to protect the public interest. If the city manager determines that debarment for an additional period is necessary, the city manager shall follow the procedures established by Section 3.60.400 of

this chapter before imposing such extension.

C. Unless the city manager has extended the debarment pursuant to subsection B of this section, the debarment shall automatically terminate upon expiration of the debarment period. (Prior code § 58.09.908)

3.60.400 Debarment procedures.

A. Prior to debarring any person under this article, the city manager shall mail by certified or registered mail, return receipt requested, or deliver by personal service a written notice of the proposed debarment to the person proposed to be debarred, hereinafter referred to as "respondent." Such notice shall contain the following:

1. Notice that a debarment is being considered;
2. The grounds for the proposed debarment, in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
3. The potential period of the debarment;
4. The city's procedures governing debarment; and
5. The address to which a request for a hearing and/or information and argument in opposition to the proposed debarment should be delivered or mailed.

B. Within thirty (30) days after personal service or mailing of the notice of proposed debarment, the respondent or the respondent's representative may submit in writing a request for a hearing and/or information and argument in opposition to the proposed debarment. Such written request and/or information and argument shall also specify the address to which subsequent notices and other communications to the respondent should be mailed.

C. If the respondent requests a hearing in accordance with subsection B of this section, the city manager shall, within thirty (30) days after receipt of such request, schedule an informal hearing at which the respondent or the respondent's representative shall have a reasonable opportunity to provide information and argument, including the presentation and questioning of witnesses, to the city manager. The city manager shall mail the respondent, by certified or registered mail, return receipt requested, written notice of the time, date, and location of such hearing, which shall be held no sooner than ten (10) days from the date of such notice of hearing.

D. The city manager's debarment decision shall be made within thirty (30) days after expiration of the thirty (30) day period specified in subsection B of this section, or within thirty (30) days after a hearing is held, whichever is later. If the city manager decides it is in the best interest of the city to impose debarment, such decision shall be in writing, shall contain findings of fact and shall specify the grounds for debarment based on the record of facts and information presented to the city manager.

E. A copy of the decision by the city manager shall be mailed to the respondent by certified or registered mail, return receipt requested, no later than five days after the decision is made. If the city manager decides to impose debarment, the decision shall specify the period of debarment. Except in cases where the city manager's debarment decision is appealed in accordance with Section 3.60.410 of this chapter, the period of debarment shall begin on the date the decision is mailed to the respondent. In cases where the city manager's debarment decision is appealed in accordance with Section 3.60.410 of this chapter, the period of debarment shall begin on the date that the hearing examiner makes a decision to uphold or modify the city manager's debarment decision, in accordance with Section 3.60.410 of this chapter.

F. If the respondent fails to submit either a written request for a hearing or written information and argument in opposition to a proposed debarment within the thirty (30) day period specified in subsection B of this section, or if respondent fails to appear at the hearing, the decision of the city manager shall be final, and

shall not be subject to appeal pursuant to Section 3.60.410 of this chapter.

G. The city manager may reverse a decision to debar a person, or may reduce the scope or time period of debarment for any reason which obviates the need for the debarment or which indicates a shorter debarment period will adequately protect the public interest. Such reasons include, but are not limited to, the following:

1. Newly discovered material evidence;
2. Reversal of the conviction, civil judgment or administrative penalty or sanction upon which the debarment was based;
3. Bona fide change in ownership or management; or
4. Elimination of other grounds for which the debarment was imposed.

Such reversal or reduction in scope or time period of the debarment may be initiated by the city manager or by the debarred person upon a request submitted to the city manager. Such debarred person's request shall be in writing and supported by documentation. The debarred person shall provide any additional documentation requested by the city manager in order to review such request. The city manager shall notify the debarred person of the decision made upon any such request submitted by a debarred person within thirty (30) days after receipt of the request and/or any supporting documentation. A debarred person may not submit such a request until a minimum of twelve (12) months have elapsed after the period of debarment begins, and no more than one such request may be submitted during each successive twelve (12) month period thereafter. (Prior code § 58.09.909)

3.60.410 Appeal of a debarment decision.

A. Any appeal of a decision of the city manager regarding a debarment or the period or scope of debarment imposed shall be heard by a hearing examiner from a panel of hearing examiners designated for this purpose by resolution of the city council. Such hearing examiners shall serve at the pleasure of the city council. A hearing examiner may not be a city employee at the time of the hearing.

B. The respondent or respondent's representative may appeal any decision made by the city manager regarding a debarment or the period or scope of debarment imposed, by delivery to the city clerk of a written notice of appeal no later than thirty (30) days after the date that notice of the city manager's decision is mailed to the respondent. The written notice of appeal shall include a copy of the city manager's debarment decision and shall comply with the requirements set forth in Article I of Chapter 1.24 of this title.

C. If a valid notice of appeal is timely filed, the city clerk shall establish the date of the hearing before the hearing examiner, and shall mail the respondent written notice of the hearing which specifies the location, time and date of the hearing, which shall be held no sooner than ten (10) days from the date of such notice of hearing.

D. The hearing by the hearing examiner shall be a de novo hearing. The hearing examiner shall have no power to declare the provisions of this article unenforceable or unconstitutional, and the hearing examiner's decision shall be based on the criteria specified herein.

E. The proceedings at the hearing shall be reported by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. The hearing examiner may, upon request of either party, grant continuances for good cause shown, or upon his or her own motion. The hearing examiner shall administer the oath or affirmation. Government Code Section 11513, subsections (a), (b) and (c), as presently written or hereafter amended, shall apply to hearings under this section, except that relevant hearsay evidence may be sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

F. At the hearing, the city manager shall bear the burden of showing, by a preponderance of

evidence in the record of facts and information presented to the city manager and the hearing examiner, that there exist grounds for debarment in accordance with the provisions of this article. The hearing examiner may take official notice, either before or after the close of the hearing, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments.

G. After the close of the hearing, the hearing examiner may uphold, reverse, or modify the city manager's debarment decision. Any decision upholding or modifying the city manager's decision shall be in writing, shall contain findings of fact, shall specify the grounds for debarment based on the record of facts and information presented to the city manager and the hearing examiner, and shall specify any modifications to the city manager's decision. A copy of the hearing examiner's decision shall be mailed to the respondent no later than five days after the decision is made.

H. The decision of the hearing examiner shall be final. Judicial review of any decision made by a hearing examiner pursuant to this section shall be governed by Section 1094.5 of the Code of Civil Procedure. (Ord. 2003-14 § 1; prior code § 58.09.910)

3.60.420 Requirement to submit information.

The director of a city department, or his or her authorized designee, may require any person bidding or submitting a proposal on a city contract or agreement administered by such department to certify under penalty of perjury, as a part of any bid or proposal submitted, whether such person, including any principal, affiliate or predecessor-in-interest of such person:

A. Is currently under debarment, or has been under debarment at any time during the preceding three years, by any federal, state or local agency; and

B. Has, at any time during the preceding three years, been convicted, been subject to a civil judgment, or been subject to a penalty or sanction by any federal, state or local agency, for any act or omission described in Section 3.60.360 of this chapter. (Prior code § 58.09.911)

3.60.430 Doing business with debarred person.

In the performance of any city contract or agreement, no person shall knowingly utilize the services of any person who is debarred under this chapter. No person shall knowingly use or list, in any bid or proposal for a city contract or agreement, any subcontractor or supplier who is debarred under this chapter. Violation of this section may result in rejection of the bid or proposal, nonpayment by the city for work performed by the debarred person, annulment of award or termination of contract or agreement, issuance of a stop work order, debarment, or any other remedy provided by law. If a person lists a debarred subcontractor or supplier without knowledge of the debarment, such person will be allowed to substitute the debarred subcontractor or supplier listed in accordance with provisions of the contract governing contract changes. (Prior code § 58.09.912)

3.60.440 Renewal of existing contracts.

The city shall not renew or extend the term of any existing contract(s) or agreement(s) with any person who is debarred in accordance with this chapter, unless the city council upon a two-thirds vote determines that such renewal or extension is in the best interest of the city. (Prior code § 58.09.913)

3.60.450 List of debarred persons.

A. The city manager shall maintain a list of all persons who are currently debarred by the city pursuant to this article and the dates of each such debarment. Such list shall not include a person debarred by

another local agency or the state or federal government unless the person also has been debarred under this article. Such list shall be filed with the city clerk. The city clerk shall make the list available for inspection and copying by any person during reasonable hours and upon reasonable notice.

B. Said list shall be included in the bid solicitation for any city contract or agreement governed by this chapter or Chapters 3.56 or 3.64 of this title. By including such list, bidders and proposers shall be deemed to be on notice as to the persons debarred under this article. (Prior code § 58.09.914)

Article X Bid Protest Procedures

3.60.460 Application.

This article shall apply to bid protests relating to all contracts for public projects that are required to be awarded by the city council under the provisions of this chapter. This article shall not apply to any contract for a public project that may be awarded without city council authorization, or to any contract awarded under any other title of this code, unless specifically so provided in the request for bids for such contract. (Ord. 98-015 § 1; prior code § 58.10.1001)

3.60.470 Definitions.

For the purpose of this article, the following definitions shall apply:

“Bid” means any bid or proposal submitted on a contract.

“Bid protest” means a protest filed by a bidder on a contract in accordance with the provisions of this chapter, which protest (1) claims that one or more bidders on the contract should be disqualified or rejected for any reason, or (2) contests a city staff recommendation to award the contract to a particular bidder, or (3) contests a city staff recommendation to disqualify or reject one or more bidders on the contract. Only a bidder on a contract, or such bidder’s authorized representative, may file a bid protest on such contract.

“Bidder” means any person or firm that submits a bid on a contract.

“Contract” means any contract for a public project that is required to be awarded by the city council under the provisions of this chapter.

“Project manager” means the city staff member identified as the project manager or city staff contact person in the city’s request for bids.

“Protested bidder” means a bidder whom the bid protest claims should be disqualified or rejected.

“Protesting bidder” means a bidder on a contract, or such bidder’s authorized representative, who files a bid protest on the contract in accordance with the provisions of this chapter.

“Request for bids” means a written request or solicitation for bids to perform a contract issued by any department or division of the city. (Ord. 98-015 § 1; prior code § 58.10.1002)

3.60.480 Form of bid protest.

Bid protests shall be in writing, shall provide the name, address, telephone and telecopier numbers of the protesting bidder, shall identify the contract to which the bid protest pertains, including the contract number and date that bids for such contract were received by the city, and shall identify the city department or division issuing the request for bids. The bid protest shall identify and explain the factual and legal grounds for the protest, and shall include and attach any written materials that the protesting bidder wishes to have considered in determining the protest. Bid protests shall be addressed to the City Clerk, 915 I Street, Room 304, Sacramento, CA 95814. Any bid protest that is not submitted as provided herein shall be invalid and shall not be considered.

(Ord. 98-015 § 1; prior code § 58.10.1003)

3.60.490 Submission of bid protest to city.

Within the time period specified in Section 3.60.500 of this chapter, the bid protest shall be filed with the city clerk, and one additional copy of the bid protest shall be filed with the project manager at the address indicated in the request for bids. Bid protests may be filed by personal delivery, by registered or certified mail (return receipt requested) or by telecopy. At the time a bid protest is filed, the protesting bidder shall also deposit with the city clerk a bid protest fee in an amount established by resolution of the city council, which fee shall be used to pay the costs of a hearing and hearing examiner as set forth in Section 3.60.520(G) of this chapter. Any bid protest that is received by the city clerk and project manager after the time period specified in Section 3.60.500 of this chapter, or that is not accompanied by the bid protest fee, shall be untimely and invalid, and shall not be considered. (Ord. 98-015 § 1; prior code § 58.10.1004)

3.60.500 Time for filing a bid protest.

After bids for a contract are received and opened by city, city staff shall provide each bidder a written notice of the city staff's preliminary recommendation for award of the contract. Any bid protest related to the contract shall be received by the city clerk and project manager no later than five working days after the date that such written notice is received by the protesting bidder. (Ord. 98-015 § 1; prior code § 58.10.1005)

3.60.510 Investigation by city.

If a valid bid protest is timely filed, city staff shall provide a copy of the bid protest to the protested bidder(s), and shall investigate or cause to be investigated the bid protest. The protesting bidder and any other bidder on the contract shall promptly provide any information requested by city staff as part of such investigation. City staff shall prepare a written response to the bid protest, which shall be provided to the protesting bidder and protested bidder(s), if any, and to the hearing examiner as provided in Section 3.60.520 of this chapter. (Ord. 98-015 § 1; prior code § 58.10.1006)

3.60.520 Hearing of bid protest by a hearing examiner.

A. A bid protest shall be heard by a hearing examiner from a panel of hearing examiners designated for this purpose by resolution of the city council. Hearing examiners shall serve at the pleasure of the city council. A hearing examiner may not be a city employee at the time of the hearing.

B. After the hearing examiner is selected, city staff shall set the date of the hearing, and shall mail the protesting bidder and the protested bidder(s), if any, a written notice that specifies the location, time and date of the hearing, which shall be held no sooner than five days after the date of the notice of hearing. The hearing examiner may postpone the hearing at the request of city staff, the protesting bidder or the protested bidder(s), if any, or upon the hearing examiner's own motion. If the protesting bidder fails to attend the hearing, the bid protest shall be deemed withdrawn and shall no longer be considered by the city.

C. City staff shall provide the hearing examiner with copies of the request for bids, the bid protest, the response of the protested bidder(s), if any, the city staff response to the bid protest, and any other relevant materials or information in city staff's possession. Any written information that the protesting or protested bidders wish to have considered in determining the protest that has not already been submitted to city staff shall be provided to the hearing examiner and to city staff, and must be received by the hearing examiner and city staff at least two working days prior to the hearing in order to be considered.

D. Evidence or argument at the hearing shall be received only from the city, the protesting bidder and the protested bidder(s), if any, their witnesses and authorized representatives. The proceedings at the hearing shall be reported by a tape recorder. Any party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. The hearing examiner may, upon request of either party, grant continuances for good cause shown, or upon his or her own motion. The hearing examiner shall administer the oath or affirmation. Government Code Section 11513 shall apply to hearings under this section, except that relevant hearsay evidence may be sufficient in itself to support a finding of fact, even if it would not be admissible over objection in a civil action, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

E. At the hearing, the protesting bidder shall bear the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner may take official notice, either before or after the close of the hearing, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records or documents of the city or any of its departments.

F. After the close of the hearing, the hearing examiner shall issue a written decision that includes findings of fact based on the record of facts and information presented to the hearing examiner, and also includes a recommended determination of the bid protest based on the findings of fact. The hearing examiner shall mail a copy of the decision to the city, the protesting bidder and the protested bidder(s), if any.

G. The city shall use the bid protest fee deposited by the protesting bidder pursuant to Section 3.60.490 of this chapter to pay all costs incurred by the city for the hearing and hearing examiner. If these costs are less than the bid protest fee deposited by the protesting bidder, the city shall return any unexpended amounts to the protesting bidder. If these costs exceed the bid protest fee deposited by the protesting bidder, the city may invoice the protesting bidder for any additional unpaid costs, and the protesting bidder shall pay all costs due no later than thirty (30) calendar days after the date of the invoice. Any protesting bidder that fails to pay an invoice as required herein shall be barred from filing a bid protest on any subsequent city contract until the city receives payment of all costs due plus interest, at the rate of ten (10) percent per annum, beginning thirty (30) calendar days after the date of the invoice. (Ord. 2003-015 § 1; Ord. 98-015 § 1; prior code § 58.10.1007)

3.60.530 Consideration of bid protest by the city council.

If a valid bid protest is timely filed and subsequently has not been withdrawn by the protesting bidder or by operation of the provisions of this chapter, the city council shall consider the protest at a public meeting after the hearing examiner's decision has been received by all parties. The city council may hear the bid protest as part of the city council's consideration of the award of the contract to which the bid protest relates or may hear the bid protest as a separate item, provided that the city council shall decide the bid protest prior to awarding the contract, unless the city council exercises its discretion to reject all bids. The city council may take action on the bid protest at the meeting when the bid protest is considered or may continue the matter of the protest and contract award to a future date. (Ord. 98-015 § 1; prior code § 58.10.1008)

3.60.540 Conduct of the city council meeting.

The scope of the bid protest considered by the city council shall be limited to the issues and evidence set forth in the bid protest. The city council may exercise its discretion to take any of the following actions prior to taking final action on the bid protest:

- A. Adopt the findings of fact issued by the hearing examiner, without hearing factual evidence from any party; or
- B. Review the recording of the hearing, or a transcript thereof, prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner, without hearing factual evidence from any

party; or

C. In addition to or in lieu of reviewing the recording of the hearing, or a transcript thereof, hear factual evidence from any party prior to adopting or rejecting, in whole or in part, the findings of fact issued by the hearing examiner.

In addition to the foregoing actions, the city council may at any time exercise its discretion to reject all bids without adopting or rejecting the hearing examiner's findings of fact. The city council may take any action on the bid protest that is authorized by law, including adoption of the hearing examiner's recommended determination of the bid protest, adoption of a determination different from that recommended by the hearing examiner or the rejection of all bids without deciding the bid protest. The decision of the city council on a bid protest shall be the final administrative action on the protest. (Ord. 98-015 § 1; prior code § 58.10.1009)

3.60.550 Providing written notice.

Whenever this article requires that written notice be provided by or to the city or the hearing examiner, such written notice shall be provided by registered or certified mail (return receipt requested), by telecopy, by personal delivery or by any other method that provides reliable evidence of the date of receipt. Written notice provided by telecopy shall be deemed received on the date that it is transmitted and transmission is confirmed by the transmitting machine. Written notice provided by personal delivery shall be deemed received on the date of delivery. (Ord. 98-015 § 1; prior code § 58.10.1010)

3.60.560 Information in request for bids.

Every request for bids issued by the city for a contract subject to this article shall indicate that any bid protest related to the contract shall be filed and maintained in accordance with the provisions of this article, and that a copy of this article may be obtained from the department or division issuing the request for bids or the city clerk. (Ord. 98-015 § 1; prior code § 58.10.1011)



SMITH & BROCKHAGE, LLP

3480 BUSKIRK AVENUE, SUITE 200
PLEASANT HILL, CALIFORNIA 94523

Telephone: (925) 296-0636
Facsimile: (925) 296-0640

RANDALL M. SMITH
rms@smithbrock.com

February 13, 2013

Ian Pietz, P.E.
City of Sacramento
1395 – 35th Avenue
Sacramento, CA 95822

Re: Project: City of Sacramento Water Treatment Plants Rehabilitation
Contract No.: Z14006000
Bid Date: January 30, 2013
Our File No. 7594.1

Dear Mr. Pietz:

We represent C. Overaa & Co. (“Overaa”), the lowest bidder for the above-referenced contract. Overaa’s bid was about \$3 million less than the next low bid received by the City of Sacramento (the “City”), the bid of Balfour Beatty Infrastructure, Inc. (“Balfour Beatty”).

We are writing to respond to the letter Balfour Beatty’s attorney, P. Randolph Finch, Jr., sent to the City dated February 12, 2013.

In his letter, Mr. Finch claims that Overaa made a mistake in bidding the lump sum amount of \$113,776,000. In fact, Overaa made no mistake. Overaa bid the lump sum amount that it intended to bid: \$113,776,000.

Mr. Finch claims that Overaa must have made a mistake because the total of the prices set forth in Article 6.01B of the Bid Form, is \$104,957,594, which is \$8,818,406 less than the amount of Overaa’s Lump Sum Bid Price of \$113,776,000.

Mr. Finch conveniently ignores the fact that Specification section 00410, Article 6.01, provides, just above the Lump Sum Bid Price, that the Lump Sum Bid Price is to be **“inclusive of Items A, B and C below.”** (Emphasis added.) Mr. Finch also conveniently ignores the fact that Article 6.01C provides:

The Bidder declares that the costs for labor, materials, equipment and incidentals necessary for the following work **are included in the Lump Sum Bid Price listed above and that such costs are as listed below.** (Emphasis added.)

Mr. Finch also conveniently ignores Specification section 00200, Article 14.01, of the bid solicitation documents, which provides as follows:

14.01 Combination of Lump Sum and Unit Price.

A. Bidders shall submit total Bid price based on lump sums and unit prices at estimated quantities listed in the Bid Form.

Accordingly, the City makes it clear that the total bid price was to be a combination of lump sums set forth in Article 6.01B and the prices set forth in Article 6.01C.

As required by the City's bid form, and Article 14.01, Overaa included the amounts set forth in both Items B and C of the bid form in its Lump Sum Bid Price. Accordingly, if one adds the amounts set forth in Item B (which totals \$104,957,594) to the amounts set forth in Item C (which total \$8,818,406), one arrives at the total amount of \$113,776,000 – which is the amount of Overaa's Lump Sum Bid Price.

Mr. Finch relies on the language in 6.01B which states that: "The Bidder declares that the Lump Sum Bid Price consists of the sum of the work at each of the water treatment plants as shown below." This language must of course be read in the context of the other provisions of the Contract that Mr. Finch has chosen to ignore, which are discussed above. These other provisions clearly provide that the Lump Sum Bid Price includes both Items B and C. Accordingly, the language relied upon by Mr. Finch must be interpreted as requiring that the lump sums set forth in Article 6.01B are included in the Lump Sum Bid Price. The City's bid solicitation makes clear, however, that the Lump Sum Bid Price also includes the amounts set forth in Article 6.01C.

Mr. Finch also claims that "Overaa's bid must be construed as an offer to perform both plants for \$104,957,594.00, not the \$113,776,000.00 it listed as its Lump Sum Bid Price." This is clearly not true.

Ian Pietz, P.E.
City of Sacramento
February 13, 2013
Page 3

In case there are discrepancies between individual prices and the total price, owners include provisions in the bid stating how such discrepancies are to be resolved. Thus, for example, bidding documents sometimes provide that if there are discrepancies between unit prices and total price, the total of the unit prices shall prevail. *See, Pozar v. Department of Transportation*, 144 Cal.App.3d 269 (1983).

Here, the City has clearly stated what price will prevail in evaluating bids. Article 6.01A states: "In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price . . ." Accordingly, Mr. Finch's claim that Overaa's bid price must be construed to be the total of the Item B prices in Article 6.01 is directly contrary to the terms of the bid solicitation. As required by Article 6.01A, the City must evaluate bids based upon the Lump Sum Bid Price. The City is required to follow this provision of its bid solicitation. *See, Pozar v. Department of Transportation, supra*.

Overaa submitted a Lump Sum Bid Price of \$113,776,000. This was the low bid price for the contract. Accordingly, if award is made, the City is legally required to award the Contract to Overaa, the low responsive, responsible bidder.

Overaa respectfully requests that Balfour Beatty's protest be denied, and that the City award the contract to Overaa, the low responsive, responsible bidder.

Very truly yours,

SMITH & BROCKHAGE, LLP



Randall M. Smith

RMS:mt



March 28, 2013

~Sent Via Email and U. S. Mail~

City of Sacramento
1395 35th Avenue
Sacramento, CA 95822-2911
Attention: Ian Pietz, Senior Engineer

Marks, Finch, Thornton & Baird, LLP
4747 Executive Drive, Suite 700
San Diego, CA 92121-3107
Attention: Jason R. Thornton, Attorney At Law

Smith & Brockhage, LLP
3480 Buskirk Avenue, Suite 200
Pleasant Hill, CA 94523
Attention: Randall M. Smith, Attorney At Law

Institute for
Administrative Justice

3200 Fifth Avenue
Sacramento, CA 95817
www.mcgeorge.edu
Tel 916.739.7049
Fax 916.669.3005

**RE: Decision on Administrative Appeal
Bid Protest Hearing – In the matter of Balfour Beatty Infrastructure, Inc.
Vs. C. Overaa & Co., and the City of Sacramento**

To all parties:

Enclosed please find a decision from Hearing Examiner Skye Foster regarding the Balfour Beatty Infrastructure, Inc. bid protest. The hearing took place on February 28, 2013. If you have any questions, please contact me at the number below.

Sincerely,


Crystal McMurtry
Legal Assistant
916-739-7379

Enclosure

INSTITUTE FOR ADMINISTRATIVE JUSTICE
 UNIVERSITY OF THE PACIFIC
 McGEORGE SCHOOL OF LAW
 3200 Fifth Avenue
 Sacramento, CA 95817
 Telephone: (916) 739-7049

CITY OF SACRAMENTO

BID PROTEST HEARING

CITY OF SACRAMENTO WATER TREATMENT PLANTS REHABILITATION

In the matter of:)	Case No.: SACBP022813-1
)	
BALFOUR BEATTY)	
INFRASTRUCTURE INC.,)	DECISION ON ADMINISTRATIVE
Protesting Bidder,)	APPEAL WITH FINDINGS OF
)	FACT AND RECOMMENDED
vs.)	DETERMINATION
)	
C. OVERAA & CO.,)	
Protested Bidder,)	
and)	
)	
CITY OF SACRAMENTO,)	
Awarding Agency.)	
_____)	

I. INTRODUCTION

The bid protest by Balfour Beatty Infrastructure Inc. (Balfour Beatty) concerning the City of Sacramento's proposed award of contract no. Z14006000, City of Sacramento Water Treatment Plants Rehabilitation, to C. Overaa & Co. (Overaa) was heard before Skye Foster, Hearing Examiner for the Institute for Administrative Justice, University of the Pacific's McGeorge School of Law, on February 28, 2013, in Sacramento, California.¹

¹ The impartial hearing examiner was appointed pursuant to Sacramento Municipal Code section 3.60.520.

II. APPEARANCES

Terry Bundick, superintendent, appeared on behalf of Balfour Beatty with counsel, Jason Thorton. Jeff Naff, vice president of municipal infrastructure, appeared on behalf of Overaa with counsel, Randall Smith. Ian Pietz, senior engineer, Dan Sherry, supervising engineer, and Joe Robinson, senior deputy city attorney, appeared on behalf of the City of Sacramento (City). Balfour Beatty and the City submitted documentary evidence and each party submitted written argument. Testimony was received from Mr. Pietz and Mr. Naff. Each party presented oral closing argument and the matter was then submitted for decision.

III. JURISDICTION AND SCOPE OF REVIEW

Section 3.60.520 of the Sacramento Municipal Code (SMC) sets forth the procedures for bid protest hearings before a hearing examiner appointed by the City Council. The protesting bidder has the burden of showing the existence of all facts necessary to support the bid protest. The hearing examiner shall issue a written decision that includes findings of fact and a recommended determination of the bid protest based on those findings of fact. Section 3.60.530 provides that after the hearing examiner issues a decision, the City Council shall consider the protest at a public meeting. The council may hear the bid protest as part of the council's consideration of the award of the contract to which the bid relates, or it may hear the bid protest as a separate item. Section 3.60.540 states that "the scope of the bid protest considered by the city council shall be limited to the issues and evidence set forth in the bid protest," and the section lists various procedures that the City may exercise, in its discretion, before taking final action.

IV. ISSUES PRESENTED FOR HEARING

- Issue 1:** Was Overaa's bid responsive?
- Issue 2:** Does California law allow the City to waive the deviation that Balfour Beatty identified in Overaa's bid?

V. BACKGROUND

The City issued a call for bids for the City of Sacramento Water Treatment Plants Rehabilitation Project ("Project"), a single project consisting of rehabilitation work at two water treatment plants, the Sacramento River Water Treatment Plant and the E.A. Fairbairn Water Treatment Plant. The instructions called for bids to be received by January 16 at 2:00 p.m.

The City's bid instructions included a nine-page Bid Form. Article 6.01 of the Bid Form requires that the bidder state a Lump Sum Bid Price; Article 6.01A states that the lowest Lump Sum Bid Price shall be the lowest Bid; Article 6.01B asks for a dollar total for E.A Fairbairn and

a dollar total for Sacramento River; and Article 6.01C instructs the bidder to itemize certain costs and include those costs in the Lump Sum Bid Price. Article 14.01A of the bid solicitation documents provides that bidders are to submit a total Bid price, "based on lump sums and unit prices as estimated quantities listed in the Bid Form."

The City received four bids and opened them on January 30. Overaa was the lowest bidder at \$113,776,000. Balfour Beatty was the next lowest bidder at \$116,705,118. When completing the Bid Form, Overaa, in Article 6.01B of the Bid Form, offered to complete the work at the E.A. Fairbairn plant for \$16,957,594 and the work at the Sacramento River plant for \$88,000,000. Overaa listed the costs for the itemized work detailed in Article 6.01C as totaling \$8,818,406, and the Lump Sum Bid Price as \$113,776,000. Overaa based its calculation of the Lump Sum Bid Price on the sum of the work on the two plants listed in Article 6.01B, and the sum of the itemized work in Article 6.01C of the Bid Form. Balfour Beatty, and the other two project bidders, completed the Bid Form differently. Rather than adding the sum of the price for the itemized work detailed in Article 6.01C to the price of the work at each plant detailed in Article 6.01B as Overaa had done, Balfour Beatty and the other bidders included the sum of the price for the itemized work detailed in Article 6.01C in their cost total for each plant listed in Article 6.01B. They then added the two line items in Article 6.01B to calculate the Lump Sum Bid Price.

After the bids were opened January 30, the Department of Utilities ("DOU") issued written notice of its intention to recommend that the Sacramento City Council award the Project to Overaa. Balfour Beatty submitted its bid protest on February 12. Balfour Beatty asserts that the City should have deemed Overaa's bid non-responsive as Overaa did not calculate the Lump Sum Bid Price in accordance with Article 6.01B of the Bid Form. Balfour Beatty argues that Overaa's Lump Sum Bid Price should have been \$104,957,594, or the sum of the two project amounts entered in Article 6.01B of the Bid Form, rather than \$113,776,000 or the sum of the two amounts entered in Article 6.01B plus the cost of work itemized in 6.01C. Therefore, according to Balfour Beatty, the bid should be declared non-responsive. Balfour Beatty further asserts that Overaa made an arithmetical error of \$8,818,406, and was therefore granted an unfair competitive advantage over the other three bidders as Overaa would have had the opportunity to pull its bid after the bid opening by claiming it made a mistake in its Bid Form. Balfour Beatty additionally argues that California law precludes the City from waiving the deviation, and respectfully requests that Balfour Beatty be awarded the project as the lowest responsive bidder. The matter convened for hearing on February 28.

VI. LEGAL ANALYSIS AND FINDINGS OF FACT

Issue 1: Was Overaa's bid responsive?

Balfour Beatty asserts that the City should have deemed Overaa's bid non-responsive as Overaa did not calculate the Lump Sum Bid Price in accordance with Article 6.01B of the Bid Form. The City argues, and Overaa concurs, that the Overaa bid was responsive.

As the court determined in *Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341, a bidder is responsible if it can perform the contract as promised, and a bid is responsive if it promises to do what the bidding instructions require. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. (*Id.* at 1342; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1438.)

In the instant matter, Article 6.01 of the Bid Form states:

Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C below.

The above statement is followed with the words Lump Sum Bid Price in bold and by two lines where the bidder is to enter the Lump Sum Bid Price in figures and then in words. On the lines provided, Overaa entered its Lump Sum Bid Price in the amount of \$113,776,000.

Article 6.01A of the Bid Form does not request any price amount from the bidder, it is merely informative. Article 6.01A states in pertinent part:

In the evaluation of Bids, the lowest Bid shall be the lowest Lump Sum Bid Price on the base contract...

Article 6.01B of the Bid Form states:

The Bidder declares that the above Lump Sum Bid Price consists of the sum of the Work at each of the water treatment plants as shown below:

The above statement is then followed by four lines, two for each of the water treatment plants, where the bidder is to enter the price in figures and words for the work conducted at each plant. Overaa entered the amount of \$16,957,594 for the E.A. Fairbairn Water Treatment Plant, and the amount of \$88,000,000 for the Sacramento River Water Treatment Plant. The sum of which totals \$104,957,594.

Article 6.01C of the Bid Form states in pertinent part:

The Bidder declares that the costs for labor, materials, equipment, and incidentals necessary for the following work are included in the Lump Sum Price listed above and that such costs are as indicated below.

The above statement is then followed on the next page with a chart itemizing some specific costs associated with work to be completed at both plants. The sum of the cost of work itemized by Overaa in Article 6.01C is \$8,818,406.

Balfour Beatty argues that Overaa's bid is non-responsive as it is contrary to the express instructions of Article 6.01B of the Bid Form, as Overaa calculated its Lump Sum Bid Price based on the sum of the work at the two plants as articulated in Overaa's response in Article 6.01B, or \$104,947,594, plus the price of the work as articulated in Article 6.01C, or \$8,818,406, thereby providing the Lump Sum Bid Price of \$113,776,000. Balfour Beatty asserts that the instructions were clear, and that Item B of Article 6.01 of the Bid Form expressly required the Lump Sum Bid Price to be calculated only on the sum of the work at each plant, thus Overaa's Lump Sum Bid Price should have been \$104,947,594.

Joe Robinson, on behalf of the City, acknowledged during the hearing that the City's bid documents provided directions that could have been interpreted differently. As Article 6.01 states that the "Bidder will complete the Work in accordance with the Contract Documents for the following Lump Sum Bid Price; inclusive of Items A, B, and C," the City believes that the statement could reasonably be interpreted as requiring that the Lump Sum Bid Price total the sum of Items A, B, and C. The City believes that it is apparent from the face of Overaa's bid that that is how Overaa interpreted the Bid Form as well. Overaa agreed that was how it interpreted the Bid Form in its response to Balfour Beatty's Bid Protest, and Jeff Naff, vice president of municipal infrastructure at Overaa, confirmed during his testimony that was how Overaa interpreted the Bid Form. Therefore, based on the City's analysis, the City finds Overaa's bid responsive.²

The Hearing Examiner is not persuaded by Balfour Beatty's argument that the Bid Form expressly required the Lump Sum Bid Price to be calculated only on the sum of the work at each plant as articulated in Article 6.01B. Rather the Hearing Examiner agrees with the City that the City's bid documents provided directions that reasonably could have been interpreted differently. As noted earlier, Article 6.01 states that the "Bidder will complete the Work in accordance with the Contract Documents for the Lump Sum Bid Price; Inclusive of Items A, B, and C below" and Article 6.01C states that the bidder declares that the costs for particular work at each plant are included in the Lump Sum Bid Price. Furthermore, Article 14.01A of the bid solicitation documents provides that bidders are to submit a total Bid price, "based on lump sums and unit prices as estimated quantities listed in the Bid Form." From the aforementioned instructions, it was reasonable to conclude that the Lump Sum Bid Price was the sum of the costs listed in Article 6.01B and 6.01C, especially in light of Article 14.01A which required that the Lump Sum Bid Price be based on the lump sums (presumably those listed in Article 6.01B) and the unit

² The City also acknowledged that although Balfour Beatty included the sum of the price for the itemized work detailed in Article 6.01C, in its cost breakdown for each plant listed in Article 6.01B, and then added the two line items in Article 6.01B to calculate the Lump Sum Bid Price, Balfour Beatty's bid was also responsive given the potentially inconsistent direction in the bid documents.

prices (presumably those listed in 6.01C) of the Bid Form. Notably, nowhere in the Bid Form does it state that bidders must include the costs associated with the work articulated in Article 6.01C in the costs for the work noted in Article 6.01B. Therefore Overaa reasonably interpreted the bid directions to mean that the Bid Form required bidders to add the prices listed in Article 6.01B and 6.01C in order calculate the Lump Sum Bid Price. Mr. Naff's testimony confirmed that was exactly what Overaa did when responding to the bid, Overaa added Article 6.01C to 6.01B to calculate the Lump Sum Bid Price. The evidence confirms no attempt at deception or other subterfuge by Overaa. There was no evidence presented to plausibly suggest the contrary.

The sum of the amounts entered by Overaa for Article 6.01B and 6.01C equal the Lump Sum Bid Price, and is responsive to Article 6.01 that requires the Lump Sum Bid Price be inclusive of Article 6.01A, B, and C, as well as Article 6.01C that requires bidders to declare that the itemized costs are included in the Lump Sum Bid Price, not just the amounts listed in Article 6.01B. Additionally, Overaa's Lump Sum Bid Price was based on the lump sums listed in Article 6.01B and the estimated unit prices listed in Article 6.01C, and that was thus responsive to the requirements outlined in Article 14.01A which required bidders to submit a total bid price "based on lump sums and unit prices as estimated quantities listed in the Bid Form."

As discussed in *Taylor*, a bid's responsiveness can usually be determined from the face of the bid. In the instant matter it is clear from Overaa's Bid Form that Overaa's Lump Sum Bid Price was the sum of the amounts listed in Article 6.01B and 6.01C, and that Overaa's Lump Sum Bid Price was \$113,776,000. \$113,776,000 is the amount listed on the two lines below Article 6.01 and follows the words Lump Sum Bid Price written in bold. Article 6.01A of the Bid Form mandates that the lowest Bid shall be determined based on the lowest Lump Sum Bid Price, and Overaa's bid price was the lowest of the four bidders. As the court stated in *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908-909, "[i]t certainly would amount to a disservice to the public if the losing bidder were permitted to comb through the bid proposal or license application of the low bidder after the fact, [and] cancel the low bid on minor technicalities, with the hope of securing acceptance of his, a higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy," and such is the case here. Therefore the Hearing Examiner concludes Overaa's bid was responsive, and that the City properly awarded Overaa the Project when it determined Overaa was the lowest responsive bidder.

Issue 2: Does California law allow the City to waive the deviation that Balfour Beatty identified in Overaa's bid?

Although the Hearing Examiner has determined that Overaa's bid was responsive and the City properly awarded Overaa the Project, the Hearing Examiner will briefly address the second issue presented in Balfour Beatty's Bid Protest. Balfour Beatty argues that Overaa made an arithmetic error when it listed its Lump Sum Bid Price as \$113,776,000 rather than \$104,957,594 in the Bid Form. Balfour Beatty claims the error made Overaa's bid materially different than it intended. Therefore The City was precluded from waiving the deviation in Overaa's bid because the error gave Overaa the opportunity to withdraw its bid after the bids were opened without having to forfeit its bid bond.

Section 3.60.140 of the Sacramento Municipal Code gives the City Council the authority to reject a bid or “waive any informalities or minor irregularities” found in a bid.

California courts have cited favorably a portion of an opinion of the Attorney General, which states:

“a basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be accepted.... However, it is further well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted *if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or*, in other words, if the variance is inconsequential....”³ [*Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 454, quoting from 47 Ops.Cal.Atty.Gen. 129, 130-131 (1966), in turn quoting from *Dougherty v. Folk* (1941) 46N.E.2d 307, 311. See also, *National Identification Systems, Inc. v. State Board of Control, et al.* (1992) 11 Cal.App.4th 1446, 1453; *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.]

California Public Contract Code section 5103 provides that when a bidder’s bid contains a “typographical or arithmetic” error that makes the bid materially different than the bidder intended it to be, the bidder may withdraw its bid without forfeiting its bid bond. (See *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1441; *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 376-3770.) The mere opportunity to withdraw its bid after bid opening without forfeiting its bid bond gives the bidder an unfair competitive advantage over the other bidders which renders the bid invalid. (*Menefree v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1178-1179.) It is irrelevant whether or not the bidder actually seeks relief from its mistake; it is the mere opportunity to withdraw its bid without penalty which creates the unfair advantage. (*Valley Crest Landscape, Inc. v. City Council, supra*, 41 Cal.App.4th at p. 1442.)

Balfour Beatty argues that Overaa made an arithmetic error when it listed its Lump Sum Bid Price as \$113,776,000 (the sum of Article 6.01B and 6.01C) rather than \$104,957,594 (the sum of Article 6.01B) in the Bid Form. Balfour Beatty claims the error made Overaa’s bid materially different than it intended, and therefore Overaa could have withdrawn its bid after the bids were opened without having to forfeit its bid bond. The City responds by noting it found no such error in Overaa’s bid, as the Lump Sum Bid Price provided by Overaa is the exact sum of the costs provided in Article 6.01B and 6.01C, and it is apparent from the face of its bid that \$113,776,000 was the amount Overaa intended to bid for the project. Therefore, the City would not have allowed Overaa to withdraw its bid pursuant to Public Contract Code section 5103 as none of the withdrawal conditions were met.

The Hearing Examiner is not persuaded by Balfour Beatty’s argument that Overaa made an arithmetic error when listing its “Lump Sum Bid Price.” Rather the Hearing Examiner agrees that it was apparent from the face of Overaa’s bid that Overaa intended to bid \$113,776, 000 as

³ Italics from *Konica, supra*.

its Lump Sum Bid Price. The Hearing Examiner finds that Overaa did not meet the statutory conditions mandated in Public Contract Code 5103, and the City would not have allowed the bid to be withdrawn, as Overaa could not have proven that it made a material error in calculating the Lump Sum Bid Price. As the City would not have permitted Overaa to withdraw its bid, Overaa was not provided with an unfair competitive advantage over the other three bidders as it would not have had an opportunity to view the bids and then withdraw its bid. Accordingly, the Hearing Examiner concludes that the City acted properly in waiving the deviation by Overaa with regard to Overaa's method for presenting the Lump Sum Bid Price.

VII. RECOMMENDED DETERMINATION

The Hearing Examiner finds that Overaa's bid was responsive, and that the City properly awarded Overaa the Project when it determined that Overaa was the lowest responsive bidder. Accordingly, the Hearing Examiner recommends that the City Council deny Balfour Beatty's bid protest and find Overaa's bid to be responsive.

Dated: March 28, 2013



Skye Foster, Hearing Examiner
Institute for Administrative Justice
University of the Pacific
McGeorge School of Law

PROOF OF SERVICE VIA EMAIL AND U.S. MAIL

I, Crystal McMurtry, declare as follows:

I am employed in the County of Sacramento, California; I am over the age of 18 years and not a party to the within action. My business address is 3455 Fifth Avenue, Sacramento, California 95817. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On March 28, 2013, I served a copy of the following document:

DECISION ON ADMINISTRATIVE APPEAL

Bid Protest Hearing

In the matter of Balfour Beatty Infrastructure, Inc. vs. C. Overaa & Co., and the City of Sacramento

on the party or parties named below by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service that same day in the ordinary course of business, addressed as follows:

Mr. Ian Pietz
City of Sacramento
1395 35th Avenue
Sacramento, CA. 95822-2911
Email: ipietz@cityofsacramento.org

Mr. Jason R. Thornton
Marks, Finch, Thornton & Baird LLP
4747 Executive Drive, Suite 700
San Diego, CA 92121-3107
Email: jthornton@mftb.com

Mr. Randall M. Smith
Smith & Brockhage, LLP
3480 Buskirk Avenue, Suite 200
Pleasant Hill, CA 94523
Email: rms@smithbrock.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 28, 2013, in Sacramento, California.


Crystal McMurtry, Legal Assistant
Institute for Administrative Justice
McGeorge School of Law



PROJECT #: Z14006000
PROJECT NAME: WATER TREATMENT PLANTS REHABILITATION PROJECT
DEPARTMENT: UTILITIES
DIVISION: ENGINEERING

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTS, LANDSCAPE
ARCHITECTS, PROFESSIONAL ENGINEERS,
AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of April 02, 2013, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Carollo Engineers
2880 Gateway Oaks Drive, Suite 300, Sacramento, CA 95833
(916) 565-4888 / 565-4800

("CONTRACTOR"), who agree as follows:

- Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
- Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
- General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

CAROLLO ENGINEERS
NAME OF FIRM

86-0899222
Federal I.D. No.

125-3653-8
State I.D. No.

66407
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify: _____)

Christopher T. Cleveland
Signature of Authorized Person

CHRISTOPHER T. CLEVELAND VICE PRESIDENT
Print Name and Title

Ken Wilkins
Additional Signature (if required)

Ken Wilkins Senior Vice President
Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Carollo Engineers

Address: 2880 Gateway Oaks Drive, Suite 300, Sacramento, CA 95833

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's

domestic partners.

- d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.

8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Christopher T. Cleveland
Signature of Authorized Representative

3/14/13
Date

CHRISTOPHER T. CLEVELAND
Print Name

VICE PRESIDENT
Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Ian Pietz, Senior Engineer
1395 35th Avenue, Sacramento, CA 95822
(916) 808-1910 / 808-1497 / ipietz@cityofsacramento.org

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Chris Cleveland, Vice President
2880 Gateway Oaks Drive, Suite 300, Sacramento, CA 95833
(916) 565-4888 / 565-4880 / ccleveland@carollo.com

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. **Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is X is not [check one] required for this Agreement. If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. **Conflict of Interest Requirements.**

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;

- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: _____ yes X no [check one]

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the "assuming office" statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** By previous agreement, CONTRACTOR has provided engineering services for the pre-design, design, and bidding phases of the Water Treatment Plants Rehabilitation Project. Under this Agreement, CONTRACTOR shall provide engineering services for the Project's construction phase. The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.
5. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, set forth in the scope of services.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF WORK
ENGINEERING SERVICES DURING CONSTRUCTION FOR THE:**

**Sacramento Water Treatment Plants Rehabilitation Project
February 15, 2013**

Engineering services during construction will be provided by Carollo Engineers, Inc. (CONTRACTOR) to assist CITY with technical services, office engineering services, field visits and observations, and startup and training services, as described below.

Task 1 – Project Management

CONTRACTOR will provide the following project management services during construction:

- T1A Project Management. Provide Project Manager, Chris Cleveland, to administer and guide the execution of the construction support services. The Project Manager will work closely with the CONTRACTOR's Project Engineer and the City's Project Manager and Construction Manager.
- T1B Pre-Construction. Assist with pre-construction services prior to award to address project administration, roles and responsibilities, project familiarity, pre-construction planning, and other necessary activities. The City's Construction Manager will oversee this effort. Services include up to two, one-day meetings.
- T1C Construction Meetings. Project Manager or Project Engineer will attend the Monthly Construction Progress Meetings with the City, City's representatives and the construction contractor. These meetings will include coordination activities for both the SRWTP and EAFWTP. CONTRACTOR will also attend milestone meetings to discuss major upcoming milestones, providing input to CM and construction contractor strategic planning, and walk through detailed scheduling of construction activities involved in the milestones.

Task 2 – Project Implementation Support

CONTRACTOR will provide the following project implementation services during construction:

- T2A Conformed Documents. Prepare drawings and specification originals that incorporate changes made by addenda into the Technical Specifications and Drawings for the convenience of CITY, construction contractor, CONSTRUCTION MANAGER, and CONTRACTOR. The original Contract Documents and Addenda will prevail over the conformed Contract Documents in the event there is any discrepancy between the subject documents. Conformed drawings will not be stamped and signed. Preparation of the Conformed Documents will commence after opening of bids and will be made available for construction use as follows:

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1. Conformed drawing and specification files will be placed on the selected electronic document management system in pdf format, to be determined by City. City will also receive electronic files on CD. Half size drawings and specification will be printed for CONTRACTOR use during the Project.
- T2B Preconstruction Conference. Project Manager, PIC, Project Engineer, and up to three Discipline Leaders will attend a one-day preconstruction conference with construction contractor, CONSTRUCTION MANAGER, and CITY's representatives. It is assumed the CM will organize and facilitate at the conference.
- T2C Concrete Conference. CONTRACTOR's Project Manager, Project Engineer and Structural Discipline Leaders will attend a one-day concrete conference per requirements of Section 03300 - Cast-In-Place Concrete. CONTRACTOR will review concrete design and testing requirements and NSF 61 compliance requirements with the construction contractor. Specialty inspections required by others for structures, concrete, and CMU will also be discussed at the conference. Concrete and reinforcing steel submittals will be coordinated with the construction contractor and parties involved with the concrete work.
- T2D Electrical Pre-Submittal Meeting. The CONTRACTOR's Project Manager, Project Engineer, and Electrical Discipline Leaders will attend and conduct a one-day, pre-submittal meeting with the construction contractor and electrical subcontractor to discuss and coordinate electrical shop drawings and other related submittals as required per Section 16050.

Task 3 - Construction Contract Support

CONTRACTOR will provide the following construction contract support services during construction:

- T3A Shop Drawing Review. Review technical information, samples, and shop drawings of materials and equipment submitted by the construction contractor for conformance with the Contract Documents. Shop drawings and submittals covered by this scope include those for the SRWTP and EAFWTP. For this task, shop drawings and resubmittals have been assumed at an average of 8 hours for each of 1,700 initial shop drawing review, and 4 hours on average for each of 900 resubmittals.
- T3B Clarifications. Respond to Requests for Information (RFIs) and Requests for Clarification (RFCs) from the construction contractor and prepare Contract Document Clarifications (CDC's) pertaining to the Contract Specifications and Drawings. Prepare elementary sketches, if required, to clarify the design. 800 RFI's have been assumed with an average of 6 hours assumed for reviewing, processing, and responding to each RFI/RFC.
- T3C Substitutions. Evaluate material and equipment substitutions that may be proposed during construction. An allowance has been provided to evaluate and respond to these proposed substitutions.

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- T3D Change Orders. Review potential change orders and prepare related revisions of the Contract Specifications and Drawings. 200 Change Orders have been assumed with an average of 10 hours per Change Order assumed for reviewing the design related issues with Change Orders. It is assumed that the CONSTRUCTION MANAGER will lead the Change Order process administration.
- T3E Construction Meetings/Site Coordination. CONTRACTOR's Project Engineer and design staff as needed will attend construction meetings associated with coordination, Ad Hoc Meetings, and Special Issues Meetings on a regular basis to review and coordinate field activities with the CITY and CM.
- T3F Record Contract Documents. Prepare record Contract Documents to incorporate modifications of Drawings resulting from change orders, observed site conditions, and construction contractor's record of construction. All changes will be monitored and recorded by the construction contractor and CONSTRUCTION MANAGER. CONTRACTOR will take all field markups at the end of construction and translate into electronic record drawings. CONTRACTOR's engineers will provide clarifications as needed to CAD staff in their respective disciplines and perform quality assurance reviews.

Task 4 - Design Discipline Site Visits and Observations

CONTRACTOR will provide the following site visits and observations during construction:

- T4A Site Visits & Observations. Provide site visits by members of the design team to assist the CITY's on-site construction management team; make field observations at significant construction stages and at completion of structural systems; and review of civil, landscaping, structural, architectural, mechanical, HVAC, electrical and instrumentation work for conformance with the Contract Specifications and Drawings as directed by CITY.
- T4B Geotechnical Services. CONTRACTOR will subcontract with the design geotechnical engineer to serve as a resource for CITY to address issues relating to dewatering, shoring, excavation, backfill and compaction, settlement, liquefiable soils, pipe and structure foundation adequacy, and other geotechnical concerns. The design geotechnical engineer will prepare brief written site visit reports to document their findings and recommendations. The design geotechnical engineer will also observe initial installation of pile foundation systems and be available on-call as needed by the CITY up to the allowance amount stated in the budget.

Task 5 - O&M and Startup Training Services

CONTRACTOR will provide the following startup and training services:

- T5A Technical Manuals. Review construction contractor-furnished or vendor-furnished O&M submittals, including the equipment O&M manuals and maintenance data

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summary sheets. Check that submittals include pertinent information requested per the contract and that submittals are complete and acceptable for use by CITY. Compile and deliver the approved Technical Manuals to CITY.

- T5B Startup Assistance. CONTRACTOR will provide technical assistance during equipment testing and facility startup. CONTRACTOR will also provide startup assistance with all treatment processes to ensure each treatment process is brought online correctly. Unit processes will include granular media filters, flocculation and sedimentation process, high service pump station, and solids handling facilities. This task assists the construction contractor and CM not just with physical and electrical startup procedures, but supports the processes with correct procedures to be followed for successful treatment plant procedures for startup.
- T5C Process/Operator Training. CONTRACTOR will prepare and conduct up to 10 classroom presentations, field orientation, and question and answer sessions (duration of 2-hr to 4-hr per session) for each process and related equipment described below. Training will be tailored to cover the treatment process relationships that are not typically covered by the training provided by the equipment manufacturer or supplier.

Task 6 - Project Closeout

CONTRACTOR will provide the following services during project closeout:

- T6A Project Closeout. Assist CITY with implementing project closeout procedures required by the Contract Documents. Assist CITY to assess the satisfactory completion of contract and change order work and to perform a final project walk-through that will assist preparation of the final punchlist.

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OPTIONAL TASKS AND SUBTASKS

Task 1D - Provide Project Engineer On-Site Full-time (Optional)

Under this optional task CONTRACTOR shall provide additional time for the project engineer to be located onsite at SRWTP. In combination with other base tasks the project engineer will be full-time during the anticipated 39 month duration of the project.

Task 3G - Additional Record Drawing Effort (Optional)

Record Contract Documents. Prepare record Contract Documents to incorporate modifications of Drawings resulting from change orders, observed site conditions, and construction contractor's record of construction. All changes will be monitored and recorded by the construction contractor and CONSTRUCTION MANAGER. CONTRACTOR will take all field markups on a quarterly schedule and translate into electronic record drawings. CONTRACTOR's engineers will provide clarifications as needed to CAD staff in their respective disciplines. The CAD drawing files will be revised to reflect changes that occurred during construction and delivered to CITY on a quarterly basis on compact disc(s) (CD) or through EADOC. This task provides effort in addition to that included in Task T3F.

T4C - Factory Acceptance Tests and Observations Allowance. (Optional)

Provide observation of factory acceptance testing and other inspection requirements for process, mechanical, electrical and other Project equipment per the Contract Documents and provide funding as needed for CITY staff airfare and per diem as requested by CITY.

Task 7 – Electronic O&M Manual (Optional)

Overview

The purpose of this Scope of Services is to develop an Electronic Operations and Maintenance (EOM) system that will provide the City of Sacramento (CITY) with the necessary information to operate and maintain its water treatment facilities in an efficient and reliable manner. Carollo Engineers (CONTRACTOR) will populate the EOM with O&M content for the Sacramento River Water Treatment Plant (SRWTP) and E.A. Fairbairn WTP (EAFWTP) under this Scope of Services. The EOM will include all new facilities constructed as part of the project. Existing facilities are not included in this task item.

The software platform proposed for the EOM is based on Microsoft SharePoint 2010, an electronic content management system that will contain a variety of operations and maintenance information including facility and equipment descriptions, design criteria, process control narratives, design drawings, and vendor operations and maintenance (O&M) manuals. Using the EOM, CITY staff will be able to access all of this information in an electronic format with an easy-to-use, graphical, user interface. The EOM will also be implemented in a manner that may allow, depending on compatibility of the CITY's platforms, for future integration with other information sources such as the CITY'S Computerized Maintenance Management System (CMMS), Laboratory Information Management System (LIMS), and Supervisory Control and Data Acquisition System (SCADA). In addition, the EOM will be updatable and expandable for the CITY'S future efforts to improve the overall operations and maintenance of their facilities.

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Scope of Services

T7A Project Initiation, Management, and Coordination.

Conduct Project Initiation Meeting

Carollo will conduct a project initiation meeting with City staff following notice to proceed. A draft project plan will be presented at the meeting that details the tasks, schedule, budget, team contact information, and coordination plan for the EOM project. Considerations such as availability of information, coordination needs with the O&M staff, and schedule for development, will also be discussed. Following review and approval, a final project plan will be delivered to the City.

Conduct Project Management and Coordination Meetings

Carollo will review budget status, provide supervision of project activities, and review deliverables throughout the course of the project. A status report noting the activities on this task will be provided to City staff as part of regular invoices.

T7B Data Collection and Information Gathering.

Collect and Review O&M Information

Carollo will review existing O&M manuals, SOPs, and related documentation to understand the current state of O&M information for the City. We will also review existing unit process documentation for major facility projects that have been completed subsequent to the original O&M Manual, including engineering drawings and specifications for near-term projects that will require additions to the O&M content. Finally, we will interview current O&M staff to gain insight into existing unit process equipment, conditions, O&M procedures, and planned capital improvement program project schedules, as they directly relate to the O&M Manual update as well as understand the current ongoing construction project improvements. This task will provide the basis of the information needed to prepare the text and graphics for the EOM in the following steps.

T7C Prepare Prototype EOM Chapter.

Populate Prototype Chapter

O&M Manual content will be populated into the EOM in phases, beginning with a prototype chapter, with appropriate checkpoints for review and approval by City staff. The purpose of the prototype chapter is to populate a complete section of the O&M Manual in order to get full approval of the format and structure of the information before proceeding with the development of the remaining chapters. The prototype EOM chapter will be populated according to the standards utilized by Carollo for similar water treatment facilities.

In order to populate the EOM prototype chapter, Carollo will establish a base configuration of the Microsoft® SharePoint® EOM on an external hosted web site. The base EOM platform will be configured using standards developed and used effectively for EOMs for similar utilities. After the prototype chapter has been populated into the EOM, a workshop will be held with City staff to review and gather feedback on any further changes that need to be made. Carollo will

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complete these changes and gain final approval before proceeding with the remaining facility chapters.

Conduct Prototype EOM Review Workshop

Carollo will conduct a 2-hour Pototype EOM Review Workshop to discuss detailed information for the development of O&M content, and to obtain approval on the layout and content, prior to proceeding with the development of the full EOM. During this workshop, we will present the prototype EOM chapter and discuss the desired specifications and O&M needs for the City. The EOM content considerations will include the extent, format, and organization of the O&M information, including the content templates used for each O&M section to allow easy information retrieval and uniformity in data collection and entry. The specific O&M Manual templates will be discussed and are anticipated to follow the City's proposed standards, as follows:

- Process Schematic
- Functional Description and Theory of Operation
- Design Criteria
- Equipment/Instrument Specifications
- Control Descriptions
- Area Procedures & Expectations (APEs)
- Standard and Emergency Operating Procedures (SOPs/EOPs)
- Safety Plans
- Troubleshooting
- Maintenance Procedures
- Record Drawings
- Photos
- Vendor O&M Manuals

The workshop will also include a discussion of the EOM system requirements such as screen layouts, file formats, administration, and integration needs. During the workshop, we will discuss the desired information technology specifications and system requirements for the City.

Following the workshop, we will document the EOM content and system requirements to be used in the development of the remaining O&M chapters.

T7D Develop Complete EOM Content.

Populate Subsequent EOM Chapters

Following the City's review and approval of the prototype EOM chapter, Carollo will populate the EOM with the remaining O&M Manual chapters according to the agreed-upon schedule and

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review timeline. The EOM will follow the documented O&M content and system specifications, with each unit process chapter separated into the sections developed and approved for the prototype EOM chapter. The chapters will be made available to the City in the EOM format as they are developed to facilitate a manageable review process. The complete chapters of each plant EOM are anticipated to include the following:

SRWTP

- Plant Overview
- Flocculation/Sedimentation Basin 3/4
- Filters 9-16
- High Service Pump Station
- Gravity Thickeners and Pump Station
- Dewatering Building
- Sludge and FWW Lagoons
- Primary Electrical Substation

EAFWTP

- Gravity Thickeners and Pump Station
- Dewatering Building
- Sludge and FWW Lagoons

Additional reference information will be included in the EOM or created as placeholder libraries for future system integration. Examples of the reference information include:

- Additional Plant Facilities
- Permits
- CAD Drawings
- Training Videos
- Vendor O&M Manuals
- Photo Libraries
- Asset Management Program
- SCADA Links

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- CMMS Links

T7E Review and Finalize EOM.

Review O&M Content and Finalize EOM

City staff will review all EOM chapters for content completeness, accuracy, and sufficient detail. The review will also be conducted to confirm the EOM functionality and ease-of-use, including links to appropriate information, editing capabilities, and overall navigation. Comments from staff and management will be incorporated into the revised and final versions of each EOM chapter to improve the knowledge, accuracy, and usefulness of the O&M information.

T7F Install and Configure EOM.

System Configuration

Carollo will coordinate with City staff to finalize procedures and activities required for the EOM on existing City information system hardware/software or approved outside information system infrastructure. The SharePoint®-based system will be configured based on the EOM Standards Document, including file formats, menu hierarchy and navigation, workflow and approval process, content sources and formats, standard content templates, and other EOM functions as specified. The system configuration will include capabilities to retrieve information, create content, upload documents/images, edit/map images, approve content, and manage links to other information.

System Deployment

Carollo will support the migration and deployment of the EOM application and content from the external hosted site to the live production system on City servers. Upon completion of the EOM deployment, Carollo will support the testing of the production system by City staff to confirm that all functionality and content is accessible and functioning properly.

T7G Train Staff Using EOM.

System User Training

Carollo will provide two training classes on the general use of the EOM by City staff. The basic system user training will be provided to City O&M staff that will access, search, and find information in the system to perform their daily functions. The City will provide a list of staff that will participate in the user training sessions and coordinate the schedules for efficient use of training time.

Content Management Training

Carollo will provide one training class on content management for the EOM by City staff. The content management training will be provided for City staff that will be updating and maintaining the information in the EOM. The City will provide a list of staff that will participate in the content management training sessions and coordinate the schedules for efficient use of training time. As part of the training, Carollo will provide documentation on the content administration of the EOM including use of all editing tools, web site management tools, and content development standards.

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System Administration Training

Carollo will provide one training class on system administration for the EOM by City staff. The system administration training will be provided for City staff on EOM system administration, maintenance, security, and general support. As part of the training, Carollo will provide documentation on the system administration of the EOM including the system configuration, administration functions, and technical support resources.

Assumptions and CITY Responsibilities for Task 7

1. CITY will identify and provide access to the electronic and hard copy O&M documentation at each of the plants.
2. Procurement of EOM server hardware and software licenses is not included in this Scope of Services.
3. Integration of EOM with SCADA, CMMS, or other CITY information systems is not included in this Scope of Services.
4. Deliverables will be provided in electronic format only. For review purposes during development, CITY will be provided access to the EOM on a secure Internet web site.
5. Meetings are limited to the number specified.
6. A decision log will be used to document, approve, and manage decisions made during the course of the work. Changes to frozen decisions may impact costs and schedule.

Time of Performance for Task 7

Anticipated schedule for completion of CONTRACTOR's Scope of Services is approximately 30 months from Notice to Proceed to Completion of Services. Notice to Proceed for this task is anticipated to occur within the first 12 months of the construction project and continue through receipt of the vendor O&M manuals submitted as part of the current construction project. If construction period is extended, then Task 7 schedule may be impacted.

Additional Optional Services

Upon written request by CITY, CONTRACTOR will provide CITY optional services should they be needed during project construction. The additional scope and associated costs will be negotiated with CITY at the time optional services are requested. Optional services include, but are not limited to, the following:

- Hazardous waste characterization, remediation, and cleanup/disposal services
- Design of any dewatering treatment processes, if needed.
- Additional design services
- Additional field services.

Scope of Work
February 15, 2013

- O&M support services
- Supplemental surveying services
- Supplemental permit compliance services
- Supplemental claims mitigation support
- Additional EOM services

Services Provided by CITY

CITY will provide the following services and responsibilities:

1. Legal Services. Legal services related to contract review, bidding irregularities, protests, claims, and related items
2. Project Administration. Responsibility and authority to approve any changes to the specifications, plans, or other contractual obligations of CITY.
3. Financial Administration. Books of account for the receipts and disbursements associated with the project necessary for fiscal control. CITY will coordinate progress payment and change order costs to facilitate proper financial administration.
4. Permits. All permit applications, fees, agency approvals, and coordination thereof.
5. Verification Surveying. Surveying services to verify construction contractor's general layout of structures and to verify elevations on various structures as necessary to confirm compliance with the Drawings.
6. Control System Coordination. Coordination of control system implementation work to determine compliance with CITY requirements and CITY needs.
7. Factory Visits. CITY will attend selected factory visits and testing programs at the factory to witness compliance with the Contract Documents and CITY requirements.
8. Claims Management. Tracking and management of all extra work items and resolution of all potential claims with the assistance of CONTRACTOR when requested.
9. Printing. CITY will print conformed Contract Documents for distribution to CITY, construction contractor, and CONSTRUCTION MANAGER as required. CITY will print record Contract Documents for distribution to CITY, general contractor, and CONSTRUCTION MANAGER as required.
10. Materials Testing.
11. Construction Management
12. Available studies, reports and other data pertinent to CONTRACTOR's services. Obtain or authorize CONTRACTOR to obtain or provide additional reports and data as required.

Scope of Work
February 15, 2013

Furnish to CONTRACTOR services of others required for the performance of CONTRACTOR's services hereunder. CONTRACTOR shall be entitled to use and rely upon all such information and services provided by the CITY or others in performing CONTRACTOR's services under this Agreement.

Fee Schedule

The total of all fees and expenses to be paid to CONTRACTOR for the engineering services during construction services described herein shall not exceed \$7,000,000 for the base scope of services without prior written approval of CITY. The basis of the budget is summarized in the spreadsheet entitled "Estimate of Costs for Engineering Services During Construction". Additional optional tasks are included in the contract that are included but must be authorized separately by the CITY through written direction to the CONTRACTOR.

The estimated budgets for Engineering Services During Construction are level of effort estimates that may not be sufficient to provide services for the entire construction period. CONTRACTOR will notify CITY of budget and progress status on a quarterly basis and will not incur costs in excess of budget without re-negotiation of project budget. The estimated budget contained herein is based on the assumptions stated in the task descriptions within the scope of work. Estimated duration of the project is 39 months.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$7,728,644.00 (Including Optional Tasks 1D, 3G, and 4C).

2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate basis, as set forth in the Estimate of Costs in Attachment 1 to Exhibit B, and the Fee Schedule in Attachment 2 to Exhibit B, both attached hereto and incorporated herein.

Fees and expenses for work performed by sub-consultants shall also be identified on the monthly invoices to the CITY. Copies of billing invoices of sub-consultants to CONTRACTOR shall be provided with the monthly invoices of CONTRACTOR to CITY. Non-salary expenses will be charged a Project Equipment Communication Expense (PECE) at a rate per labor hour, as set forth in Attachment 2 to Exhibit B. The PECE cost rate shall cover the incidental cost for telecommunication, postage, computers, incidental photocopying, and related equipment. It does not include the cost for large print jobs of major documents, which will be billed at actual cost plus 10 percent.

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**

A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

B. All invoices submitted by CONTRACTOR shall contain the following information:

- (1) Job Name
- (2) Description of services billed under this invoice, and overall status of project
- (3) Date of Invoice Issuance
- (4) Sequential Invoice Number
- (5) CITY's Purchase Order Number
- (6) Total Contract Amount
- (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
- (8) Total Billed to Date
- (9) Total Remaining on Contract
- (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform

to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

City of Sacramento, Dept. of Utilities
1395 35th Avenue, Sacramento, CA 95822
(916) 808-1910 / 808-1497 / ipietz@cityofsacramento.org
Attn: Ian Pietz

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

ATTACHMENT 2 TO EXHIBIT B

**CAROLLO ENGINEERS, INC.
FEE SCHEDULE**

As of January 1, 2013

	<u>Hourly Rate</u>
Engineers/Scientists	
Assistant Professional	\$149.00
Professional	182.00
Project Professional	216.00
Lead Project Professional	236.00
Senior Professional	257.00
Senior Process Specialist	346.00
Technicians	
Technicians	111.00
Senior Technicians	157.00
Support Staff	
Document Processing / Clerical	99.00
Project Equipment Communication Expense (PECE) Per DL Hour	11.70
Other Direct Expenses	
Travel and Subsistence	at cost
Mileage at IRS Reimbursement Rate Effective January 1, 2013	\$.565 per mile*
Subconsultant	cost + 10%
Other Direct Cost	cost + 10%
Expert Witness	Rate x 2.0

* - Mileage will not be billed for travel to site for full-time field located staff

This fee schedule is subject to annual revisions due to labor adjustments.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [*check one*]

 Not furnish any facilities or equipment for this Agreement; or

 X Furnish the following facilities or equipment for the Agreement

- CITY shall provide all services, facilities and equipment identified in *Services Provided by CITY* as and set forth in Attachment 1 to Exhibit A – Scope of Services, attached hereto and incorporated herein.

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature

that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of

documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
 - C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
 - D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.
8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such

person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (3) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured

retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be

determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
- (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent

shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On _____ (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for _____ (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.



PROJECT #: **Z14006000**
PROJECT NAME: **WATER TREATMENT PLANTS REHABILITATION PROJECT**
DEPARTMENT: **UTILITIES**
DIVISION: **ENGINEERING**

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTS, LANDSCAPE
ARCHITECTS, PROFESSIONAL ENGINEERS,
AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of April 02, 2013, by and between the **CITY OF SACRAMENTO**, a municipal corporation (“CITY”), and

MWH Americas, Inc.
3321 Power Inn Road, Suite 300, Sacramento CA 95826
916-924-8844

(“CONTRACTOR”), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager’s authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of

this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

MWH Americas, Inc.
NAME OF FIRM

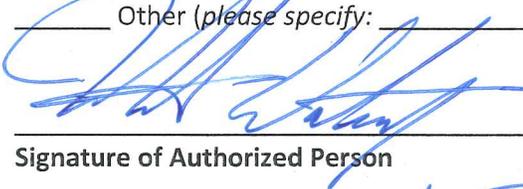
95-1878805
Federal I.D. No.

C0292333
State I.D. No.

66308
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify:* _____)



Signature of Authorized Person

MIKE WATSON, VICE PRESIDENT
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: MWH Americas, Inc.

Address: 3321 Power Inn Road, Suite 300, Sacramento CA 95826

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

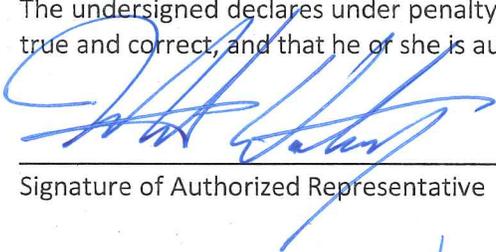
4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.

- b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized

representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

7. MAR. 2013
Date

MIKE WATSON
Print Name

VICE PRESIDENT
Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

Ian Pietz, Senior Engineer
1395 35th Avenue, Sacramento, CA 95822
(916) 808-1910 / 808-1497 / ipietz@cityofsacramento.org

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

Neil C. Mann, Principal Engineer
3321 Power Inn Road, Suite 300, Sacramento CA 95826
916-924-8844 / 916-924-9102 / neil.c.mann@mwhglobal.com

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

2. Professional Liability Insurance. Professional Liability (Errors and Omissions) insurance is is not [check one] required for this Agreement. If required, such coverage must be continued for at least 3 year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An “assuming office” statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A “leaving office” statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY’s Conflict of Interest Code also requires individuals who qualify as “consultants” under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are “consultants” within the meaning of the Political Reform Act and the CITY’s Conflict of Interest Code: _____ yes no *[check one]*

If “yes” is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as “consultants”;
- (2) Cause these individuals to file with the CITY Representative the “assuming office” statements of economic interests required by the CITY’s Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and “leaving office” statements of economic interests, as required by the CITY’s Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. **Scope of Services.** By previous agreement, CONTRACTOR has provided Phase 1 and certain early Phase 2 Construction Management Services (CMS) for the Water Treatment Plants Rehabilitation Project. Under this Agreement, CONTRACTOR shall provide the remainder of the Phase 2 Construction Management Services (CMS) for the Water Treatment Plants Rehabilitation Project. The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

5. **Time of Performance.** The time of performance shall be as set forth in Attachment 1 to Exhibit A.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

**PHASE 2 – CONSTRUCTION MANAGEMENT SERVICES FOR THE:
Water Treatment Plants Rehabilitation Project (Z14006000)**

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**ATTACHMENT 1 TO EXHIBIT A
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ATTACHMENT 1 TO EXHIBIT A SCOPE OF SERVICES

1.0 PROJECT BACKGROUND AND DESCRIPTION

Project Design Phase

The City of Sacramento Department of Utilities (CITY) solicited proposals from qualified firms interested in providing Design Services for the Water Treatment Plants Rehabilitation Project (WTPRP). The City selected Carollo Engineers, Inc. for the preliminary and final design. Preliminary design work was conducted in 2010 and 2011. Final design work was conducted in 2011 and 2012.

Sacramento River Water Treatment Plant (SRWTP)

The SRWTP site is a 160 million gallons per day (mgd) plant with three parallel trains for sedimentation and filtration. The work at the SRWTP project site involves replacing existing sedimentation, filter and pump station facilities with new facilities, constructing new solids handling facilities, and modifying SRWTP Intake pump motors/drives. The work consists of the following activities:

- Electrical upgrades to the SRWTP Intake pump motors/drives
- Demolition of existing Floc Sed Basin 2
- Decommissioning of existing old filters, electrical substation and treated water pump station
- Construction of a new Floc Sed Basin with a flow capacity of 80 mgd
- Construction of a new Filter Complex with a flow capacity of 80 mgd
- Construction of a new High Service Pump Station with 8,000 horsepower (hp) pumping capacity
- Construction of a new 4160v Electrical Substation facility
- Construction of new solids handling facilities: solids handling pump station, gravity thickeners, a solids dewatering building, improvements to a solids drying area consisting of a storm water collection pump station and discharge pipe
- Construction of structural improvements and mechanical sludge collection equipment in the existing Filter Waste Washwater Lagoons
- Civil sitework consisting of: earthwork, grading, paving, pile driving, shoring, yard piping, retaining walls, fencing, entrance gates and related work.

E.A. Fairbairn Water Treatment Plant (EAFWTP)

The EAFWTP site is a 200 mgd plant with three parallel trains for sedimentation and filtration. The work at the EAFWTP project site involves constructing new solids handling facilities, and modifications to the existing sludge and filter waste washwater lagoons. The work consists of the following activities:

- Partial demolition and structural modifications of an existing Sludge Lagoon #3
- Construction of new solids handling facilities: solids handling pump station, gravity thickeners, and a solids dewatering building
- Construction of structural walkways and mechanical sludge collection equipment in the existing Filter Waste Washwater Lagoons
- Civil sitework consisting of: earthwork, grading, paving, shoring, yard piping, and related work.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

The 90-percent design was completed in September 2012 and was reviewed by the CITY and its consultants. The Final design was completed in November 2012 and the bid documents advertised for bid on December 3, 2012. Construction bids were received and opened on January 30, 2013. CITY anticipates bond sales for project funding to occur the month of February 2013. As of 3/4/13, CITY anticipates review of the construction contract at the April 2, 2013 City Council meeting, and if approved, providing a Notice of Award by April 3, 2013. CITY anticipates a target date of April 22, 2013 for the formal Notice to Proceed.

The approximate construction cost together with approximate construction start and completion dates are summarized in the following table.

SUMMARY OF CONSTRUCTION CONTRACT COSTS AND PROJECT SCHEDULE

Contract	Description	3/21/12 Cost Estimate (a) (\$)	Estimated Construction (b)	
			Start Date	Finish Date
1	SRWTP Construction	\$129,100,000	May 2013	May 2016
2	EAFWTP Construction	\$14,860,000	May 2013	August 2015
TOTAL	CONSTRUCTION	\$143,960,000		

(a) Information provided in RFQ Q13141311001, Addendum #1 dated 7/6/2012.

(b) Estimated construction duration as of 3/4/2013.

(c) Apparent low construction bid is \$113,776,000 as of 2/27/13.

Project Pre-Construction and Construction Phases

CITY solicited qualifications from firms interested in providing Construction Management Services (CMS) for construction of the WTPRP. The scope of the services was identified as two phases of work, consisting of the following:

- Phase 1, 90% Design Construction Documents Review & Bid and Award Services
- Phase 2, Construction Management Services

By previous agreement, CONTRACTOR has provided Phase 1 and certain early Phase 2 Construction Management Services (CMS) for the Water Treatment Plants Rehabilitation Project. Under this Agreement, CONTRACTOR shall provide the remainder of the Phase 2 Construction Management Services (CMS) for the Water Treatment Plants Rehabilitation Project. CONTRACTOR's Phase 2 services are described herein for this agreement and set forth in the Fee Schedule (Attachment 1 to Exhibit B of the Agreement).

2.0 SCOPE OF SERVICES – BASELINE TASKS

A. CONTRACTOR will provide Construction Management Services (CMS) and serve as the Construction Manager for the project. CONTRACTOR will also have the following designations, to comply with the construction document provisions described in Article 9, Document 00700, General Conditions, and in Document 00800, Supplementary Conditions:

- Owner's Representative (00700-9.01)
- ENGINEER (00700-9.01)
- Resident Project Representative (00700-9.03)

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

- Construction Manager (00800, SC-1.01.A.54)
- B. Design Support and Engineering Services During Construction (ESDC) will be provided by Carollo Engineers, Inc. As the engineer-of-record, Carollo Engineers, Inc. will have the following designations, to comply with the construction document provisions described in Article 1, Document 00800, Supplementary Conditions, 1.01.A.55:
- DESIGN ENGINEER
- C. In providing CMS, the CONTRACTOR will rely on the following provisions incorporated in the construction documents by the CITY to protect CONTRACTOR from liabilities beyond those provided for in the Agreement.
- 1) Reference Article 6.13 of the construction document provisions described in Document 00700 General Conditions:
The CITY agrees that in accordance with generally accepted construction practices, that the Construction Contractor (the entity awarded the contract by the CITY to construct the project) will be required to assume sole and complete responsibility for job site health and safety during the course of construction of the Project, including but not limited to the safety of all persons and property related to the Project. This requirement shall apply continuously and not be limited to normal working hours. CONTRACTOR shall have no control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, health or safety as those responsibilities remain solely with the Construction Contractor.
 - 2) Reference Articles 5.04 and 6.20 of the construction document provisions described in Document 00700 General Conditions:
The CITY shall incorporate a provision into all related construction contracts entered into by CITY relating to such Project to require each Construction Contractor to defend, indemnify and hold CONTRACTOR harmless to the same extent that the Construction Contractor is obligated to defend, indemnify and hold CITY harmless relating to those contracts. CITY shall also include a provision in the construction contracts requiring the Construction Contractor to name CONTRACTOR as an additional insured on the Construction Contractor's Commercial General Liability and Auto Liability insurance policies applicable to the Project, and provide waivers of subrogation, in favor of the CONTRACTOR and CITY, confirmed with endorsements for Commercial General Liability, Auto Liability, and Workers' Compensation Insurance policies.
 - 3) Reference Article 9.09 of the construction document provisions described in Document 00700 General Conditions:
The CONTRACTOR shall not have responsibility for or guarantee the performance of the construction work by the Construction Contractor, or the acts of their Subcontractors or Suppliers. The Construction Contractor will have sole responsibility for planning, directing, scheduling, providing, and managing the manpower, equipment, material, and safety necessary for construction.
 - 4) CONTRACTOR's opinions, recommendations and assessments are limited by a) the accuracy and completeness of information upon which it may reasonably rely, b) schedule constraints or scope limitations, c) unknown or variable site or other conditions, d) other factors beyond CONTRACTOR's control. Any estimates as to

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construction or remediation costs are limited by a lack of control over financial and/or market conditions, including the future price of labor, materials, and prospective bidding environments and procedures. CONTRACTOR does not warrant or guarantee the accuracy or completeness of its Services to the extent impacted by these limitations and CITY should limit its reliance on the Services in like manner.

D. **Phase 2 Scope of Services**

CONTRACTOR will provide Phase 2 CMS consisting of the following tasks, as described herein.

- Task 1 – Project Management Services
- Task 2 – Pre-Construction Services
- Task 3 – Construction Management Services
- Task 4 – Field Administration Services
- Task 5 – Field Quality Management Services
- Task 6 – Field Observation Services
- Task 7 – Startup Testing and Commissioning Services

1. **Task 1 – Project Management Services**

CONTRACTOR will be responsible for overall coordination and administration of project tasks through its assigned Project Manager (PM). The PM will manage the financial and schedule aspects of the tasks identified herein for the period indicated in the Time of Performance. The PM's efforts will focus on completing tasks and submitting deliverables according to the project schedule and budget, managing staff assignments, facilitating QA/QC reviews, and identifying and communicating issues affecting CMS cost, schedule and quality.

1.1. **Project Execution Plan (PXP)**

CONTRACTOR will prepare a Project Execution Plan consisting of project management plans for health and safety, risk, quality, change, communication, responsibility assignments, and a project file system.

1.2. **Monitoring and Control**

CONTRACTOR will provide a part-time (8 hours per annual quarter) Principal-In-Charge (PIC) for 11 consecutive quarters to monitor and oversee the scope of services. CONTRACTOR will provide a part-time (20 hours per month) PM for 34 consecutive months of construction, to execute CONTRACTOR's scope of services. The Principal-In-Charge will be Mike Watson and the Project Manager will be Neil Mann.

1.2.1 Quarterly Reports/Meetings: CONTRACTOR staff will provide up to 8 hours per quarter preparing an executive summary report of project status. The PIC will provide up to 8 hours per quarter on meetings with Oversight Committee and designees of CITY to review project status.

1.2.2 Project Manager Communication: PM will provide up to 8 hours per month communicating with the CITY's Project Manager regarding general status and issues related to the project and plant operations.

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1.2.3 Status Reports and Invoices: CONTRACTOR staff will provide up to 8 hours per month preparing monthly project status reports and reviewing, preparing, approving and submitting monthly invoices to CITY.

1.2.4 Project Execution Plan Updates: CONTRACTOR staff will provide up to 12 hours per quarter for up to 11 annual quarters updating the PXP to address variances between planned and actual performance of tasks in the scope and budget.

1.3. Quality Assurance Monitoring and Audits

CONTRACTOR staff will provide up to 16 hours bi-annually conducting audits of CMS quality assurance processes and up to 16 hours monthly performing quality assurance monitoring.

1.4. Project Close-Out

CONTRACTOR staff will provide up to 50 hours per person per month (for two staff people) for 3 consecutive months for post-construction project closeout services consisting of field office demobilization and project management closeout processes.

2. Task 2 – Pre-Construction Services

CONTRACTOR staff will provide pre-construction services consisting of the execution of subconsultant agreements, setup up the project management system for cost and schedule management, staff training for the project's document management control system, development of the construction management plan, performing pre-project planning, familiarity and preparation for scheduling review, and preparation for preconstruction conference preparation meeting activities.

2.1. Project Setup and Implementation

CONTRACTOR will perform pre-construction services to prepare and execute staffing and sub-consultant agreements, establish a project management integrated schedule and cost estimate, and participate in training on the CITY provided project document management and control system. The following activities will be performed prior to the start of the construction phase:

2.1.1 Subconsultant Agreements: CONTRACTOR will prepare and execute agreements with subconsultants identified as part of the CM project team. Up to four sub-consultant agreements are included.

2.1.2 Project Management Integrated Schedule and Cost Estimate: CONTRACTOR will establish an integrated project management schedule and budget for monitoring and updating project status. CONTRACTOR will use Primavera P6 to prepare a cost and resource loaded schedule for monitoring actual costs and schedule for the project.

2.1.3 Document Control Management System: CONTRACTOR staff will be trained on the CITY provided web-based Document Control Management System (DCMS) for up to 20 hours per person for up to four staff people.

2.2. Construction Management Plan

CONTRACTOR will prepare a Construction Management Plan (CM Plan) to document CITY policies, procedures and project requirements, serving as a

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reference and guide during the construction and post-construction phases. In preparing the CM Plan, CONTRACTOR will consider the CITY's schedule, budget and general design requirements for the project. The CM Plan will be presented to CITY for acceptance.

2.2.1 Policies and Procedures: CITY will provide information on its project policies and procedures for the CONTRACTOR to review. CONTRACTOR will prepare a written outline of the draft CM Plan and strategy for fulfilling the CITY's policies, procedures and requirements of the project. CITY will review and approve the draft CM Plan outline.

2.2.2 Draft CM Plan: CONTRACTOR will develop and prepare the draft CM Plan. CONTRACTOR will provide CITY with one copy of the draft CM Plan.

2.2.3 Draft CM Plan Review with CITY: CONTRACTOR will meet with CITY to review the draft CM Plan. CITY will review and provide comments of the draft CM Plan. CONTRACTOR will document and log CITY review comments and changes to the draft CM Plan.

2.2.4 Final CITY-Approved CM Plan: CONTRACTOR will incorporate draft CM Plan review comments and prepare a final version CM Plan. CONTRACTOR will distribute one copy final CM Plan copy to the CITY Project Manager.

2.3. Pre-Construction Scheduling

CONTRACTOR will provide up to 32 hours per person for four staff people to prepare for and conduct a pre-construction scheduling meeting with the CITY and construction contractor to review project scheduling requirements, format, milestones, constraints, review and correction procedures, and detailed requirements to help coordinate the construction contractor's schedules for the project.

2.3.1 Project Constraints and Schedule Requirement Preparation: Prior to the pre-construction scheduling meeting, CONTRACTOR will review contract bid documents and addenda and summarize the scheduling requirements and major constraints/milestones for the project.

2.3.2 Pre-Construction Scheduling Meeting: CONTRACTOR will conduct a pre-construction scheduling meeting with the construction contractor and CITY. The pre-construction scheduling meeting will review requirements for schedule format, cost loading, resource loading, labor and equipment loading, and the procedures for updates, revisions and delay impact analysis. The pre-construction scheduling meeting will be held within 7 days following the CITY's Notice of Award to the construction contractor. CONTRACTOR will provide and distribute meeting minutes.

2.4. Pre-Construction Conference

CONTRACTOR will provide up to 40 hours per person for five staff people to prepare for and conduct the project's Pre-Construction Conference with CITY and the construction contractor. CONTRACTOR will coordinate the review of pre-construction submittals and formal requests for substitutions.

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2.4.1 Pre-Construction Conference: CONTRACTOR will review project construction documents, prepare an agenda for the Pre-Construction Conference, and conduct the Pre-Construction Conference to coordinate project communications, administration, schedule, cost, progress payments, milestones and constraints, technical specification requirements, startup and commissioning, and project closeout procedures. CONTRACTOR will provide and distribute meeting minutes.

2.4.2 Pre-Construction Conference Submittals: CONTRACTOR will coordinate the review and processing of three pre-construction construction contractor submittals with CITY and DESIGN ENGINEER. CITY and DESIGN ENGINEER will review and respond to submittals, and provide written response comments. CONTRACTOR will issue written response comments to the construction contractor:

- Preliminary Progress Schedule
- Preliminary Schedule of Submittals
- Preliminary Schedule of Values

2.4.3 Substitutions/Or-Equal Equipment: CONTRACTOR will coordinate the review for up to eight contract equipment substitution requests or proposed or-equal suppliers/vendors proposed by the construction contractor during the pre-construction phase. The CITY and DESIGN ENGINEER will review and respond to substitution requests, and provide written response comments. CONTRACTOR will issue written response comments to the construction contractor.

2.5. Pre-Construction Project Specific Review and Planning

CONTRACTOR will provide up to 160 hours per person for five staff people to review project construction documents and prepare checklists and tools used to document progress in the construction phase. Specific items will be developed for daily and monthly reporting, submittal master lists, concrete and soils quality control testing requirements, review of conformed documents, and a concrete conference agenda.

2.5.1 Project Submittals: CONTRACTOR will review the project construction documents and prepare a list of required submittals for the project. The list will serve as the basis for reviewing the construction contractor's preliminary list of submittals and for submittal activities in the baseline CPM schedule.

2.5.2 Quality Control Requirements: CONTRACTOR will review the project construction documents and prepare a list of testing and special inspection requirements. CONTRACTOR will review the project's specified test requirements and procedures to develop checklists for use by field observation and inspection staff during the construction phase.

2.5.3 Conformed Contract Documents: CONTRACTOR will review conformed contract bid documents to verify that items changed during the bid phase by contract addendum have been incorporated into the drawings and specifications.

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2.5.4 Concrete Conference: CONTRACTOR will review the project construction documents and conduct a pre-construction conference for the purpose of coordinating structural concrete quality for the project. The conference will include topics for reinforcing steel placement, concrete formwork, concrete mix designs, concrete placement and curing, concrete sampling and testing, and field procedures for coordinating routine field observation and special inspections. CONTRACTOR will prepare an agenda, preside over the conference and provide and distribute meeting minutes.

2.5.5 Documentation Planning and Setup: CONTRACTOR will identify and develop necessary tracking checklists and forms for documenting construction contractor progress during the construction phase. The anticipated checklists and forms consist of the following:

- Pile Driving Progress and Discrepancies Tracking
- Submittal/Shop Drawings Tracking
- Contractor Requests for Information (RFI) Tracking
- Designer Clarifications Tracking
- Potential Change Orders (PCOs) Tracking
- Change Orders (CCOs) Summary
- Dewatering and Monitoring Well Elevations
- Dewatering Flow Monitoring Data
- Dewatering Discharge Sampling and Testing Results
- SWPPP Inspection and Discrepancies Tracking
- Settlement Monitoring Elevation Data
- Record Drawing Issues Tracking
- Spare Parts and Warranty Issues Tracking
- Spare Parts Transfer Checklist
- Equipment Training Tracking
- Factory Testing Results
- Technical (O&M) Manual Tracking
- Quality Control Testing Lists and Forms
- Pipe Testing and Disinfection Lists

2.5.6 Project Files: CONTRACTOR will use the developed Master List of Files established in the PXP to setup a field office file system for the project file documentation.

3. Task 3 – Construction Management Services

CONTRACTOR will provide a part-time Construction Manager (CM) to provide construction management services for the project, consisting of mobilization and organization of the project field offices, review of the initial baseline CPM schedule from the construction contractor, review of monthly schedule updates, and services

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consisting of meetings, communications, site observation, and progress reporting. The Construction Manager will be Neil Mann.

3.1 Field Office Mobilization

CITY shall provide the CONTRACTOR fully furnished and equipped field offices located on the project site for the duration of the project. Upon availability of the project field offices, CONTRACTOR will transport and setup office space for its personnel assigned to the project, and coordinate with the construction contractor for the organization of the field office furnishings and utilities.

3.2 Baseline Schedule

CONTRACTOR will provide up to 72 hours per person for four staff people to prepare for and conduct a baseline CPM schedule review meeting with CITY and the construction contractor to review the schedule requirements for the proposed format, milestone, constraints and activity detail in the construction contractor's preliminary baseline CPM schedule. CONTRACTOR will review the construction contractor's initial baseline CPM schedule and provide review comments.

3.2.1 Project Constraints and Requirements: Prior to the baseline schedule review meeting, CONTRACTOR will review the project construction documents for specific time-related restrictions and requirements. CONTRACTOR will summarize and provide a list of the specific time-related and scheduling requirements for the project to serve as a reference during the review of the baseline CPM schedule.

3.2.2 Baseline Schedule Coordination Meetings: CONTRACTOR will prepare an agenda and preside at an initial baseline CPM schedule review meeting and one follow-up review meeting with CITY and the construction contractor. The initial baseline CPM schedule review meeting will be held within 60 days of CITY's Notice of Award to the construction contractor. CONTRACTOR will provide and distribute meeting minutes.

3.2.3 Baseline Schedule Review and Comment: CONTRACTOR will review and provide comments to the initial baseline CPM schedule submitted by the construction contractor, and one subsequent revised baseline CPM schedule. The review will consist of the following:

- Activity Successor and Predecessor Logic
- Activity Durations
- Activity Cost Loading
- Critical Path Activities
- Construction Sequencing
- Project Constraints
- Plant Shutdowns and Tie-Ins
- Startup and Testing Activities
- Project Closeout Activities

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3.3 Schedule Updates

CONTRACTOR will provide a part-time (24 hours per month) Scheduler to review construction schedule updates for 33 consecutive months and provide written comments. CONTRACTOR will provide a part-time (8 hours per month) Scheduler to prepare schedule fragments 33 consecutive months to evaluate aspects of critical path.

3.4 Construction Management Services

CONTRACTOR will provide a part-time (137 hours per month) CM for 34 consecutive months from, of which 82 hours per month are dedicated to the Construction Management Services task (remaining hours per month are dedicated to supporting other tasks) to conduct project meetings, correspond with the construction contractor, observe site construction progress, review construction documents, prepare progress reports, and review schedule updates.

3.4.1 Meetings: CM will conduct weekly progress meetings, and prepare and distribute meeting minutes of same, and participate and/or conduct other project meetings for up to 16 hours per month.

3.4.2 Correspondence: CM will be the primary point of contact for written correspondence with the construction contractor. CM will provide up to 16 hours per month to review and/or prepare up to 600 letters (total in/out).

3.4.3 Site Observation: CM will walk the project site observing construction progress and identifying potential issues for up to 16 hours per month.

3.4.4 Change Orders: CM will provide up to 16 hours per month reviewing and negotiating contract change orders and make recommendations to CITY for acceptance or rejection.

3.4.5 Progress Reports: CM will prepare progress reports for up to 6 hours per month and issue to CITY. The reports will document current status on the project, critical issues, design changes, potential change orders, field orders, construction cost, and change order cost.

3.4.6 Schedule Review: CM will review construction schedule documents for up to 12 hours per month to identify potential issues to address with the construction contractor. The construction schedule documents will consist of the construction contractor's weekly look-ahead schedules, monthly CPM schedule narratives, and the CM team draft review comments. Nothing in this article will be deemed to create any CONTRACTOR liability for scheduling issues or failure to maintain the schedule.

4. Task 4 – Field Administration Services

CONTRACTOR will provide field office administrative staff to document project meetings, process reviews of submittal and clarifications, prepare project reports, and control and manage project documents during the construction phase.

4.1. Field Office Engineer Services

CONTRACTOR will coordinate, and respond to Requests for Information (RFI's). All other Field Office Engineer tasks are provided by others, and listed under optional tasks.

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4.1.1 Clarification Reviews and Responses: CONTRACTOR will review and respond to RFI's submitted by the construction contractor related to matters generally consisting of change order, schedule, administrative, contract documentation conflicts and contract document interpretation issues. CONTRACTOR will use its judgment and discretion to identify RFI's related to technical design and process issues and forward to the DESIGN ENGINEER for the review and response. The CONTRACTOR's RFI review and response duties and hours will be allocated between the Construction Manager and Resident Engineers. CONTRACTOR will provide up to 2.5 hours per RFI for the review and response of up to a total of 700 RFIs.

4.2. Field Office Administration Services

CONTRACTOR will provide a full-time (160 hours per month) Field Office Administrator for 34 consecutive months, of which 150 hours per month are dedicated to Field Office Administration tasks (remaining hours per month are dedicated to supporting other tasks) to perform DCMS processing, filing, tracking construction documents, prepare meeting minutes, and maintain record project files. The Field Office Administrator will be Loretta Arteaga.

4.2.1 Meetings: Field Office Administrator will attend and prepare minutes for weekly progress meetings, and other project meetings as necessary, for up to 16 hours per month.

4.2.2 DCMS Processing: Field Office Administrator will process DCMS items for up to 118 hours per month. DCMS processing will consist of downloading and uploading RFIs, submittals, clarifications, meeting minutes, letters, daily reports, potential changes, and change orders.

4.2.3 Progress Reports: Field Office Administrator will assist the Construction Manager in preparing progress reports to CITY documenting the monthly construction progress, status of the construction costs, and critical project issues, for up to 16 hours per month for up to 34 monthly reports.

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5. Task 5 – Field Quality Management Services

CONTRACTOR will provide field quality management services consisting of resident engineer and project closeout services.

5.1. Resident Engineer Services

CONTRACTOR will provide one full-time (160 hours per month) Resident Engineer (RE) for 31 consecutive months, and one full-time (160 hours per month) RE for 34 consecutive months, of which 136 hours per month are dedicated to Resident Engineer Services tasks (remaining hours per month are dedicated to supporting other tasks) to manage and oversee field observation, conduct pre-activity meetings, negotiate change orders, review monthly progress payment requests, track construction schedule, and coordinate with CITY operations and maintenance staff. Resident Engineers will be Matt Carpenter and Stephen Chavez. Resident Engineer activities consist of the following items:

- 5.1.1 Site Observation:** RE's will walk the project site up to 12 hours per month to observe construction progress and identify potential issues.
- 5.1.2 Daily Reports:** RE's will review and finalize draft daily inspection reports prepared by Field Inspectors up to 8 hours per month.
- 5.1.3 Communication:** RE's will interact and communicate with construction contractor's project manager and staff up to 8 hours per month to coordinate daily schedule, inspections, review of clarification responses and submittal comments, and interpretations of contract documents.
- 5.1.4 Quality Control Testing Results:** RE's will review quality control test results up to 8 hours per month to verify conformance with the project construction documents, identify deviations or non-conforming tests, and maintain testing logs.
- 5.1.5 Construction Issue Resolution:** RE's will facilitate and lead day-to-day management of construction issues for up to 8 hours per month and coordinate issue resolution. RE's will coordinate issues with inspectors, DESIGN ENGINEER, and CITY.
- 5.1.6 Work Activity Preparation:** RE's will support the field observation effort up to 8 hours per month by preparing project specific work activity packages for identifiable new phases of construction. Work packages will include drawings, specifications, standards, and requirements for inspection staff to carry out the field observation duties.
- 5.1.7 Progress Payments:** RE's will review construction contractor's monthly pay request and verify work status with inspectors up to 8 hours per month. RE's will verify documentation has been uploaded to CITY website for certified payroll and labor compliance.
- 5.1.8 Special Inspection and Testing:** RE's will coordinate special inspection and testing for up to 8 hours per month.
- 5.1.9 Meetings:** RE's will participate and/or conduct project meetings for up to 12 hours per month. Meetings consist of the following:

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- Weekly Progress Meetings
- Contractor Safety Meetings
- Pre-Activity, System Outage, and Specific Issue Meetings

5.1.10 Schedules: RE's will review construction schedule updates for up to 10 hours per month and coordinate review comments.

5.1.11 Submittal and RFI Tracking: RE's will track Submittals and RFI's that pertain to their process area responsibility. Each RE will spend up to 0.25 hours per item (11 hours per month) tracking up to 1,600 Submittals and RFI's (3,200 total items).

5.1.12 Work Activity Updates: RE's will update process area work activity packages for inspection staff to include the relevant Submittals and RFI's. Each RE will spend up to 0.25 hours per item (6 hours per month) updating work activity packages for the up to 800 Submittal and RFI's (1,600 total items).

5.1.13 Correspondence: RE's will review and/or prepare letters related to quality, cost, schedule, or contract document interpretive issues. Each RE will spend up to 1 hour per letter (6 hours per month) reviewing or preparing up to 200 letters each (400 total in/out). CM will review draft responses and be primary contact for correspondence with contractor.

5.1.14 Change Order Issues: RE's will spend up to 26 hours per month to track and administer change order issues; including potential change order (PCOs), field orders (FO's), and contract change orders (CCOs); as described below:

- PCO Issues – Review entitlement & make recommendation to CITY; up to 1 hour per issue for up to 160 issues/each (320 total issues)
- CCO Issues – Review entitled issue quotes & prepare negotiation; up to 2 hours/issue for up to 80 issues/each (160 total issues)
- CCO Meetings – Prepare, negotiate, and document positions; up to 8 hours/meeting for up to 20 total meetings
- CCO Package – Prepare draft justifications & incorporate comments; up to 8 hours/package for up to 20 total packages

5.1.15 Record Drawing Updates: RE's will support the field observation effort up to 8 hours per month for coordinating draft record drawing review comments prepared by Field Inspectors. The estimated effort is based on construction contractor submitting digitally updated (.pdf format) record drawings each month that are annotated neatly in an organized, legible, and complete fashion documenting all revisions/modifications due to clarifications, shop drawings, change orders, field routes/ elevations, and as-built field conditions. RE's will finalize review comments and maintain a log. Record drawings will be provided to Design Engineer quarterly for CAD updates as construction is completed for each area/discipline.

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5.2. Project Close-Out Services

CONTRACTOR will provide up to 28 hours per person per week for up to 13 weeks for three staff people, between substantial completion and final acceptance to verify procedures required by the contract documents, and to confirm completion of contract work, change order work and contracting procedures. CONTRACTOR will perform final project walk-through to assist preparation of the final punchlist.

5.2.1 Final Completion & Payment Request: CONTRACTOR will review construction contractor's final payment request and identify remaining contract deficiencies, withholds or liens to the project. CONTRACTOR will make a recommendation to the CITY for final acceptance and payment with any noted issues or payment withholds.

5.2.2 Final Record Drawings: CONTRACTOR will review the final draft record drawings prepared by the DESIGN ENGINEER to verify compliance with the project RFIs and issued clarifications.

5.2.3 Final O&M Manuals, Parts Lists, and Warranties: CONTRACTOR will provide CITY with copies of final O&M manuals, spare parts lists, and warranty agreements. CONTRACTOR will provide signed transmittals to the CITY Resident Engineer to document dates of transfer, the name of person accepting the items, and the storage location of the items.

5.2.4 Final Executive Summary Report: CONTRACTOR will prepare a final executive summary report consisting of the final construction cost, percent change orders, total number of submittals and RFIs, outstanding issues and known potential claims.

5.2.5 Final Project Documents: CONTRACTOR will provide hard copies of final project documents (field office files) to CITY at project completion. Electronic files for project correspondence submittals, RFI's, meeting notes, reports, schedules, PCOs and change orders, and contractor progress payments will be provided on a DVD format.

6. Task 6 – Field Observation Services

CONTRACTOR will provide Field Inspectors for routine field observation to verify construction progress and compliance with contract documents. Field Inspection staff will prepare daily reports depicting a general overview of construction activities, including weather conditions, construction equipment and labor, work performed, materials used, observed delays, and deficiencies. CONTRACTOR will provide Field Testing and Special Inspection Technicians for field testing and observation of soil compaction and concrete placement and compliance with contract documents.

6.1. Site Stormwater Pollution and Prevention Plan (SWPPP)

CONTRACTOR will provide a part-time (24 hours per month) field inspector for 27 consecutive months. The inspector will be assigned to cover both the SRWTP and EAFWTP project sites.

6.2. High Service Pump Station (HSPS) and 4160V Substation

CONTRACTOR will provide a full-time (160 hours per month) field inspector for 22 consecutive months at the SRWTP project site.

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6.3. Solids Handling and Filter Waste Washwater Improvements

CONTRACTOR will provide a full-time (160 hours per month) field inspector for 25 consecutive months. The inspector will be assigned to cover both the SRWTP and EAFWTP project sites.

6.4. Site Civil and Yard Piping

CONTRACTOR will provide a full-time (160 hours per month) field inspector for 23 consecutive months at the SRWTP project site.

6.5. Floc-Sed Basin and Filters

CONTRACTOR will provide a full-time (160 hours per month) field inspector for 19 consecutive months at the SRWTP project site.

6.6. Field Testing – Soils

CONTRACTOR will provide a part-time field testing technician (16 days per month, for 4 hours per day, for up to 64 hours per month) for 26 consecutive months for sieve analysis, compaction curve, and field compaction testing. Logs of field compaction results will be maintained. The technician will be assigned to cover both the SRWTP and EAFWTP project sites

6.7. Field Testing – Concrete

CONTRACTOR will provide a part-time field testing technician (16 days per month, for 4 hours per day, for up to 64 hours per month) for 26 consecutive months. CONTRACTOR will monitor concrete deliveries for batch age, w/c ratio, mix design, and provide concrete slump tests, temperature, air content, and compressive strength. Logs of strength testing results will be maintained. The technician will be assigned to cover both the SRWTP and EAFWTP project sites.

6.8. Special Inspection – Concrete, Masonry, Anchors, and Welding

CONTRACTOR will provide a part-time special inspection technician (16 days per month, for 4 hours per day, for up to 64 hours per month) for 19 consecutive months to perform special inspection of concrete, masonry, anchors, and structural steel welding. The technician will be assigned to cover both SRWTP and EAFWTP sites.

6.9. Field Observation – Pile Driving

CONTRACTOR will observe and document up to 2,600 driven concrete piles (100 indicator piles/2,500 production piles) at the SRWTP site. CONTRACTOR will dedicate up to 660 hours from other inspection tasks hours, and provide one additional full-time field inspector (160 hours per month) for 4 consecutive months, to perform routine field observation of pile driving work. Field observation will consist of documenting installed pile length, location, identification number, date and number of blows-per-foot on a separate field log form for each pile. CONTRACTOR will provide copies of pile log forms to the DESIGN ENGINEER for review.

7. Task 7 – Testing, Training, and Startup Services

CONTRACTOR will provide a full-time (160 hours per month) Field Inspector at the project site for 12 consecutive months to provide testing, training, and startup support services. The services shall generally support Specification Section 01756, consisting of the testing activities described as General Startup & Testing Procedures, Functional

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Testing, Training of Owner's Personnel, and the Final Punchlist and Substantial Completion processes. Remaining testing activities in Specification Section 01756, such as Performance Testing and Operational Testing, shall be provided by others.

7.1. General Startup and Testing Procedures (01756-1.05):

CONTRACTOR will provide up to 40 hours per month witnessing the specified pre-functional test activities for mechanical, electrical, and instrumentation systems.

7.2. Functional Testing (01756-1.06):

CONTRACTOR will provide up to 60 hours per month witnessing the specified functional testing for mechanical/electrical equipment and instrumentation/control systems, operation of instrument loop function via signal generation, and continuous 8-hour tests. CONTRACTOR will track and log certificates of proper installation and notify City, Design Engineer, and Programmer that Operational Testing (01756-1.07) may commence.

7.3. Training of Owner's Personnel (01756-1.09):

CONTRACTOR will provide up to 20 hours per month facilitating specified operations and maintenance training for mechanical, electrical, and instrumentation equipment. CONTRACTOR will attend training coordination meetings and facilitate communication with CITY.

7.4. Final Punchlist and Substantial Completion:

CONTRACTOR will provide up to 40 hours per month preparing and managing the final punchlist for each contract milestone.

3.0 FEES, EXPENSES AND TIME OF PERFORMANCE

A. Fee Schedule

The total of all fees and expenses to be paid to CONTRACTOR for the Phase 2 construction management support services, including contingency Task 6.10, as described herein shall not exceed \$8,259,514.00 without prior written approval of CITY. The basis of the cost estimate is summarized in the Fee Schedule in Attachment 1 to Exhibit B. The cost estimate and budget for the CMS are level of effort estimates that may not be sufficient to provide services for the entire construction period. CONTRACTOR will notify CITY of budget and progress status on a quarterly basis and will not incur costs in excess of budgets without re-negotiation of project budgets.

B. Project Expenses

Project expenses consist of 1) those specifically included as authorized reimbursable expenses, subject to allowed markup, and 2) those specifically excluded from the total fee, as indicated below:

1. **Reimbursable Expenses** – Associated Project Costs (APC) and Materials Testing non-labor costs are authorized reimbursable expenses, per the Schedule of Hourly Rates (Attachment 2 to Exhibit B of the Agreement). Reimbursable expenses shall also include future identified project expenses, not specifically excluded below, and authorized in advance by the CITY.

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2. **Non-Reimbursable Expenses** – The following project expenses, associated with the services for in 2.0 SCOPE OF SERVICES – BASELINE TASKS, are specifically identified as non-reimbursable:

- Mobilization/Demobilization
- Vehicle Mileage
- Home Office Personal Vehicle Mileage
- Leased Vehicles
- Travel Expenses
- Housing and Accommodation Expenses
- Field Equipment and Materials

C. Time of Performance

CONTRACTOR's schedule and compensation are based on providing the above services for a period of 40 consecutive months. CONTRACTOR's schedule is based on a planned duration consisting of 2 months of pre-construction services, 1 month of pre-project planning, 34 months of construction phase services and 3 months of post-construction phase services for project close out. In the event that the schedule for the CITY's construction contract extends beyond 34 months of construction phase time and CONTRACTOR's continued services are required, and additional costs are projected, CONTRACTOR will request an amendment to this Agreement before incurring additional cost.

D. Task/Work Hour Management

CONTRACTOR shall monitor and track expenditures, budgets, and level of effort required to complete each Task, to the extent possible. CONTRACTOR may request a supplemental agreement to re-allocate hours and compensation between Tasks if the estimate-to-completion for Tasks begins to deviate significantly from the budgeted amounts and the total Agreement price is not increased.

4.0 SCOPE OF SERVICES – CONTINGENCY TASKS

A. **Contingency Tasks:** Upon written request, expense and authorization by CITY, CONTRACTOR will provide proposed contingency tasks beyond the level of effort described in 2.0 SCOPE OF SERVICES – BASELINE TASKS and 3.0 FEES, EXPENSES, AND TIME OF PERFORMANCE, should they be required during the construction phase of the project. The scope for proposed contingency services is described herein.

1. Additional Hours Beyond Baseline Monthly Planned Effort

Should the Project require additional hours of services beyond the proposed monthly level of effort, CONTRACTOR will provide the following:

- ***Task 6.10 - Field Inspection Hours Beyond Baseline (> 160 hours/month)***

CONTRACTOR will provide additional Field Inspection, Testing and Special Inspection hours, beyond the budgeted baseline of 160 hour per month, by up to 80 hours per month for up to 26 months.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

5.0 SCOPE OF SERVICES – OPTIONAL TASKS

A. **Proposed Optional Tasks:** Upon written request, expense and authorization by CITY, CONTRACTOR will provide proposed optional tasks beyond the level of effort described in 2.0 SCOPE OF SERVICES – BASELINE TASKS and 3.0 FEES, EXPENSES, AND TIME OF PERFORMANCE, should they be required during the construction phase of the project. The scope for proposed optional services is described herein.

1. Additional Hours Beyond Baseline Monthly Planned Effort

Should the Project require additional hours of services beyond the proposed monthly level of effort, CONTRACTOR will provide the following:

- **Task 8.1.1 - Construction Manager/Project Manager Hours (>137 hours/month):** CONTRACTOR will increase budgeted hours by up to 11 hours per month for 34 months.
- **Task 8.1.2 - Resident Engineer Hours (>160 hours/month):** CONTRACTOR will increase budgeted hours by up to 16 hours per month for up to 34 months for each of two RE's.
- **Task 8.1.3 - Field Office Administrator Hours (>160 hrs/mo):** CONTRACTOR will increase budgeted hours up to 40 hours per month for up to 34 months.

2. Additional Months Beyond Baseline Planned Construction Duration

Should the Project duration extend beyond the planned construction phase duration and the services are required by CITY, the CONTRACTOR will provide the following.

- **Task 8.2.1 - Additional CM Months (>34 months):** CONTRACTOR will increase budgeted duration by up to 2 months at 160 hours per month.
- **Task 8.2.2 - Additional RE Months (>31 or 34 months):** CONTRACTOR will increase budgeted duration for up to 3 months at 160 hours/month for each RE.
- **Task 8.2.3 - Field Office Administrator Months (>34 months):** CONTRACTOR will increase budgeted duration for up to 2 months at 160 hours per month.
- **Task 8.2.4 - Field Inspector Months (additional months):** CONTRACTOR will increase budgeted duration for up to 2 months at 160 hours per month for one Field Inspector.

3. Staffing Classification Changes Due to Availability

Should staff availability or field requirements dictate, CONTRACTOR will provide 'senior inspector' in lieu of 'inspector' for field observation services.

- **Task 8.3.1 - Floc-Sed and Filters Inspector Classification:** CONTRACTOR will provide 'senior inspector' in lieu of 'inspector' for field observation services for up to 19 months at 160 hours per month.
- **Task 8.3.2 - Site Civil and Yard Piping Inspector Classification:** CONTRACTOR will provide 'senior inspector' in lieu of 'inspector' for field observation services for up to 23 months at 160 hours per month.

ATTACHMENT 1 TO EXHIBIT A SCOPE OF SERVICES

4. Claims Review and Analysis

Should review and analysis of construction contractor claims be required, CONTRACTOR will review claims based on the project contract documents, evaluate submitted claims costs, and provide analysis and comments on the justification and reasonableness of the claims.

- **Task 8.4.1 – Claims Review and Analysis:** CONTRACTOR will provide claims support services for up to 160 hours each for the four staff members proposed in the July 19, 2012 Statement of Qualifications.

5. Additional Months Beyond Baseline Pre/Post Construction Effort:

Should the Project start or finish milestones be delayed beyond the planned durations, CONTRACTOR will provide additional months of pre- and post-construction services.

- **Task 8.5.1 - Pre-Construction Completion Support (>2 months):** CONTRACTOR will provide pre-construction support services up to 160 hours per person per month for five staff members for 1 month beyond planned duration.
- **Task 8.5.2 - Post-Construction Completion Support (>3 months):** CONTRACTOR will provide post-construction support services up to 160 hours per person per month for three staff members for 2 months beyond planned duration.

B. Other Optional Tasks:

Upon written request, expense and authorization by CITY, CONTRACTOR will provide other optional tasks beyond the level of effort described in 2.0 SCOPE OF SERVICES – BASELINE TASKS, should they be required during the construction phase of the project. The scope and cost estimate for other optional services will be developed and negotiated with CITY at the time other optional services are requested by CITY. Other optional services include, but are not limited to, the following:

- Design Discipline Support Services
- Hazardous Waste Characterization, Remediation and Cleanup/Disposal Services
- Operational Support Services
- Permit Compliance Services
- Outside Agency Coordination and Support Services
- Field Office Engineer Services
- Operational Testing Services (01756-1.07)
- Programming Coordination Services

6.0 SERVICES BY OTHERS

Services provided by the CITY

A. CITY will provide the following services and responsibilities, among others:

- **Labor Compliance:** Services related to the review of the construction contractor's monthly certified payroll.
- **Legal Services:** Services related to contract review, bidding irregularities, protests, claims, and related items.

ATTACHMENT 1 TO EXHIBIT A SCOPE OF SERVICES

- Project Administration: Responsibility and authority related to the approval of any changes to the specifications, plans, or other contractual obligations of CITY.
- Financial Administration. Books of account for the receipts and disbursements associated with the project necessary for fiscal control. CITY will coordinate progress payment and change order costs to facilitate proper financial administration.
- Permits. All permit applications, fees, agency approvals, and coordination thereof.
- Verification Surveying. Surveying services to verify Construction Contractor's general layout of structures and to verify elevations on various structures as necessary to confirm compliance with the Drawings.
- Mechanical and Electrical Support Inspection. Support Inspection services for mechanical and electrical work to determine compliance with CITY requirements.
- Control Systems Programming. Coordination of PLC/HMI Plant Process Control System programming and operational testing work to determine compliance with CITY requirements and CITY needs.
- Web Based Document Management Control System. Provide system setup, training, and maintenance for the EADOC web-based document management control system.
- Factory Visits. CITY will attend selected factory visits and testing programs at the factory to witness compliance with the Contract Documents and CITY requirements.
- Claims Management. Tracking and management extra work items and resolution of potential claims with the assistance of CONTRACTOR when requested.
- Printing.
- LEED Certification (if applicable).
- Provide CM Field Office, Furnishings and internet connection.
- Provide CM Field Office Supplies and Equipment.
- Low Voltage System Coordination.
- LAN/WAN, Voice over IP (VoIP) Telephone and Wireless Coordination.
- Elderberry Shrub Management, Removal & Report Coordination.
- Construction Employee Education.
- Biologist On-Site Inspection.
- Paleontologist and Archaeologist On-Site Inspection.
- Project Partnering Facilitation and Meetings.
- Plant Security/Access Gate Monitoring.
- Selection of CITY management and staff to participate in a project Oversight Committee.
- Written CITY policies and procedures for evaluation in the CM Plan.
- Services for bid disputes or rebidding the project
- Reports to Public Agencies

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

Services provided by the DESIGN ENGINEER

B. DESIGN ENGINEER (Carollo Engineers, Inc.) will provide the following services and responsibilities, among others:

- Design Engineering Services
- Field Surveying Services
- Field Office Engineering Services for Specification Divisions 01–17
- Submittal Coordination, Review and Comment for Specification Divisions 01–17
- RFI Coordination, Review and Comment for Specification Divisions 01–17
- Factory Testing Visits for Specification Divisions 01–17
- Geotechnical Engineering Services
- Site Visits and Discipline Field Observations for Specification Divisions 01–17
- Fire Sprinkler, HVAC and Plumbing Code Coordination
- CCTV System and Site/Building Security System.
- Technical Manuals Review and Comment
- Record Drawings for Specification Divisions 01–17
- Fire Marshall Coordination
- Agency and Permit Coordination
- Utilities Coordination
- Architectural Coordination
- LEED Certification Process Coordination
- Operator Instruction and Training of Owner's Personnel
- Operational Testing (01756-1.07) and Commissioning Activities
- Operation and Maintenance (O&M) Manual
- Short Circuit Study

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions and including Contingency Task 6.10 (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$8,259,514.00 (excluding Optional Tasks 8.1.1 thru 8.5.2), as set forth in Attachment 1 to Exhibit B.
2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate basis, as set forth in the Fee Schedule in Attachment 1 to Exhibit B, and the Schedule of Hourly Billing Rates in Attachment 2 to Exhibit B, both attached hereto and incorporated herein. All billing rates, including sub-consultants to CONTRACTOR, will be adjusted annually every year on April 1st. The amount of annual adjustment to billing rates will be the higher of 2%, or the annual % increase determined based on the change in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for the San Francisco/Oakland area (=241.17 in August 2012), but not to exceed the rate based on a CPI-U for Sacramento CA in the event a Sacramento index is created. Billing rates for staff in any position will apply regardless of whether it is straight time, premium time, or overtime, except for positions requiring prevailing wage rates.

Fees and expenses for work performed by sub-consultants shall also be identified on the monthly invoices to the CITY. Copies of billing invoices of sub-consultants to CONTRACTOR shall be provided with the monthly invoices of CONTRACTOR to CITY. Non-salary expenses will be charged an associated project cost (APC) at a rate per labor hour, as set forth in Attachment 2 to Exhibit B. The APC cost rate shall cover the incidental cost for telecommunication, postage, computers, incidental photocopying, and related equipment. The APC cost rate does not include the identifiable costs of reproduction, printing, and binding applicable to the project, which will be charged at actual cost plus 10 percent.

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance

- (4) Sequential Invoice Number
- (5) CITY's Purchase Order Number
- (6) Total Contract Amount
- (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
- (8) Total Billed to Date
- (9) Total Remaining on Contract
- (10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

5.D. Requests for payment shall be sent to:

City of Sacramento, Dept. of Utilities
1395 35th Avenue, Sacramento, CA 95822
(916) 808-1910 / 808-1497 / ipietz@cityofsacramento.org
Attn: Ian Pietz

- 5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other consultants to perform said Additional Services.
- 6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
- 7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Labor Estimate References																								
Phase & Task Descriptions	Units			Schedule										Prn Prof I	Prn Prof II	Spv Prof II	Snr Adm	Spv Eng II	Spv Prof I	Insp	Snr Insp	Snr Insp	Insp	Snr Insp
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrrs	Hour Totals	Labor Totals	Mike Watson	Neil Mann	Steve Chavez	Loretta Arteaga	Matt Carpenter	Rafael Martin	David Sun	Larry Haupt	Ray Sruba	Sam Hawkins	Wade Weston
Phase 2 - Construction Management Services																								
Task 1.0 Project Management													3,467		\$684,596									
1.1 Project Execution Plan																								
1.1.1 Health & Safety Plan	LS	1	10	Late Jan	2.1	01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.2 Risk Management Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.3 Quality Assurance Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.4 Change Management Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.5 Communication Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.6 Responsibility Assignment Matrix	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762		10	10	10							
1.1.7 Project File System	LS	1	20			01/30/13	02/13/13	14	2	0	0	60	\$10,741		20	20	20							
1.2 Monitoring and Control																								
1.2.1 Quarterly Reports/Meetings	Quarterly	11	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	363	\$79,898	91	91	91	91							
1.2.2 PM Communication	Monthly	34	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	272	\$70,548		272									
1.2.3 Status Reports and Invoices	Monthly	34	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	1,088	\$160,008		272	136	136							
1.2.4 Project Execution Plan Updates	Quarterly	11	12	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	460	\$84,346		136	68	136							
1.3 Quality Assurance																								
1.3.1 Bi-Annual Quality Assurance Audits	Bi-Annual	6	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	182	\$48,921	91										
1.3.2 Quality Assurance Monitoring	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095		544									
1.4 Project Close-Out																								
1.4.1 Field Office Demobilization	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	153	\$27,234		76		76							
1.4.2 PM Closeout	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	153	\$27,234		76		76							
2.0 Pre-Construction Services													2,068		\$352,236									
2.1 Project Setup Execution																								
2.1.1 Subcontract/Agreement	Each	4	8	Late Jan	2.1	01/30/13	03/06/13	14	2	0	0	144	\$20,533		16	32	32							
2.1.2 PM Cost and Schedule	LS	1	20	1.1		02/13/13	03/06/13	21	3	1	0	260	\$31,474		20	20	40	20						
2.1.3 Document Control Management System	LS	1	20	1.1		02/13/13	03/06/13	21	3	1	0	80	\$14,342		20	20	20	20						
2.2 Construction Management Manual																								
2.2.1 Review City Policies/Procedures	LS	1	8	1.1 & 2.1.1		02/13/13	02/27/13	14	2	0	0	48	\$8,618		8	8	8	24						
2.2.2 Prepare Draft CM Manual	LS	1	32	1.1 & 2.1.1		02/27/13	03/27/13	28	4	1	0	198	\$32,921		32	32	64	70						
2.2.3 Review Draft CM Manual with City	LS	1	8	2.2.2		03/27/13	04/03/13	7	1	0	0	32	\$5,737		8	8	8	8						
2.2.4 Final CM Manual and Distribute	LS	1	16	2.2.3		04/03/13	04/10/13	7	1	0	0	80	\$13,039		16	16	32	16						
2.3 Pre-Construction Scheduling																								
2.3.1 Identify Schedule Constraints	LS	1	24	2.1.1	NOA	02/13/13	02/28/13	15	2	0	0	96	\$19,629		24	24		24	24					
2.3.2 Pre-Construction Scheduling Meeting	LS	1	8	2.1.1 & 2.3.1	NOA + 7	02/28/13	03/07/13	7	1	0	0	40	\$7,326		8	8	8	8	8					
2.4 Pre-Construction Conference																								
2.4.1 Prepare, Conduct, and Minutes	LS	1	16	Pre-Con	Pre-Con	02/28/13	03/31/13	24	3	1	0	72	\$13,063		16	16	16	16	8					
2.4.2 Prelim Schedule/Submittal/Payment Review	Each	3	8	2.4.1		03/31/13	04/14/13	7	1	0	0	96	\$19,629		24	24		24	24					
2.4.3 Substitutions/Or-Equals	Each	8	2	2.1.2		03/31/13	05/11/13	11	2	0	0	32	\$4,446				16	16						
2.5 Pre-Construction Project Specific Planning																								
2.5.1 Project Submittal Requirements	Monthly	1	60		Late NTP	03/16/13	04/15/13	30	4	1	0	237	\$42,437		59	59	59	59						
2.5.2 Quality Control Requirements	Monthly	1	60		Late NTP	03/16/13	04/15/13	30	4	1	0	178	\$36,647		59	59		59						
2.5.3 Conformed Contract Document Review	LS	1	40		Late NTP	04/01/13	05/01/13	30	4	1	0	118	\$24,432		39	39		39						
2.5.4 Concrete Conference	LS	1	20		Late NTP	04/01/13	05/01/13	30	4	1	0	79	\$14,146		20	20	20	20						
2.5.5 Documentation Planning and Setup	Monthly	1	20		Late NTP	04/01/13	05/01/13	30	4	1	0	239	\$39,958		20	20	20	20						
2.5.6 Project Files Setup	Monthly	1	40		Late NTP	04/01/13	05/01/13	30	4	1	0	39	\$3,860				39							
3.0 Construction Management													4,151		\$993,169									
3.1 Field Office Mobilization																								
3.1.1 Field Office Setup	LS	1	24	Late NTP	Mlst A	05/01/13	05/08/13	7	1	0	0	24	\$2,348				24							
3.2 Baseline Schedule																								
3.2.1 Project Constraints and Requirements	LS	1	24		Mlst B	04/29/13	06/15/13	47	7	2	1	96	\$19,629		24	24		24	24					
3.2.2 Baseline Schedule Coordination Meetings	LS	1	8	01324A-1.09	Mlst B	04/29/13	06/15/13	47	7	2	1	32	\$6,543		8	8		8	8					
3.2.3 Baseline Schedule Review and Comment	LS	1	40	01324A-1.09	Mlst B	04/29/13	06/15/13	47	7	2	1	160	\$32,714		40	40		40	40					
3.3 Schedule Updates																								
3.3.1 Review and Comment	Monthly	33	24	Mlst B	Mlst I	06/15/13	03/01/16	990	141	33	11	781	\$155,127						781					
3.3.2 Schedule Fragnets and Analysis	Monthly	33	8	Mlst B	Mlst I	06/15/13	03/01/16	990	141	33	11	270	\$53,695						270					
3.4 Construction Management Services																								
3.4.1 Meetings	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095		544									
3.4.2 Correspondence	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095		544									
3.4.3 Site Observation	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095		544									
3.4.4 Change Orders	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095		544									
3.4.5 Progress Reports	Monthly	34	6	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	204	\$52,911		204									
3.4.6 Schedule Review	Monthly	34	12	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	408	\$105,821		408									

**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Labor Estimate References													Support Team Members													
Phase & Task Descriptions	Units			Schedule								Spec Insp			Prn Adm	Sup Adm	Sup Prof I	Sup Prof I	Sr Prj Cntrl	Proj Ctrl	Sr Adm	Adm	Adm	Adm		
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrts	Hour Totals	Labor Totals	Dave King	Barry Lottz	William Whalen	Scott Poquette	Ellen Seymour	Michael McWhirter	Khalid Talaat	Casey Frederick	Rohit Shinde	Jane Remedios	Diane Martens	Ryan Beer	Mark O'Kane
Phase 2 - Construction Management Services																										
Task 1.0 Project Management																										
1.1 Project Execution Plan																										
1.1.1 Health & Safety Plan	LS	1	10	Late Jan	2.1	01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.2 Risk Management Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.3 Quality Assurance Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.4 Change Management Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.5 Communication Plan	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.6 Responsibility Assignment Matrix	LS	1	10			01/30/13	02/13/13	14	2	0	0	32	\$5,762						1	1						
1.1.7 Project File System	LS	1	20			01/30/13	02/13/13	14	2	0	0	60	\$10,741													
1.2 Monitoring and Control																										
1.2.1 Quarterly Reports/Meetings	Quarterly	11	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	363	\$79,898													
1.2.2 PM Communication	Monthly	34	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	272	\$70,548													
1.2.3 Status Reports and Invoices	Monthly	34	8	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	1,088	\$160,008								136	136	68	68	68	68
1.2.4 Project Execution Plan Updates	Quarterly	11	12	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	460	\$84,346													
1.3 Quality Assurance																										
1.3.1 Bi-Annual Quality Assurance Audits	Bi-Annual	6	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	182	\$48,921													
1.3.2 Quality Assurance Monitoring	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095													
1.4 Project Close-Out																										
1.4.1 Field Office Demobilization	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	153	\$27,234													
1.4.2 PM Closeout	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	153	\$27,234													
2.0 Pre-Construction Services																										
2.1 Project Setup Execution																										
2.1.1 Subcontract/Agreement	Each	4	8	Late Jan	2.1	01/30/13	02/13/13	14	2	0	0	144	\$20,533				32	32								
2.1.2 PM Cost and Schedule	LS	1	20	1.1		02/13/13	03/06/13	21	3	1	0	260	\$31,474								40	40	20	20	20	20
2.1.3 Document Control Management System	LS	1	20	1.1		02/13/13	03/06/13	21	3	1	0	80	\$14,342													
2.2 Construction Management Manual																										
2.2.1 Review City Policies/Procedures	LS	1	8	1.1 & 2.1.1		02/13/13	02/27/13	14	2	0	0	48	\$8,618													
2.2.2 Prepare Draft CM Manual	LS	1	32	1.1 & 2.1.1		02/27/13	03/27/13	28	4	1	0	198	\$32,921													
2.2.3 Review Draft CM Manual with City	LS	1	8	2.2.2		03/27/13	04/03/13	7	1	0	0	32	\$5,737													
2.2.4 Final CM Manual and Distribute	LS	1	16	2.2.3		04/03/13	04/10/13	7	1	0	0	80	\$13,039													
2.3 Pre-Construction Scheduling																										
2.3.1 Identify Schedule Constraints	LS	1	24	2.1.1	NOA	02/13/13	02/28/13	15	2	0	0	96	\$19,629													
2.3.2 Pre-Construction Scheduling Meeting	LS	1	8	2.1.1 & 2.3.1	NOA + 7	02/28/13	03/07/13	7	1	0	0	40	\$7,326													
2.4 Pre-Construction Conference																										
2.4.1 Prepare, Conduct, and Minutes	LS	1	16	Pre-Con	Pre-Con	02/28/13	03/31/13	24	3	1	0	72	\$13,063													
2.4.2 Prelim Schedule/Submittal/Payment Review	Each	3	8	2.4.1		03/31/13	04/14/13	7	1	0	0	96	\$19,629													
2.4.3 Substitutions/Or-Equals	Each	8	2	2.1.2		03/31/13	05/11/13	11	2	0	0	32	\$4,446													
2.5 Pre-Construction Project Specific Planning																										
2.5.1 Project Submittal Requirements	Monthly	1	60		Late NTP	03/16/13	04/15/13	30	4	1	0	237	\$42,437													
2.5.2 Quality Control Requirements	Monthly	1	60		Late NTP	03/16/13	04/15/13	30	4	1	0	178	\$36,647													
2.5.3 Conformed Contract Document Review	LS	1	40		Late NTP	04/01/13	05/01/13	30	4	1	0	118	\$24,432													
2.5.4 Concrete Conference	LS	1	20		Late NTP	04/01/13	05/01/13	30	4	1	0	79	\$14,146													
2.5.5 Documentation Planning and Setup	Monthly	1	20		Late NTP	04/01/13	05/01/13	30	4	1	0	239	\$39,958													
2.5.6 Project Files Setup	Monthly	1	40		Late NTP	04/01/13	05/01/13	30	4	1	0	39	\$3,860													
3.0 Construction Management																										
3.1 Field Office Mobilization																										
3.1.1 Field Office Setup	LS	1	24	Late NTP	Mlst A	05/01/13	05/08/13	7	1	0	0	24	\$2,348													
3.2 Baseline Schedule																										
3.2.1 Project Constraints and Requirements	LS	1	24		Mlst B	04/29/13	06/15/13	47	7	2	1	96	\$19,629													
3.2.2 Baseline Schedule Coordination Meetings	LS	1	8	01324A-1.09	Mlst B	04/29/13	06/15/13	47	7	2	1	32	\$6,543													
3.2.3 Baseline Schedule Review and Comment	LS	1	40	01324A-1.09	Mlst B	04/29/13	06/15/13	47	7	2	1	160	\$32,714													
3.3 Schedule Updates																										
3.3.1 Review and Comment	Monthly	33	24	Mlst B	Mlst I	06/15/13	03/01/16	990	141	33	11	781	\$155,127													
3.3.2 Schedule Fragnets and Analysis	Monthly	33	8	Mlst B	Mlst I	06/15/13	03/01/16	990	141	33	11	270	\$53,695													
3.4 Construction Management Services																										
3.4.1 Meetings	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095													
3.4.2 Correspondence	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095													
3.4.3 Site Observation	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095													
3.4.4 Change Orders	Monthly	34	16	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	544	\$141,095													
3.4.5 Progress Reports	Monthly	34	6	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	204	\$52,911													
3.4.6 Schedule Review	Monthly	34	12	NTP	Mlst J	05/01/13	03/01/16	1,035	148	34	11	408	\$105,821													

**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Labor Estimate References																								
Phase & Task Descriptions	Units			Schedule										Prn Prof I	Prn Prof II	Spv Prof II	Snr Adm	Spv Eng II	Spv Prof I	Insp	Snr Insp	Snr Insp	Insp	Snr Insp
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrts	Hour Totals	Labor Totals	Mike Watson	Neil Mann	Steve Chavez	Loretta Arteaga	Matt Carpenter	Rafael Martin	David Sun	Larry Haupt	Ray Sruba	Sam Hawkins	Wade Weston
4.0 Field Administration Services												6,845	\$849,225											
4.1 Field Office Engineer Services																								
4.1.7 Clarification Review and Comment	Each	700	2.5	NTP	Mlst H2	05/01/13	12/31/15	974	139	32	11	1,750	\$350,627		525	648	73	505						
4.2 Field Office Administration Services																								
4.2.1 Progress Meetings	Monthly	34	16	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	544	\$53,267											
4.2.2 DCMS Processing	Monthly	34	118	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	4,007	\$392,064											
4.2.3 Progress Reports	Monthly	34	16	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	544	\$53,267											
5.0 Field Quality Assurance/Control Services												10,028	\$1,798,061											
5.1 Resident Engineer Services																								
5.1.1 Site Observation	Monthly	34	12	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	748	\$134,731											
5.1.2 Daily Report	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.3 Communication	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.4 Quality Control Testing Results	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.5 Construction Issue Resolution	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.6 Work Activity Preparation	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.7 Progress Payments	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.8 Special Inspection and Testing	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821											
5.1.9 Meetings	Monthly	34	12	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	748	\$134,731											
5.1.10 Schedule	Monthly	34	10	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	624	\$112,276											
5.1.11-Submittal and RFI Tracking	Each/RE	1,600	0.25	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	766	\$137,869											
5.1.12 Work Activity Updates	Each/RE	800	0.25	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	382	\$68,870											
5.1.13 Correspondence	Each/RE	200	1	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	380	\$68,487											
5.1.14 Change Order Issues																								
5.1.14.1 PCO Issues - Entitlement	Each/RE	160	1	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199											
5.1.14.2 CCO Issues - Review Quote & Markup	Each/RE	80	2	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199											
5.1.14.3 CCO Meetings-Preparation & Follow-up	Each/RE	20	8	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199											
5.1.14.4 CCO Packages-Justifications	Each/RE	20	8	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199											
5.1.15 Record Drawings	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	519	\$93,373											
5.2 Project Closeout																								
5.2.1 Final Completion & Payment Request	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970		76	76	76							
5.2.2 Final Record Drawings	Weekly	13	10	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	377	\$61,537											
5.2.3 Final O&Ms, Parts Lists, and Warranties	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970		76	76	76							
5.2.4 Final Executive Summary Report	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970		76	76	76							
5.2.5 Final Project Documents	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	76	\$13,736											
6.0 Field Observation Services												21,514	\$2,737,181											
6.1 Site SWPPP	Monthly	27	24	NTP	Mlst G+30	05/01/13	07/31/15	821	117	27	9	650	\$77,774											
6.2 HSPS and 4160V Substation	Monthly	22	160	NTP	Mlst F	05/01/13	03/01/15	669	96	22	7	3,354	\$541,115											
6.3 Solids Handling and FWW Improvements	Monthly	25	160	Mlst A + 30	Mlst G+30	07/03/13	07/31/15	758	108	25	8	3,822	\$616,644											
6.4 Site Civil and Yard Piping	Monthly	23	136	Mlst A + 90	Mlst G+30	09/01/13	07/31/15	698	100	23	8	2,955	\$353,671											
6.5 Floc-Sed and Filters	Monthly	19	160	Mlst C	Mlst G+30	01/01/14	07/31/15	576	82	19	6	2,865	\$342,899											
6.6 Field Testing - Soils	Monthly	26	64	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	1,658	\$126,839											
6.7 Field Testing - Concrete	Monthly	26	64	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	1,658	\$154,030											
6.8 Special Insp.-Concrete/CMU's/Anchors/Welding	Monthly	19	64	Mlst C	Mlst G+30	01/01/14	07/31/15	576	82	19	6	1,212	\$92,715											
6.9 Pile Driving Observation (2600 piles @ 0.5 hr/ea)	Monthly	4	160			03/31/14	07/31/14	122	17	4	1	1,300	\$195,986											
6.10 Additional Hours Beyond Baseline (>160 hrs/mo)	Monthly	26	80	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	2,040	\$235,509											
7.0 Testing, Training, and Facilities Startup Support												1,925	\$310,599											
7.1 General Startup & Testing (01756-1.05)	Monthly	12	40	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	481	\$77,650											
7.2 Functional Testing (01756-1.06)	Monthly	12	60	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	722	\$116,475											
7.3 Training of Owner's Personnel (01756-1.09)	Monthly	12	20	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	241	\$38,825											
7.4 Substantial Completion & Punch Lists	Monthly	12	40	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	481	\$77,650											

**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Labor Estimate References													Support Team Members													
Phase & Task Descriptions	Units			Schedule								Spec Insp			Prn Adm	Sup Adm	Sup Prof I	Sup Prof I	Sr Prj Cntrl	Proj Ctrl	Sr Adm	Adm	Adm	Adm		
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrts	Hour Totals	Labor Totals	Dave King	Barry Lottz	William Whalen	Scott Poquette	Ellen Seymour	Michael McWhirter	Khalid Talaat	Casey Frederick	Rohit Shinde	Jane Remedios	Diane Martens	Ryan Beer	Mark O'Kane
4.0 Field Administration Services												6,845	\$849,225													
4.1 Field Office Engineer Services				NTP	Mlst H2	05/01/13	12/31/15																			
4.1.7 Clarification Review and Comment	Each	700	2.5	NTP	Mlst H2	05/01/13	12/31/15	974	139	32	11	1,750	\$350,627													
4.2 Field Office Administration Services				NTP	Mlst I	05/01/13	03/01/16																			
4.2.1 Progress Meetings	Monthly	34	16	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	544	\$53,267													
4.2.2 DCMS Processing	Monthly	34	118	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	4,007	\$392,064													
4.2.3 Progress Reports	Monthly	34	16	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	544	\$53,267													
5.0 Field Quality Assurance/Control Services												10,028	\$1,798,061													
5.1 Resident Engineer Services				NTP	Mlst I	05/01/13	03/01/16																			
5.1.1 Site Observation	Monthly	34	12	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	748	\$134,731													
5.1.2 Daily Report	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.3 Communication	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.4 Quality Control Testing Results	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.5 Construction Issue Resolution	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.6 Work Activity Preparation	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.7 Progress Payments	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.8 Special Inspection and Testing	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	499	\$89,821													
5.1.9 Meetings	Monthly	34	12	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	748	\$134,731													
5.1.10 Schedule	Monthly	34	10	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	624	\$112,276													
5.1.11-Submittal and RFI Tracking	Each/RE	1,600	0.25	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	766	\$137,869													
5.1.12 Work Activity Updates	Each/RE	800	0.25	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	382	\$68,870													
5.1.13 Correspondence	Each/RE	200	1	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	380	\$68,487													
5.1.14 Change Order Issues																										
5.1.14.1 PCO Issues - Entitlement	Each/RE	160	1	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199													
5.1.14.2 CCO Issues - Review Quote & Markup	Each/RE	80	2	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199													
5.1.14.3 CCO Meetings-Preparation & Follow-up	Each/RE	20	8	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199													
5.1.14.4 CCO Packages-Justifications	Each/RE	20	8	NTP	Mlst I	05/01/13	03/01/16	0	0	0	0	307	\$55,199													
5.1.15 Record Drawings	Monthly	34	8	NTP	Mlst I	05/01/13	03/01/16	1,035	148	34	11	519	\$93,373													
5.2 Project Closeout				Mlst I	Mlst J	03/01/16	05/29/16																			
5.2.1 Final Completion & Payment Request	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970													
5.2.2 Final Record Drawings	Weekly	13	10	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	377	\$61,537													
5.2.3 Final O&Ms, Parts Lists, and Warranties	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970													
5.2.4 Final Executive Summary Report	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	229	\$40,970													
5.2.5 Final Project Documents	Weekly	13	6	Mlst I	Mlst J	03/01/16	05/29/16	89	13	3	1	76	\$13,736													
6.0 Field Observation Services				Mlst A + 3	Mlst G+30	06/03/13	07/31/15					21,514	\$2,737,181													
6.1 Site SWPPP	Monthly	27	24	NTP	Mlst G+30	05/01/13	07/31/15	821	117	27	9	650	\$77,774													
6.2 HSPS and 4160V Substation	Monthly	22	160	NTP	Mlst F	05/01/13	03/01/15	669	96	22	7	3,354	\$541,115													
6.3 Solids Handling and FWW Improvements	Monthly	25	160	Mlst A + 30	Mlst G+30	07/03/13	07/31/15	758	108	25	8	3,822	\$616,644													
6.4 Site Civil and Yard Piping	Monthly	23	136	Mlst A + 90	Mlst G+30	09/01/13	07/31/15	698	100	23	8	2,955	\$353,671													
6.5 Floc-Sed and Filters	Monthly	19	160	Mlst C	Mlst G+30	01/01/14	07/31/15	576	82	19	6	2,865	\$342,899													
6.6 Field Testing - Soils	Monthly	26	64	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	1,658	\$126,839	1658												
6.7 Field Testing - Concrete	Monthly	26	64	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	1,658	\$154,030		1658											
6.8 Special Insp.-Concrete/CMU's/Anchors/Welding	Monthly	19	64	Mlst C	Mlst G+30	01/01/14	07/31/15	576	82	19	6	1,212	\$92,715								1212					
6.9 Pile Driving Observation (2600 piles @ 0.5 hr/ea)	Monthly	4	160			03/31/14	07/31/14	122	17	4	1	1,300	\$195,986													
6.10 Additional Hours Beyond Baseline (>160 hrs/mo)	Monthly	26	80	Mlst A + 3	Mlst G+30	06/03/13	07/31/15	788	113	26	9	2,040	\$235,509	260	260	260										
7.0 Testing, Training, and Facilities Startup Support												1,925	\$310,599													
7.1 General Startup & Testing (01756-1.05)	Monthly	12	40	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	481	\$77,650													
7.2 Functional Testing (01756-1.06)	Monthly	12	60	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	722	\$116,475													
7.3 Training of Owner's Personnel (01756-1.09)	Monthly	12	20	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	241	\$38,825													
7.4 Substantial Completion & Punch Lists	Monthly	12	40	Mlst F	Mlst I	03/01/15	03/01/16	366	52	12	4	481	\$77,650													

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CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Labor Estimate References																									
Phase & Task Descriptions	Units			Schedule										Prn Prof I	Prn Prof II	Spv Prof II	Snr Adm	Spv Eng II	Spv Prof I	Insp	Snr Insp	Snr Insp	Insp	Snr Insp	
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrs	Hour Totals	Labor Totals	Mike Watson	Neil Mann	Steve Chavez	Loretta Arteaga	Matt Carpenter	Rafael Martin	David Sun	Larry Haupt	Ray Sruba	Sam Hawkins	Wade Weston	
						Phase 1, Task 3 & 4						544		0	160	160	160	0	24	0	0	0	0	0	
						Phase 2 - Pre-Construction						1,775		0	309	325	302	443	40	0	160	0	0	0	
						Phase 2 - Construction						44,195		182	4,703	5,640	5,556	4,837	1,124	3,770	5,444	3,987	3,030	640	
						Phase 2 - Post-Construction						1,445		0	468	435	542	0	0	0	0	0	0	0	
						Phase 2 - Optional Task 6.10						2,040		0	0	0	0	0	0	510	250	250	250	0	
						Phase 1, Task 3 & 4 - Labor Hour Totals						544		0	160	160	160	0	24	0	0	0	0	0	
						Phase 2, wo Contingency Task 6.10 - Labor Hour Totals						47,415		182	5,480	6,400	6,400	5,280	1,164	3,770	5,604	3,987	3,030	640	
						Phase 2 Contingency Task 6.10 - Labor Hour Totals						2,040		0	0	0	0	0	0	510	250	250	250	0	
						2012 Hourly Rates						49,998	7,725,068	330.00	249.00	173.00	94.00	173.00	190.81	115.00	155.00	155.00	115.00	155.00	
						2013 Hourly Rates								336.60	253.98	176.46	95.88	176.46	194.62	117.30	158.10	158.10	117.30	158.10	
						2014 Hourly Rates								343.33	259.06	179.99	97.80	179.99	198.51	119.65	161.26	161.26	119.65	161.26	
						2015 Hourly Rates								350.20	264.24	183.59	99.76	183.59	202.48	122.04	164.49	164.49	122.04	164.49	
						2016 Hourly Rates								357.20	269.52	187.26	101.76	187.26	206.53	124.48	167.78	167.78	124.48	167.78	
						Mid-Point Hourly Rates						0.00		343.47	259.16	180.06	97.84	180.06	198.59	119.69	161.33	161.33	119.69	161.33	
						Phase 1, Task 3 & 4							\$90,899	\$0	\$39,840	\$27,680	\$15,040	\$0	\$4,579	\$0	\$0	\$0	\$0	\$0	
						Phase 2 - Pre-Construction							\$302,764	\$0	\$80,080	\$58,520	\$29,548	\$79,767	\$7,944	\$0	\$25,813	\$0	\$0	\$0	
						Phase 2 - Construction							\$6,839,559	\$62,512	\$1,218,829	\$1,015,538	\$543,599	\$870,950	\$223,215	\$451,231	\$878,281	\$643,223	\$362,661	\$103,251	
						Phase 2 - Post-Construction							252,642	0	121,287	78,326	53,029	0	0	0	0	0	0	0	0
						Phase 2 - Contingency Task 6.10							235,563	0	0	0	0	0	0	61,042	40,333	40,333	29,923	0	
						Phase 1, Task 3 & 4 - Labor Fee Totals							90,899	0	39,840	27,680	15,040	0	4,579	0	0	0	0	0	
						Phase 2, wo Contingency Task 6.10 - Labor Fee Totals							7,394,965	62,512	1,420,197	1,152,384	626,176	950,717	231,159	451,231	904,093	643,223	362,661	103,251	
						Phase 2 Contingency Task 6.10 - Labor Hour Totals							235,563	0	0	0	0	0	0	61,042	40,333	40,333	29,923	0	

Phase 2 Baseline Tasks - Labor & ODC's									
ODC's - Other Direct Costs (non-labor costs)	Type	Amount	Units		Rate	Cost	Markup	Revenue	
Miscellaneous									
Associated Project Costs - MWH Labor Hours	hour	41,723	1		\$12.00	\$500,676	0%	\$500,676	
Other Labor Hours	hour	5,692	1		\$0.00	\$0	0%	\$0	
Subcontractor - Materials Testing				Months	Day/Month	Units/Day	Units	Unit Price	Raw Cost
CEL Concrete Cylinders - Lab Cure/Test				26	16	7.5	3,120	\$22.00	\$68,640
CEL Concrete Cylinders - Weekend Pickup				26	4	1	104	\$85.00	\$8,840
CEL Mileage				26	16	40	16,640	\$0.60	\$9,984
CEL Masonry Specimen Lab ODCs							24	\$66.00	\$1,584
CTS Pull Tests				19			38	\$120.00	\$4,560
CTS Sieve Analysis				19			20	\$90.00	\$1,800
CTS Soil Compaction Curves				19			20	\$190	\$3,800
Phase 2, wo Contingency Task 6.10 - ODC Fee Subtotal								\$604,844	
Phase 2, wo Contingency Task 6.10 - Labor Fee Subtotal								\$7,394,965	
Phase 2, Baseline Tasks - Labor & ODC Fee Total								\$7,999,809	

Phase 2, Contingency Task 6.10 - Labor & ODC's									
ODC's - Other Direct Costs (non-labor costs)	Type	Amount	Units		Rate	Cost	Markup	Revenue	
Miscellaneous									
Associated Project Costs - MWH Labor Hours	hour	1,260	1		\$12.00	\$15,120	0%	\$15,120	
	hour	780	1		\$0.00	\$0	0%	\$0	
Subcontractor - Materials Testing				Months	Day/Month	Units/Day	Units	Unit Price	Raw Cost
CEL Concrete Cylinders - Lab Cure/Test				2	16	7.5	240	\$22.00	\$5,280
CEL Concrete Cylinders - Weekend Pickup				2	4	1	8	\$85.00	\$680
CEL Mileage				2	16	40	1280	\$0.60	\$768
CEL Masonry Specimen Lab ODCs							4	\$66.00	\$264
CTS Pull Tests				2			4	\$120.00	\$480
CTS Sieve Analysis				2			4	\$90.00	\$360
CTS Soil Compaction Curves				2			4	\$190	\$760
Phase 2, Contingency Task 6.10 - ODC Fee Subtotal								\$24,142	
Phase 2, Contingency Task 6.10 - Labor Fee Subtotal								\$235,563	
Phase 2, Contingency Task 6.10 - Labor & ODC Fee Total								\$259,705	

Phase 2 Agreement Amount - Baseline & Contingency Tasks	\$8,259,514
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**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Proposed Optional Tasks - Labor Estimate References																									
Proposed Optional Task Descriptions	Units			Schedule										Prn Prof I	Prn Prof II	Spv Prof II	Snr Adm	Spv Eng II	Spv Prof I	Insp	Snr Insp	Snr Insp	Insp	Snr Insp	
	Type	Amount	Hours	Predecessor	Successor	Start	Finish	Days	Wks	Mths	Qtrs	Hour Totals	Labor & APC	Mike Watson	Neil Mann	Steve Chavez	Loretta Arteaga	Matt Carpenter	Rafael Martin	David Sun	Larry Haupt	Ray Sruba	Sam Hawkins	Wade Weston	
1) Additional Hours Beyond Baseline Monthly Planned Effort																									
8.1.1 Construction Manager Hours (> 137 hr/mo)	Monthly	34	11			05/01/13	03/01/16	1,035	148	34	11	374	\$101,414		374										
8.1.2 Resident Engineer Hours (>160 hr/mo)	Monthly	34	16			05/01/13	03/01/16	1,035	148	34	11	1,088	\$208,961			544		544							
8.1.3 Field Office Administrator Hours (>160 hr/mo)	Monthly	34	40			05/01/13	03/01/16	1,035	148	34	11	1,360	\$149,382				1360								
2) Additional Months Beyond Baseline Construction Duration																									
8.2.1 Construction Manager Months (>34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	320	\$86,771		320										
8.2.2 Resident Engineer Months (>31 or 34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	640	\$122,918			320		320							
8.2.3 Field Office Administrator Months (>34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	320	\$35,149				320								
8.2.4 Field Inspector Months (>25 mo)	Monthly	2	160			07/31/15	09/29/15	60	9	2	1	320	\$55,466									320			
3) Staffing Classification Changes Due to Availability																									
8.3.1 Floc-Sed and Filters Inspector Classification	Monthly	19	160			01/01/14	07/31/15	576	82	19	6	3,040	\$163,066										3040		
8.3.2 ISite Civil and Yard Piping Inspector Classification	Monthly	23	160			09/01/13	07/31/15	698	100	23	8	3,680	\$197,395							3680					
4) Claims Review and Analysis																									
8.4.1 Claims Review and Analysis	Each	1	160									640	\$152,426						640						
5) Additional Months Beyond Baseline Pre/Post Construction Effort																									
8.5.1 Pre-Construction Completion Support (> 2 mo)	Monthly	1	160			05/01/13	06/01/13	31	4	1	0	800	\$150,152		160	160	160	160			160				
8.5.2 Post Final Completion Support (> 3 mo)	Monthly	2	160			05/29/16	07/29/16	61	9	2	1	960	\$183,379		320	320	320								

**ATTACHMENT 1 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
FEE SCHEDULE - CONSTRUCTION MANAGEMENT SERVICES**

Proposed Optional Tasks - Labor Estimate References													Support Team Members													
Proposed Optional Task Descriptions	Units			Schedule				Days	Wks	Mths	Qtrs	Hour Totals	Labor & APC	Spec Insp Dave King	Spec Insp Barry Lottz	Spec Insp William Whalen	Prn Adm	Sup Adm	Sup Prof I	Sup Prof I	Sr Prj Cntrl	Proj Ctrl	Sr Adm	Adm	Adm	Adm
	Type	Amount	Hours	Predecessor	Successor	Start	Finish										Scott Poquette	Ellen Seymour	Michael McWhirter	Khalid Talaat	Casey Frederick	Rohit Shinde	Jane Remedios	Diane Martens	Ryan Beer	Mark O'Kane
1) Additional Hours Beyond Baseline Monthly Planned Effort																										
8.1.1 Construction Manager Hours (> 137 hr/mo)	Monthly	34	11			05/01/13	03/01/16	1,035	148	34	11	374	\$101,414													
8.1.2 Resident Engineer Hours (>160 hr/mo)	Monthly	34	16			05/01/13	03/01/16	1,035	148	34	11	1,088	\$208,961													
8.1.3 Field Office Administrator Hours (>160 hr/mo)	Monthly	34	40			05/01/13	03/01/16	1,035	148	34	11	1,360	\$149,382													
2) Additional Months Beyond Baseline Construction Duration																										
8.2.1 Construction Manager Months (>34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	320	\$86,771													
8.2.2 Resident Engineer Months (>31 or 34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	640	\$122,918													
8.2.3 Field Office Administrator Months (>34 mo)	Monthly	2	160			03/01/16	04/30/16	60	9	2	1	320	\$35,149													
8.2.4 Field Inspector Months (>25 mo)	Monthly	2	160			07/31/15	09/29/15	60	9	2	1	320	\$55,466													
3) Staffing Classification Changes Due to Availability																										
8.3.1 Floc-Sed and Filters Inspector Classification	Monthly	19	160			01/01/14	07/31/15	576	82	19	6	3,040	\$163,066													
8.3.2 ISite Civil and Yard Piping Inspector Classification	Monthly	23	160			09/01/13	07/31/15	698	100	23	8	3,680	\$197,395													
4) Claims Review and Analysis																										
8.4.1 Claims Review and Analysis	Each	1	160									640	\$152,426													
5) Additional Months Beyond Baseline Pre/Post Construction Effort																										
8.5.1 Pre-Construction Completion Support (> 2 mo)	Monthly	1	160			05/01/13	06/01/13	31	4	1	0	800	\$150,152													
8.5.2 Post Final Completion Support (> 3 mo)	Monthly	2	160			05/29/16	07/29/16	61	9	2	1	960	\$183,379													

**ATTACHMENT 2 TO EXHIBIT B
CITY OF SACRAMENTO
WATER TREATMENT PLANTS REHABILITATION PROJECT
SCHEDULE OF HOURLY RATES - APRIL 1, 2013 through MARCH 31, 2014**

MWH Global Co.	Classification	Rates
MWH Americas	Principal Professional I	\$336.60 per hour
MWH Americas	Principal Professional II	\$253.98 per hour
MWH Americas	Principal Professional III	\$229.50 per hour
MWH Americas	Supervising Professional I	\$191.76 per hour
MWH Americas	Supervising Professional II	\$176.46 per hour
MWH Americas	Senior Professional I	\$153.00 per hour
MWH Americas	Senior Professional II	\$132.60 per hour
MWH Americas	Professional	\$122.40 per hour
MWH Americas	Associate Professional	\$102.00 per hour
MWH Americas	Engineering Assistant	\$86.70 per hour
MWH Americas	Senior Designer	\$112.20 per hour
MWH Americas	Designer	\$91.80 per hour
MWH Americas	Principal Administrator	\$122.40 per hour
MWH Americas	Supervising Administrator	\$107.10 per hour
MWH Americas	Senior Administrator	\$95.88 per hour
MWH Americas	Administrator	\$86.70 per hour
MWH Americas	Secretary	\$76.50 per hour
MWH Constructors	Principal Professional I	\$336.60 per hour
MWH Constructors	Senior Estimator	\$188.70 per hour
MWH Constructors	Senior Inspector	\$158.10 per hour
MWH Constructors	Inspector	\$117.30 per hour
MWH Constructors	Specialty Inspector I	\$107.10 per hour
MWH India (Rnet)	Senior Engineer	\$107.10 per hour
MWH India (Rnet)	Engineer/Designer	\$91.80 per hour
MWH India (Rnet)	Project Controls Specialist	\$86.70 per hour

APC Rate - Associated Project Cost	\$12.00 per hour
ODC Markup - Other Direct Costs/Reimbursable Expenses (excluding APC)	10%
Subcontract Markup - Labor and Reimbursable Expenses	5%
Vehicle Mileage - Reimbursable Expense (when authorized and if not excluded)	IRS Rate

In the performance of these services, MWH Americas may use personnel and other resources from affiliated MWH companies, including MWH Constructors and MWH India (Rnet). The personnel from MWH affiliated companies will be billed at the hourly rates provided on this schedule. Reimbursable expenses, when authorized, consist of travel, housing and accommodations, mileage, leases, equipment, materials, and similar categories; except for those specific exclusions identified in Attachment 1 to Exhibit A.

EXHIBIT C

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [check one]

_____ Not furnish any facilities or equipment for this Agreement; or

X _____ Furnish the following facilities or equipment for the Agreement:

- CITY shall provide all services, facilities and equipment identified in Section 6.0 as set forth in Attachment 1 to Exhibit A – Scope of Services, attached hereto and incorporated herein in addition to those listed below.
- **Conformed Contract Documents:** CITY will provide conformed construction documents consisting of the following:
 - **Drawings.**
 - Fourteen (14) half-size conformed drawings sets – each volume of a set bound in a Ledger 11” x 17” size, 2-inch minimum Slant D ring type, 3-ring binder with clear overlay and cover sheet and spine inserts.
 - Two (2) half-size conformed drawings sets – each volume of a set spiral bound.
 - Two (2) full-size conformed drawings sets.
 - **Specifications.**
 - Fourteen (14) conformed specifications sets – each volume of a set bound in a Letter 8-1/2” x 11” size, 3-inch minimum Slant D ring type, 3-ring binder with clear overlay and cover sheet and spine inserts.
 - Four (4) conformed specifications sets – each volume of a set spiral bound.
 - **Reports.**
 - Four (4) geotechnical report sets – each volume bound in a Letter 8-1/2” x 11” size, 3-inch minimum Slant D ring type, 3-ring binder with clear overlay and cover sheet and spine inserts.
 - Two (2) geotechnical study report sets – spiral bound.
 - **Referenced Documents.**
 - Reports and Drawings documents as described in Document 00800, Supplementary Conditions of the construction documents – electronic files, when requested by CONTRACTOR.

EXHIBIT D

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN PROFESSIONALS

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. Licenses; Permits, Etc. CONTRACTOR represents and warrants that CONTRACTOR has all licenses,

permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In

this Agreement, the term “information” shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party’s trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY’s failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR’s proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked “trade secret” when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff’s attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual “trade secret” designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated “trade secret” by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. Standard of Performance. CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR’s profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR’s profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR’s staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to

perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. Term; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real, or intellectual property, or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to, or relate to any negligent act or omission, recklessness, or willful misconduct of CONTRACTOR, its sub-consultants, subcontractors, or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled, or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to

property, or other loss, damage, or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY.

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits, or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

X Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each

insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. Equal Employment Opportunity. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. Entire Agreement. This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

14. Severability. If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. Waiver. Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

- 16. Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- 17. Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
- 18. Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$100,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

“Contractor” means any person or persons, firm, partnership, corporation, company, or combination thereof, that enters into a Contract with the City. “Contractor” does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directly on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On _____ (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for _____ (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.



PROJECT #: Z14006000
 PROJECT NAME: Sacramento Water Treatment Plants Rehabilitation Project
 DEPARTMENT: Utilities
 DIVISION: Engineering Services

CITY OF SACRAMENTO

**PROFESSIONAL SERVICES AGREEMENT
 FOR ARCHITECTS, LANDSCAPE
 ARCHITECTS, PROFESSIONAL ENGINEERS,
 AND PROFESSIONAL LAND SURVEYORS**

THIS AGREEMENT is made at Sacramento, California, as of 3-09-13, by and between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and

JSP Automation
 405 30th Street
 Sacramento, CA 95816
 (916) 448-3776/(916) 448-3778
 JSP.Automation@sbcglobal.net

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the

General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions

Exhibit E - Non-Discrimination in Employee Benefits
Attachment 1 to Exhibit A
Attachment 1 to Exhibit B
Section 17100 Control Strategies
Section 17101A SRWTP Specific Control Strategies
Section 17101B EAFTWP Specific Control Strategies

CONTRACTOR:

JSP AUTOMATION
NAME OF FIRM

45-4408170
Federal I.D. No.

102662
State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify:* _____)


Signature of Authorized Person

James Phillips, President
Print Name and Title

Additional Signature (*if required*)

Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: JSP AUTOMATION

Address: 405 30th Street, Sacramento, Ca 95816

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date

after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.


Signature of Authorized Representative

3-9-13
Date

James Phillips
Print Name

President
Title



**CITY OF SACRAMENTO AND
SACRAMENTO SUBURBAN WATER DISTRICT
EMERGENCY WATER SERVICE AGREEMENT
(Enterprise Drive Connection)**

This agreement is entered into on _____, 2013, by and between the City of Sacramento, a charter municipal corporation (“City”) and the Sacramento Suburban Water District, a county water district organized and existing under and pursuant to Division 12 of the Water Code of the State of California (“SSWD”). City and SSWD may individually be referred to as “Agency” and collectively referred to as “Agencies.”

RECITALS

- A. SSWD and City both operate public water supply systems serving their respective customers.
- B. The City is currently underway with the City’s Water Treatment Plants Rehabilitation Project (the “City Project”), which will rehabilitate various facilities and components at the City’s Sacramento River Water Treatment Plant (SRWTP) and E.A. Fairbairn Water Treatment Plant (EAFWTP). The City anticipates that the construction phase of the City Project will commence in approximately April 2013, with a construction period of approximately 3.5 years.
- C. The City desires to have a back-up emergency water supply available during construction of the City Project, in case the SRWTP or EAFWTP is unable for any reason to operate as needed to meet the City’s water supply demands (hereafter referred to as an “Emergency Condition”) at any time during construction of the City Project.
- D. SSWD receives wholesale water service from the City at SSWD’s wholesale service connection (the “Service Connection”) between the Agencies’ respective water distribution systems located near Enterprise Drive west of Howe Avenue in Sacramento County, pursuant to the terms of a Wholesale Water Supply Agreement between the City and District, dated January 20, 2004, and identified as City Agreement No. 2004-013 (the “Wholesale Agreement”).
- E. The City has requested that SSWD provide the City with an emergency water supply during an Emergency Condition from SSWD’s water distribution system utilizing the Service Connection.
- F. SSWD is willing to provide an emergency water supply at the Service Connection on the terms and conditions specified in this Agreement.

NOW, THEREFORE, the City and SSWD agree as follows:

1. RECITALS INCORPORATED

The above recitals are incorporated in this Agreement as if fully set forth at this place.

2. PURPOSE

The Agencies desire to set forth in this Agreement procedures to develop and implement a plan to provide potable water service from SSWD to the City at the Service Connection, if requested by the City, during an Emergency Condition.

3. SERVICE CONNECTION

- A. Ownership, operation, maintenance, and repair of the Service Connection shall be governed by applicable provisions of the Wholesale Agreement, except as is expressly provided otherwise in this Agreement with respect to operation of the Service Connection to provide emergency water service to the City. If there is a conflict between the provisions of this Agreement and the provisions of the Wholesale Agreement, the terms of this Agreement shall govern.
- B. SSWD's General Manager and the City's Director of Utilities may agree in writing on any improvements necessary to utilize the Service Connection to provide emergency water service from SSWD to the City, including the allocation of responsibilities and costs for such improvements, if any.

4. OPERATION OF SERVICE CONNECTION FOR EMERGENCY WATER SERVICE

A. NOTIFICATION PROCEDURES

- 1. If City has a need for emergency water service at the Service Connection due to an Emergency Condition, the City shall notify SSWD's personnel in the following order:
 - a. 8:00 a.m. – 4:30 p.m., Monday – Friday:
 - i. Production Superintendent
 - ii. Operations Manager
 - iii. Assistant General Manager
 - iv. General Manager

The names and contact numbers of the above personnel are listed in Exhibit A, attached hereto. SSWD shall keep this list current by sending

City an amended Exhibit A whenever any information on Exhibit A changes.

- b. 4:30 p.m. – 8:00 a.m., Monday – Friday, and weekends and holidays:
 - i. Call SSWD answering service at 916-972-7171.

SSWD’s answering service will be instructed to notify SSWD’s on-call personnel. The on-call personnel will be instructed to notify one of the persons listed in Section 4.A.1.a to call the City’s designated personnel to determine a response to the Emergency Condition.

- 2. If SSWD has a need to contact the City due to a condition which impairs the delivery of water supply from SSWD to the City, SSWD shall notify the City’s personnel in the following order:

- a. 8:00 am – 4:30 pm, Monday – Friday
 - i. Fairbairn Water Treatment Plant Control Room
 - ii. Supervising Plant Operator
 - iii. Water Superintendent
 - iv. Plant Division Manager
 - v. Director of Utilities

The names and contact numbers of the above personnel are listed in Exhibit B, attached hereto. The City shall keep this list current by sending SSWD an amended Exhibit B whenever any information on Exhibit B changes.

- b. 4:30 pm – 8:00 am., Monday – Friday, and weekends and holidays:
 - i. Call City dispatcher at 311.

The City dispatcher will be instructed to notify City water production staff as necessary.

B. EMERGENCY PROCEDURES

The procedure for the City to request assistance from SSWD to respond to an Emergency Condition shall be as follows:

- 1. City personnel will notify the first available SSWD contact person listed in Section 4.A.1.a. If after hours, City personnel will call the SSWD answering service number and ask for the SSWD on-call personnel to notify the first available contact person listed in Section 4.A.1.a.

2. As soon as practicable, City and SSWD personnel will make contact to discuss, analyze, and determine a mutually-acceptable course of action to address the Emergency Condition and resulting water supply needs of the City, taking into account the nature of the Emergency Condition, impacts to the environment, time of day, parties to be involved, equipment and facilities required, and the personnel required to implement the agreed course of action.
3. City and SSWD personnel will then determine a plan for implementing the proposed course of action. The plan shall provide for the most appropriate possible utilization of personnel, equipment, materials and/or facilities necessary to minimize adverse impacts of the Emergency Condition to either the City or SSWD. The plan shall include procedures for regular communication between the Agencies concerning implementation of and possible revisions to the plan.

C. SERVICE CONNECTION OPERATION PROCEDURE:

1. Opening of Valves for Emergency Water Service – After the Agencies agree on a plan to address an Emergency Condition, appropriate representatives of both the City and SSWD will meet at the Service Connection as soon as practicable, verify the meter reading(s), then open the valves slowly until fully open or to a predetermined setting.
2. Closing of Valves to End Emergency Water Service – Upon the City’s determination that the Emergency Condition has ended and notification to SSWD in accordance with this Agreement, both the City and SSWD representatives will meet at the Service Connection as soon as practicable, verify the meter reading(s), then close the valves slowly.
3. Closing of Valves due to conditions impeding SSWD’s production capacity – Upon SSWD’s determination that it cannot provide supply to the City due to capacity availability constraints or emergency conditions within its own service area, SSWD will notify the City as soon as possible of the pending termination of service. SSWD staff will request a City representative to meet at the Service Connection to verify the meter reading(s), then close the valves slowly.

D. WATER QUALITY

It is assumed that the water in both Agencies’ water distribution systems meets or exceeds the safe drinking water levels for drinking water as established by the California Department of Public Health and/or the United States Environmental Protection Agency. However, if any water quality problem results from implementing this Agreement, the City shall bear the sole and full responsibility

for resolving any water quality impact. Further, the City shall perform all evaluation, monitoring, testing, sampling, and reporting that may be required of a consecutive water system under applicable federal and/or state regulations as a result of implementation of this Agreement, and shall bear sole responsibility for compliance, at no cost to SSWD, with all federal and state drinking water standards applicable to the distribution of water by the City water distribution system. Upon City's request, SSWD shall provide City copies of such documents and information in SSWD's possession as may reasonably be required by City to comply with these requirements.

E. WATER RIGHT LIMITATIONS

The Agencies shall take into consideration any place of use limitations or other applicable water right conditions or requirements in developing the plan to address the Emergency Condition.

F. EMERGENCY WATER SERVICE ONLY

The Service Connection shall not be used to provide water from SSWD to City during any time other than an Emergency Condition, unless and until the Agencies enter into a separate agreement that authorizes use of the Service Connection for that purpose.

5. COST

A. COST of WATER

City shall pay SSWD a volumetric water service rate based on the metered quantity of water delivered to City at the Service Connection equal to the current volumetric rate charged to SSWD under the Wholesale Agreement. SSWD's invoices for such volumetric water usage may be sent on a monthly basis or less frequently depending on City demands, and shall be paid by City within 45 days of the invoice date, unless the accuracy of the volumetric measurement is reasonably disputed by City. Given the intermittent emergency-only nature of this water service, SSWD shall not charge City any other costs than those identified in Paragraph 3.B and this paragraph 5 for this water service.

B. COMPENSATION FOR EQUIPMENT, MATERIAL, AND PERSONNEL

City shall reimburse SSWD for the actual cost of any equipment, materials, supplies, and personnel utilized by SSWD to provide emergency water service at the Service Connection during each Emergency Condition period. SSWD's invoice for such reimbursement shall include an itemization of the equipment, materials, supplies, and personnel used, the date(s), and a supervisor's signature certifying that the itemization is correct. Such cost also may include SSWD's standard overhead charges. Invoices for SSWD's equipment, materials, supplies,

and personnel costs may be rendered to City separately from invoices for volumetric water charges. Payment shall be made not later than 45 days after the City receives an invoice from SSWD.

6. NO WARRANTY OR LIABILITY

It is understood and agreed that, while SSWD will use all reasonable efforts to provide emergency water service pursuant to the terms of this Agreement, SSWD is not warranting or guaranteeing that it will be able to provide emergency water service when and as requested by City. Neither Agency will be liable to the other Agency for any failure by SSWD to provide emergency water service for any reason. It is also understood that water made available by SSWD to the City under this agreement is done so only with system capacity and water supply that is excess to the customer needs of SSWD which vary by time of day and month of the year. In the event delivery of water under this agreement threatens the ability to meet the demands of its customers, SSWD may unilaterally terminate or reduce service upon written notification to the City.

7. FLUORIDATION

City acknowledges that water delivered by SSWD may contain fluoride, and agrees that City will be solely responsible for: (1) any public notification to all or any portion of the City's service area that such water contains fluoride; and (2) for all costs associated with or resulting from the introduction of fluoridated water into City's water distribution system, including monitoring and testing costs.

8. HOLD HARMLESS, INDEMNIFICATION

Except as provided in this section, each Agency shall, to the fullest extent permitted by law, indemnify, hold harmless and defend (with mutually acceptable counsel) the other Agency, its directors, officers, employees, or authorized agents from and against any claims, actions or liability for any damage, any injury to persons or property, any violation of any law or regulation, or any cost, including attorney's fees, costs of defense, and expert witness fees and costs (collectively referred to as "Liabilities"), to the extent arising or resulting from any negligent or wrongful acts or omissions by the indemnifying Agency, its directors, officers, employees, or authorized volunteers, under this Agreement. Notwithstanding the foregoing, the City also shall indemnify, hold harmless and defend (with mutually acceptable counsel) SSWD, and its directors, officers, employees, or authorized agents, from and against any and all Liabilities arising due to any failure of SSWD to provide emergency water service or due to the water quality of the emergency water service provided by SSWD.

9. NO THIRD PARTY BENEFICIARIES

This agreement creates no benefit or rights whatsoever, nor any basis for a claim for damages, in favor of any third party.

10. TERMINATION

This Agreement may be terminated, without any penalty or further liability, on 90 days' written notice by either Agency, except that the provisions of sections 5, 8, 9, 11, 12, and 13 of this Agreement shall survive any termination.

11. WHOLESALE AGREEMENT

Nothing in this Agreement shall affect or amend any provision of the Wholesale Agreement, which shall remain in full force and effect.

12. INSURANCE

Each Agency shall carry insurance, risk pool coverage or self-insurance in types, limits and amounts sufficient to protect against all risks that may occur or arise as a result of each Agency's activities under this Agreement.

13. GENERAL PROVISIONS

- A. This Agreement will be construed in accordance with, and governed by, the laws of the State of California. The place where this Agreement is to be performed and its situs or forum will at all times be in the County of Sacramento.
- B. Each Agency will perform its obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations. Each Agency also will possess, maintain and comply with all federal, state and local permits, licenses and certificates that may be required for it to perform their obligations hereunder.
- C. Each Agency will keep and maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records and documents evidencing or relating to any work performed under this Agreement for a minimum period of three years (or for any longer period required by law) from the date of final payment of an Agency's invoice. With prior reasonable notice and at reasonable times during regular business hours, each Agency may inspect and audit such books and records, including source documents, to verify all charges, payments and reimbursable costs under this Agreement. For any work performed under this Agreement in excess of \$10,000, the parties acknowledge that this Agreement, and performance and payments under it, are subject to examination and audit by the State Auditor General for three years following final payment under the Agreement in accordance with California Government Code section 8546.7.
- D. This Agreement is the result of the joint efforts and negotiations of both Agencies,

and this Agreement will be interpreted as though each of the Agencies participated equally in the drafting and composition of this Agreement and each and every part hereof.

- E. This Agreement may not be assigned by either Agency without the written consent of the non-assigning Agency, and any purported assignment without such consent will be void.
- F. The provisions of this Agreement shall bind the Agencies' successor entities and authorized assigns.
- G. Neither City nor SSWD, nor their respective agents, consultants, or contractors, are or shall be considered to be agents of the other Agency in connection with the performance of this Agreement. Nothing in this Agreement shall be construed to create a joint venture, partnership, or other relationship between the City and SSWD.
- H. The waiver by either Agency of the other Agency's breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of the Agreement.
- I. No amendment or modification to this Agreement will be valid unless executed in writing and duly approved by both the City and SSWD.
- J. All Exhibits referred to herein and attached hereto are fully incorporated into this Agreement as if such Exhibits were set forth in their entirety at this place.
- K. This Agreement may be executed in counterparts, each of which will be deemed an original, and which taken together will constitute one and the same Agreement.

CITY OF SACRAMENTO

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**SACRAMENTO SUBURBAN WATER
DISTRICT**

Todd L. Robison, President
Sacramento Suburban Water District
Board of Directors

ATTEST:

Robert S. Roscoe
Secretary / General Manager
Sacramento Suburban Water District

EXHIBIT A

SSWD Contact List

- Jim Arenz, Production Superintendent: 869-7359
- Dan York, Operations Manager: 869-7349
- Ed Formosa, Assistant General Manager: 240-1598
- Robert Roscoe, General Manager: 240-2025

EXHIBIT B

City Contact List

- Fairbairn Water Treatment Plant Control Room: 808-3120
- Mary Krizanosky, Supervising Plant Operators: 801-5970
- Dave Phillips, Water Superintendent: 952-8809
- Mike Malone, O&M Division Manager: 997-0133
- Dave Brent, Director of Utilities: 834-6715



Community Development Department

CITY OF SACRAMENTO
CALIFORNIA

300 Richards Boulevard
Sacramento, CA
95811

Environmental Planning Services
916-808-5842

ADDENDUM TO AN APPROVED MITIGATED NEGATIVE DECLARATION

The City of Sacramento, California, a municipal corporation, does hereby prepare, make declare, and publish the Addendum to an approved Mitigated Negative Declaration for the following described project:

Sacramento Water Treatment Plant Rehabilitation - The project is to include four separate locations on City owned [controlled] properties surrounding the Sacramento River Water Treatment Plant (SRWTP) for the Sacramento Water Treatment Plants (WTPs) Rehabilitation Project for the purposes of construction staging and parking. The project is located at four separate locations in the City and County of Sacramento, on City owned [controlled] properties surrounding the SRWTP. Site 1 is approximately 1.22 acres and is located between Interstate 5 and Bercut Drive, west of the SRWTP (APN: 001-0210-012); Site 2 consists of three parcels totaling approximately 1.0 acre located directly south of Bannon Street along the northern edge of the SRWTP (APNs: 001-0040-014, 001-0040-015, and 001-0040-039); Site 3 is approximately 0.95 acre located east of the intersection of the Bannon Street and Sequoia Pacific Boulevard to the northeast of the SRWTP (APN: vacant public right-of-way, no APN listed); Site 4 is approximately 0.55 acre located directly north of North B Street (APN: vacant 5th Street right-of-way, no APN listed). The proposed project modifications to the approved WTPs Rehabilitation project include the use of the four identified locations adjacent to the SRWTP for the purposes of construction parking and possible staging activities.

The City of Sacramento, Community Development Department, has reviewed the proposed project and on the basis of the whole record before it, has determined that there is no substantial evidence that the project, as identified in the attached Addendum, would have a significant effect on the environment beyond that which was evaluated in the attached Mitigated Negative Declaration. A new Mitigated Negative Declaration is not required pursuant to the California Environmental Quality Act of 1970 (Sections 21000, et. Seq., Public Resources Code of the State of California).

This Addendum to an approved Mitigated Negative Declaration has been prepared pursuant to Title 14, Section 15164 of the California Code of Regulations; the Sacramento Local Environmental Regulations (Resolution 91-892) adopted by the City of Sacramento.

A copy of this document and all supportive documentation may be reviewed or obtained at the City of Sacramento, Community Development Department, Planning Division, 300 Richards Boulevard, Sacramento, California 95811.

Environmental Services Manager,
City of Sacramento, California, a municipal corporation

Date: 2/13/13

By:

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**Sacramento Water Treatment Plants Rehabilitation Project (Z14006000)(SCH: 2011112039)
Addendum to Mitigated Negative Declaration**

File Number/Project Name: Sacramento Water Treatment Plants Rehabilitation Project (Z14006000) (SCH: 2011112039).

Project Location: The project is located in the City and County of Sacramento, at four additional locations surrounding the Sacramento River Water Treatment Plant (SRWTP) located at 301 Water Street (APNs: : 001-0210-038, 001-0064-015, 001-0210-024, and 001-0061-025). The additional locations (see Figure 1) surrounding the SRWTP consist of: Site 1 that is an approximate 1.22 acres parcel that is located between Interstate 5 and Bercut Drive, west of the SRWTP (APN: 001-0210-012); Site 2 consists of three parcels totaling approximately 1.0 acre located directly south of Bannon Street along the northern edge of the SRWTP (APNs: 001-0040-014, 001-0040-015, and 001-0040-039); Site 3 is approximately 0.95 acre located east of the intersection of the Bannon Street and Sequoia Pacific Boulevard to the northeast of the SRWTP (APN: vacant public right-of-way, no APN listed); and Site 4 is approximately 0.55 acre located directly north of North B Street (APN: vacant 5th Street right-of-way, no APN listed).

Existing General Plan Designations and Zoning: The new project areas consist of four additional properties, all of which are located within the River District Special Planning District (SPD). Table 1 below provides the zoning and general plan designation for each of the four locations.

Table 1

Location	Zoning* Designation	2030 General Plan Designation
Site 1	Heavy Industrial (M-2 SPD)	Public/Quasi-Public
Site 2	Multi-Family (R-3A SPD)	Urban Center Low
Site 3	Residential Mixed-Use (RMX SPD) and public right-of-way.	Urban Center High
Site 4	Multi-Family (R-5 SPD) and public right-of-way.	Urban Center High
* Title 17 of the Sacramento City Code		

Project Background: The Sacramento River Water Treatment Plant (SRWTP) and the E.A. Fairbairn Water Treatment Plant (EAFWTP) require extensive rehabilitation in order to modernize plant infrastructure and performance. This rehabilitation is required in order to ensure a safe and reliable water supply for the City’s current and future water needs. In order to move forward with the rehabilitation work required at the SRWTP without a break in service or functionality, it is necessary to acquire additional property adjacent to the SRWTP.

The Water Treatment Plant Rehabilitation project consists of replacing existing outdated equipment and facilities, constructing solids handling and other miscellaneous improvements at the treatment plants. The project does not increase the capacity of either the SRWTP or the EAFWTP. At SRWTP the existing flocculation and sedimentation Basins 1 and 2, old filters 1 through 16 and pump station will be replaced with new facilities. To construct these new facilities, Basin 2 and the former 911 Call Center building north of the plant will be demolished. Basin 1, pump station and old filters 1 through 16 will be decommissioned, but not demolished. The project includes acquisition of two parcels totaling approximately three acres at the SRWTP site, new solids handling improvements and miscellaneous

electrical/process improvements. At EAFWTP, the existing FWW basins will be retrofitted with mechanical sludge collection systems. A new dewatering building will be constructed and fitted with equipment to dewater solids. The existing chlorine system will be expanded and other improvements to the electrical and operating system will be installed as required. On March 20, 2012, the City Council adopted a mitigated negative declaration (MND) for the project (Resolution 2012-067).

Project Description: Following adoption of the MND and direction to proceed, project design has continued. As part of that process, the need for parking and staging areas for project contractors has become apparent. Staff has identified the following properties that would provide appropriate sites for such activities. The properties are as follows:

- Site 1 is approximately 1.22 acres and is located between Interstate 5 and Bercut Drive, west of the SRWTP (APN: 001-0210-012);
- Site 2 consists of three parcels totaling approximately 1.0 acre located directly south of Bannon Street along the northern edge of the SRWTP (APNs: 001-0040-014, 001-0040-015, and 001-0040-039);
- Site 3 is approximately 0.95 acre located east of the intersection of the Bannon Street and Sequoia Pacific Boulevard to the northeast of the SRWTP (APN: vacant public right-of-way, no APN listed);
- Site 4 is approximately 0.55 acre located directly north of North B Street (APN: vacant 5th Street right-of-way, no APN listed).

Acquisition, arrangement for use and use of these parcels is identified here as the “project modification.” Each of the properties is in close vicinity to the project site. Use of the properties for the identified purposes would not increase traffic that was evaluated in the MND, and would not substantially increase effects from air quality, noise or light and glare. Biologist review of the sites found that wildlife habitat value of the sites is poor and native habitats are absent. The four sites did not provide evidence of special status species. No habitat for valley elderberry longhorn beetle (i.e., elderberry shrub) occurs on the sites. Three elderberry shrubs were visible on the private property to the east of Site 2, but would not be affected by the project modification.. The project modification will avoid activities affecting the elderberry shrubs by not allowing herbicide/chemical or ground-disturbing uses within 100 feet of these shrubs. Parking on existing paved surfaces may occur within 20-feet of these shrubs. To ensure this protection, the DOU will ensure a protective barrier fence will be installed providing a 20-foot buffer to the existing shrubs east of Site 2. The project modification would result in no additional effects or significant effects on the environment.

Discussion

An Addendum to an approved Mitigated Negative Declaration may be prepared if only minor technical changes or additions are required, and none of the conditions identified in CEQA Guidelines Section 15162 are present. The following identifies the standards set forth in section 15162 as they relate to the project.

1. No substantial changes are proposed in the project which would require major revisions of the previously approved Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The original Mitigated Negative Declaration for the Sacramento Water Treatment Plants Rehabilitation Project (Z14006000)(SCH#: 2011112039) approved on March 20, 2012, evaluated the replacement of

old and unreliable facilities, construction of miscellaneous improvements at Sacramento River WTP and construction of solids handling and dewatering improvements at Sacramento River WTP and Fairbairn WTP.

Changes to the original project from what was described in the adopted Mitigated Negative Declaration include acquisition of four off-site properties to be used temporarily for construction parking and possibly some construction staging activities. Each of the four properties is located immediately adjacent to or across the adjacent roadways.

The current proposal for the addition of four off-site properties for the use as construction parking and staging areas does not require any revisions to the Mitigated Negative Declaration. No new traffic, noise or air quality effects would occur with the inclusion of the four additional locations to be used temporarily for construction parking and possible staging. None of the properties are immediately adjacent to existing residential development. There is existing residential development located north of the SRWTP along Bannon Street near Site 2. Although the Addendum provides additional information and evaluation, none of the new information and evaluations will trigger a need for a Subsequent Mitigated Negative Declaration. The proposed project is within the scope of analysis of the prior project and will not result in any new potential environmental impacts or any more severe impacts than those previously evaluated and identified and proposed to be mitigated in the original Sacramento Water Treatment Plants Rehabilitation Project (Z14006000)(SCH#: 2011112039).

2. No substantial changes have occurred with respect to circumstances under which the project is undertaken that would require major revisions of the previous Mitigated Negative Declaration due to the involvement of new significant environmental effect or a substantial increase in the severity of previously indemnified significant effects.

The City adopted the 2030 General Plan and Master EIR in March 2009. The 2030 General Plan does not result in a change of any new significant effects. All of the new information and evaluations are considered to be minor changes of temporary uses and do not include any new impacts that have not already been discussed in the previous Mitigated Negative Declaration.

3. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous Mitigated Negative Declaration was certified as complete or adopted, shows any of the following:

a) The project will have one or more significant effects not discussed in the previous Mitigated Negative Declaration;

b) Significant effects previously examined will be substantially more severe than shown in the previous Mitigated Negative Declaration;

c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative, or;

d) Mitigation measures or alternatives which are considerable different from those analyzed in the previous would substantially reduce on or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

There are no sections in the Initial Study checklist that require revisions and therefore the proposed change in the project description will not result in any environmental impacts that were not previously identified in the Initial Study/Mitigated Negative Declaration.

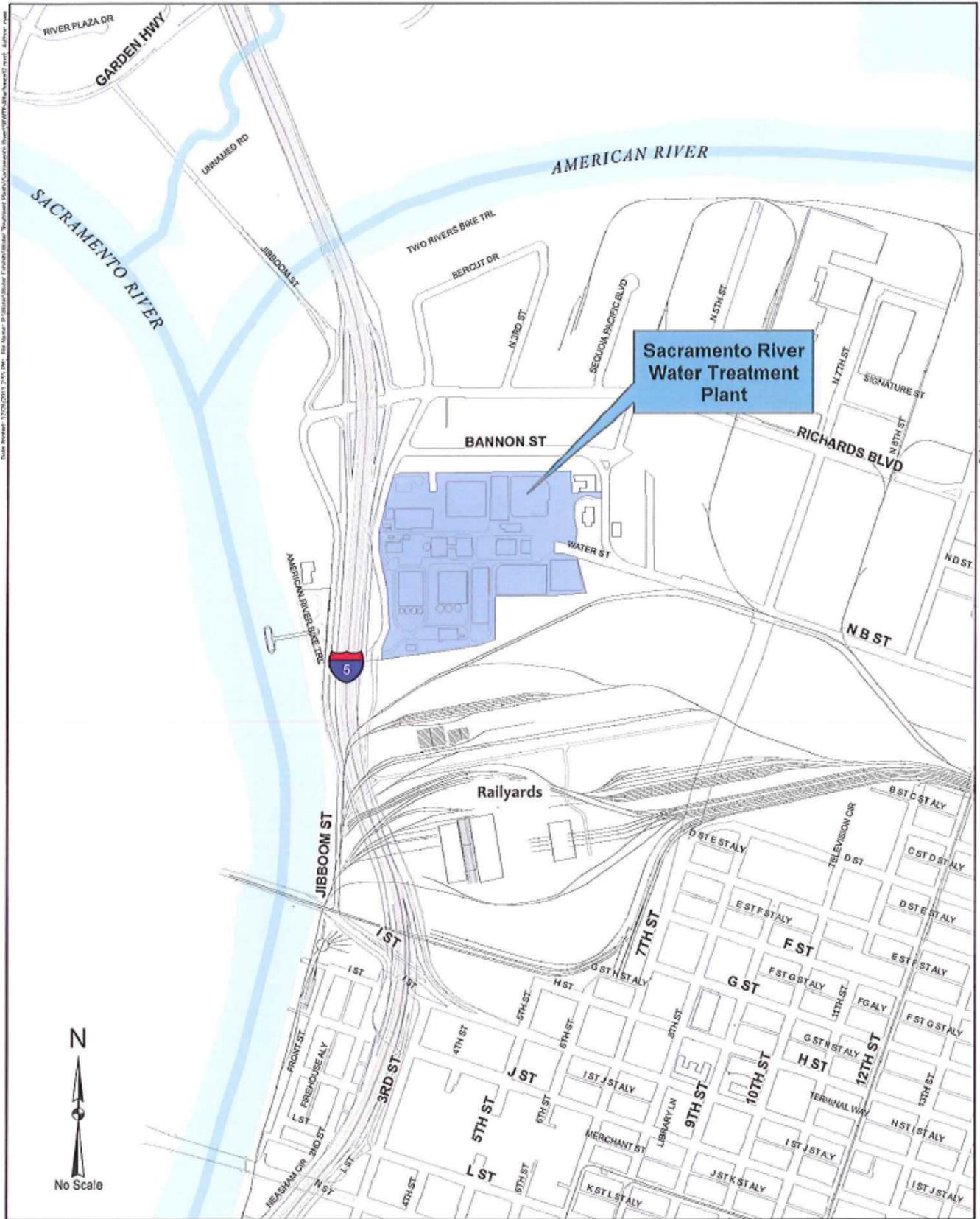
The proposed project modification will not result in effects more severe than what is evaluated in the Initial Study/Mitigated Negative Declaration and mitigation measures adopted for the previous Initial Study/Mitigated Negative Declaration are consistent with what has been previously analyzed. The City Council adopted a Mitigation Reporting Program (MRP) as part of its approval of the original project and the MRP remains applicable to the revised project.

Based on the above analysis, this Addendum to the previously adopted Mitigated Negative Declaration for the project has been prepared.

Attachments:

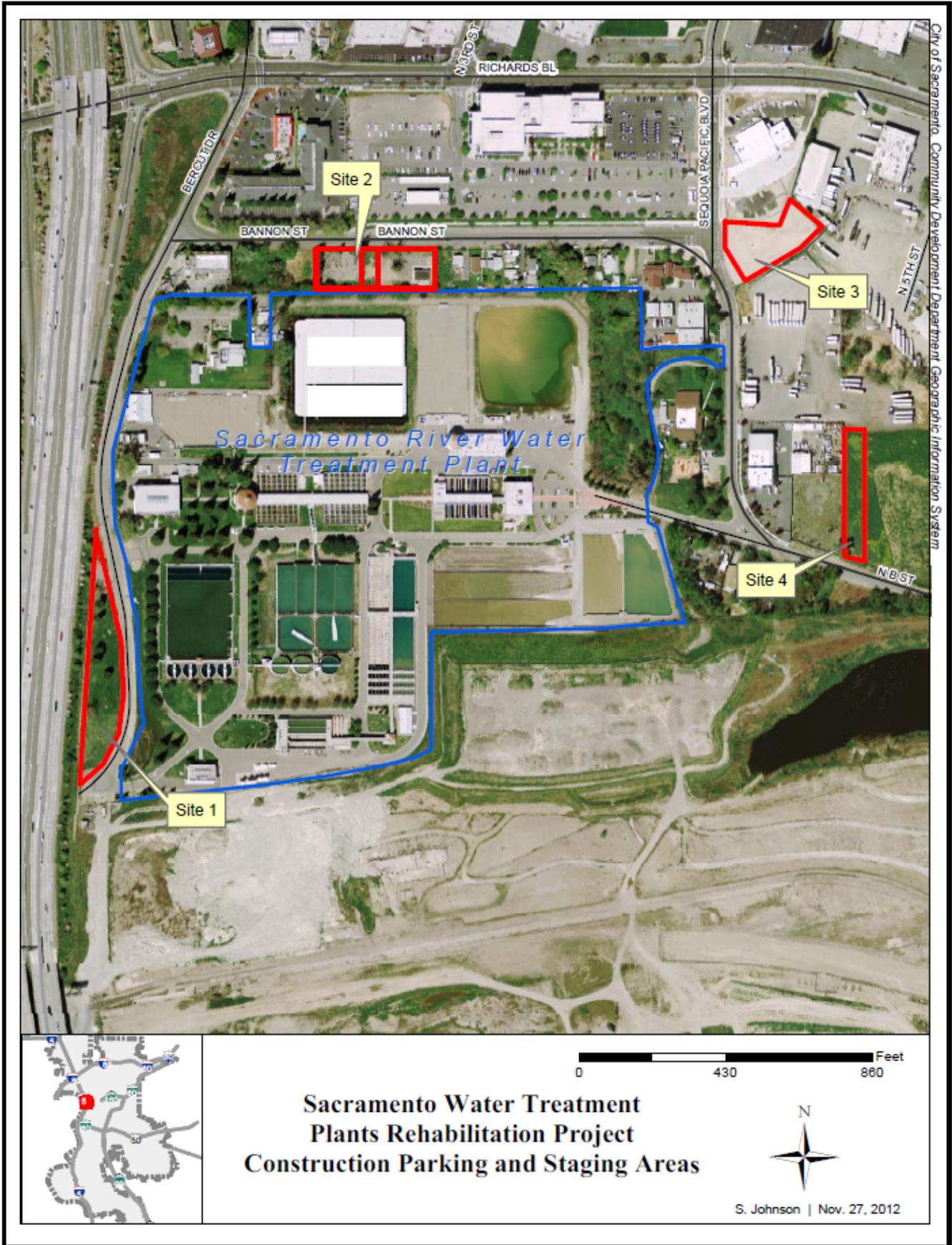
- A) Location Map
- B) Construction Parking and Staging Areas
- C) Mitigated Negative Declaration for the Sacramento Water Treatment Plants Rehabilitation Project (Z14006000)(SCH#: 2011112039)

Attachment - A



**Sacramento River Water Treatment Plant
Project Location**

Attachment - B





COMMUNITY DEVELOPMENT
DEPARTMENT

ENVIRONMENTAL PLANNING
SERVICES

CITY OF SACRAMENTO
CALIFORNIA

300 Richards Boulevard
Third Floor
Sacramento, CA 95811

MITIGATED NEGATIVE DECLARATION

The City of Sacramento, California, a municipal corporation, does hereby prepare, declare, and publish this Mitigated Negative Declaration for the following described project:

City of Sacramento Water Treatment Plants Rehabilitation Project (Z14006000) (SCH No. 2011112039)

The proposed project would replace old and unreliable facilities, construct miscellaneous improvements at Sacramento River WTP and construct solids handling and dewatering improvements at Sacramento River WTP and Fairbairn WTP.

E.A. Fairbairn Water Treatment Plant (Fairbairn WTP) is located immediately east of California State University at Sacramento (CSUS). The Sacramento River Water Treatment Plant (Sacramento River WTP) is located east of Interstate 5 near Richards Boulevard. See Attachment 1 for Regional Location, Attachment 2 for Sacramento River WTP Project Location, and Attachment 3 for Fairbairn WTP Project Location.

Assessor Parcel Numbers:

Fairbairn Plant: 005-0010-011, -012

Sacramento River Plant: 001-0210-038, 001-0064-015,
001-0210-024 and 001-0061-025 (SHRA Parcels)

The Lead Agency is the City of Sacramento. The City of Sacramento, Community Development Department, has reviewed the proposed project and, on the basis of the whole record before it, has determined that there is no substantial evidence that the project, with mitigation measures as identified in the attached Initial Study, will have a significant effect on the environment. This Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. An Environmental Impact Report is not required.

This Mitigated Negative Declaration has been prepared pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.), CEQA Guidelines (Title 14,

Attachment C

Sections 15000 et seq. of the California Code of Regulations), the Sacramento Local Environmental Regulations (Resolution 91-892), and the Sacramento City Code. The public review period is January 18, 2012 to February 17, 2012. Comments should be submitted to:

Attn: Scott Johnson, Associate Planner
Community Development Department
City of Sacramento
300 Richards Blvd, 3rd Floor
Sacramento, CA 95811
Direct Line: (916) 808-5842
sjohnson@cityofsacramento.org

A copy of this document and all supportive documentation may be reviewed or obtained at the City of Sacramento, Community Development Department, 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811 from 9:00 a.m. to 4:00 p.m. (or 8:00 a.m. to 5:00 p.m. with prior arrangement). The document is available online at <http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>

Environmental Services Manager, City of Sacramento,
California, a municipal corporation

By: _____

Date: _____

1/17/2012



Sacramento Water Treatment Plants Rehabilitation Project Mitigation Reporting Program

In January 1989, Assembly Bill 3180 went into effect requiring the City to monitor all mitigation measures applicable to this project and included in the Mitigated Negative Declaration. For this project, mitigation reporting will be performed by the City of Sacramento Department of Transportation in accordance with the monitoring and reporting program developed by the City to implement AB 3180.

This Mitigation Reporting Program is being prepared for the Community Development Department, Environmental Planning Services, 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811, pursuant to the California Environmental Quality Guidelines, Section 21081.

Project Number: Z14006000

Project Name: Sacramento Water Treatment Plants Rehabilitation Project

Project Location: E.A. Fairbairn Water Treatment Plant (EAFWTP) is located east of California State University at Sacramento (CSUS) and south of the American River and consists of Assessor's Parcel Numbers (APN): 005-0010-011, -012. The Sacramento River Water Treatment Plan (SRWTP) is located east of Interstate 5 and the Sacramento River near Richards Boulevard and consists of APNs: 001-0210-038, 001-0064-015, 001-0210-024, and 001-0061-025.

Project Description: The proposed Water Treatment Plant Rehabilitation project consists of replacing existing outdated equipment and facilities, constructing solids handling and other miscellaneous improvements at the treatment plants. The project does not increase the capacity of either the SRWTP or the EAFWTP. At SRWTP the existing flocculation and sedimentation Basins 1 and 2, old filters 1 through 16 and pump station will be replaced with new facilities. To construct these new facilities, Basin 2 and the former 911 Call Center building north of the plant will be demolished. Basin 1, pump station and old filters 1 through 16 will be decommissioned, but not demolished. The project includes acquisition of two parcels totaling approximately three acres at the SRWTP site, new solids handling improvements and miscellaneous electrical/process improvements. At EAFWTP, the existing FWW basins will be retrofitted with mechanical sludge collection systems. A new dewatering building will be constructed and fitted with equipment to dewater solids. The existing chlorine system will be expanded and other improvements to the electrical and operating system will be installed as required.

**MITIGATION REPORTING PROGRAM CHECKLIST FOR THE
 SACRAMENTO WATER TREATMENT PLANTS REHABILITATION PROJECT (Project #Z14006000)**

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
1. BIOLOGICAL RESOURCES				
<p>MITIGATION MEASURE BIO-1.</p> <p>The Department of Utilities shall implement the following measures to minimize impacts to nesting special-status birds:</p> <ul style="list-style-type: none"> To the maximum extent possible, trees shall be removed during the non-breeding season for most birds (i.e., September 16 to February 14). If construction activity is scheduled to occur during the typical nesting season for Swainson's hawk and other raptors (i.e., February 15 to September 15), the project applicant shall retain a qualified biologist to conduct preconstruction surveys and to identify active nests within 500 feet of the project site. The surveys shall be conducted within 14 days and no more than 30 days before the beginning of project activity. If active nests are found, impacts on nesting special-status birds shall be avoided by establishment of appropriate buffers around the nests. No project activity shall commence within the buffer area until a qualified biologist confirms that any young have fledged and the nest is no longer active. The buffer may be adjusted based on a recommendation from a qualified biologist in consultation with the state Department of Fish and Game, if the construction activities are unlikely to disturb the nest. A biological monitor may be required to ensure that nest abandonment or failure does not occur. If no nests are found, no further mitigation is required. 	Prior to and during construction	City of Sacramento / DFG		
<p>MITIGATION MEASURE BIO-2A.</p> <p>The Department of Utilities will consult with the US Fish and Wildlife Service (USFWS) regarding impacts to VELB and will obtain approval for removing and transplanting elderberry plants prior to ground-disturbing activities within 100 feet of elderberry plants. A Habitat Conservation Plan shall be prepared that includes</p>	Prior to and During construction	City of Sacramento / USFWS		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>the following information:</p> <ul style="list-style-type: none"> the effects of the proposed project on VELB; a conservation strategy that describes measures to avoid, minimize and compensate for impacts, including description of the conservation area, relocation plans, replacement plantings, irrigation, and maintenance requirements; an implementation plan that describes monitoring requirements, including performance and success criteria; funding for implementation of the HCP; and procedures to deal with unforeseen circumstances; a description of alternative actions considered that would not result in take; and any additional measures USFWS may require as necessary or appropriate for purposes of the plan. 				
<p>MITIGATION MEASURE BIO-2B.</p> <p>For elderberry shrubs that are to remain on the project site, the following mitigation measures shall be implemented in accordance with the USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle (USFWS, 1999).</p> <ul style="list-style-type: none"> Fence and flag all areas to be avoided during construction activities. A minimum setback of at least 20 feet from the dripline of each elderberry plant with stems greater than 1-inch diameter at ground level shall be maintained to avoid direct impacts. The buffer area shall be fenced with high visibility construction fencing prior to commencement of ground-disturbing activities and shall be maintained for the duration of construction activities. Erect signs every 50 feet along the edge of the avoidance area with the following information: "This area is habitat of the valley elderberry longhorn beetle, a threatened species, and must not be disturbed. This species is protected by the Endangered Species Act of 1973, as amended. Violators are subject to prosecution, fines, and imprisonment." The signs shall be clearly readable from a distance of 20 feet, and shall be maintained for the 	Prior to and during construction	City of Sacramento / USFWS		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
<p>duration of construction.</p> <ul style="list-style-type: none"> • Ground disturbing activities on the project site shall not alter the hydrology of the site or otherwise affect the likelihood of vigor or survival of elderberry shrubs. Project activities, such as truck traffic or other use of machinery, shall not create excessive dust on the project site, such that the growth or vigor of elderberry shrubs would be adversely affected. • Areas that are disturbed temporarily shall be restored to pre-disturbance conditions. Erosion control measures shall be implemented to restore areas disturbed within 100 feet of elderberry shrubs. • No insecticides, herbicides, fertilizers, or other chemicals shall be used within 100 feet of elderberry shrubs. 				
<p>MITIGATION MEASURE BIO-2C.</p> <p>For elderberry plants that cannot be retained in the project area, the following mitigation measures shall be implemented. These measures may be modified based upon the consultation with USFWS.</p> <ul style="list-style-type: none"> • If feasible, Elderberry plants that cannot be avoided shall be transplanted. All elderberry plants with one or more stems measuring 1.0 inch or greater in diameter at ground level shall be transplanted to a conservation area consistent with USFWS Conservation Guidelines for the Valley Elderberry Longhorn Beetle, 1999. The conservation area shall be protected in perpetuity and monitoring shall be conducted to ensure that the success criteria are met. If success criteria are not met, remedial actions shall be required, Consultation with the USFWS will specifically define the replanting plan. • Additional elderberry seedlings or cuttings and associated native plants shall be planted in a designated conservation area at a ratio consistent with the USFWS's Conservation Guidelines for the Valley Elderberry Longhorn Beetle, 1999 or determined during consultation with USFWS. Each elderberry stem measuring 1.0 inch or greater in diameter at ground level that is adversely affected (i.e., transplanted or destroyed) shall be replaced in the conservation area, with elderberry seedlings or cuttings at a ratio 	Prior to and during construction	City of Sacramento / USFWS		

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ranging from 1:1 to 8:1 (new plantings to affected stems.). A mix of native plants associated with the elderberry plants at the project site or similar sites shall be planted at ratios ranging from 1:1 to 2:1). Table Bio-2 estimates the required conservation plantings required for the project. However, additional conservation plantings may be required if a 20-foot buffer cannot be provided around the elderberry shrubs to be retained. The final number of conservation plantings to be provided shall be determined during consultation with USFWS. Alternatively, compensatory credits may be purchased at an USFWS approved conservation bank				
2. CULTURAL RESOURCES				
<p>MITIGATION MEASURE CUL-1.</p> <p>The City (Department of Utilities) shall prepare a Decommissioning Plan (Plan) for the Pump Station, Head House and West Filter Buildings, for approval by the Preservation Director, prior to decommissioning the structures from active service. The Plan shall include the following provisions:</p> <ul style="list-style-type: none"> ■ Technical Report submitted by JRP that documents historical significance; ■ Written confirmation of physical condition of the buildings, including any need of structural stabilization, signed by a Registered Structural Engineer and the Plant Superintendent; ■ Maintenance of interior ventilation systems in good working order; ■ Plan for inspection of the structures on a periodic basis, to address and correct the following: <ul style="list-style-type: none"> ○ Evidence of, and plan for handling any pest infestation; ○ Moisture penetration to the interior; ○ Adverse condition of the exterior of the building; ○ Failure of the interior ventilation system. <p>The Department of Utilities shall inspect and maintain the affected structures on a regular basis, and shall maintain written records of such inspections and conditions. Prior to the expiration of five years from the date of decommissioning, the Department shall prepare and present to the Preservation Director a proposal for the permanent treatment of the decommissioned structures, consistent with the</p>	Prior to, during, and following construction	City of Sacramento		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
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U.S. Department of the Interior standards to the extent feasible.				
<p>MITIGATION MEASURE CUL-2.</p> <p>In advance of construction, an additional identification effort consisting of geoarchaeological trenching shall be conducted at the Fairbairn WTP in the northeast portion of the project area identified to have Rossmoor soils where there is a high potential for buried archaeological resources. If nothing is found during trenching, no additional identification efforts would be necessary. If resources are found proper documentation and removal practices shall be implemented prior to construction activities beginning.</p>	Prior to construction	City of Sacramento		
<p>MITIGATION MEASURE CUL-3.</p> <p>In the northeastern portion of the Sacramento River WTP project area at the location of excavation for the dewatering building and the thickener tanks where there is potential for subsurface features, a qualified historical archaeologist should monitor ground-disturbing activities. In the event test cores are obtained prior to excavation, and reveal no such features, the archaeologist may be utilized on an on-call basis only.</p>	Prior to and during construction	City of Sacramento		
<p>MITIGATION MEASURE CUL-4.</p> <p>In the event that unidentified cultural materials are unearthed during construction, work shall be halted in that area until a qualified archaeologist can assess significance of the find and develop and implement a plan for documentation and removal of resources. Additional survey will be needed if project limits are extended beyond the present survey limits.</p>	During construction	City of Sacramento		
<p>MITIGATION MEASURE CUL-5</p> <p>The historic quarried granite slabs identified on the northeast portion of the Sacramento River WTP project site shall be retained and stored on-site during construction and incorporated into and used as curbing on new road/driveway to</p>	During and following construction	City of Sacramento		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
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be constructed as part of the WTP Rehabilitation Project.				
3. HAZARDS				
<p>MITIGATION MEASURE HAZ-1.</p> <p>A preliminary site assessment for asbestos and lead-based paint shall be conducted, consisting of records searches, site reconnaissance, and interviews with knowledgeable persons to determine whether such materials exist in any facilities scheduled for demolition or substantial renovation. This assessment may include limited sampling to further assess the potential of encountering such materials. Abatement and remediation shall be implemented as required by state or federal regulations, and appropriate procedures followed for removal and disposal followed.</p>	Prior to and during construction	City of Sacramento		
4. LIGHT AND GLARE				
<p>MITIGATION MEASURE LIGHT-1.</p> <p>New buildings or renovated facades of existing buildings in the proposed project shall be prohibited from using:</p> <ol style="list-style-type: none"> 1) reflective glass that exceeds 50 percent of any building surface and on the ground three floors; 2) mirrored glass; 3) black glass that exceeds 25 percent of any surface of a building; and, 4) metal building materials that exceed 50 percent of any street-facing surface of a primarily residential building. 	Prior to, during, and following construction	City of Sacramento		
<p>MITIGATION MEASURE LIGHT-2.</p> <p>Exterior lighting at the project site, and any exterior lighting that may be visible from the exterior, shall comply with the following requirements:</p> <ol style="list-style-type: none"> a. Lighting design shall be such as not to produce hazardous and annoying glare to motorists and building occupants, adjacent residents or the public; and 	Prior to, during, and following construction	City of Sacramento		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
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b. Lighting shall be oriented away from adjacent properties, shall not produce a glare or reflection or any nuisance, inconvenience or hazardous interference of any kind on adjoining streets or property. In addition, the source of the light shall not be visible from adjacent property or a public street.				
5. NOISE				
MITIGATION MEASURE NOISE-1. All construction activity on the project sites shall comply with the provisions of City Code Chapter 8.68 relating to noise, including the following: All noise-producing activity on the project sites will be conducted during these hours: Monday through Saturday: 7:00 a.m. to 6:00 p.m.; Sunday: 9:00 a.m. to 6:00 p.m. Equipment on the project site shall be equipped with suitable exhaust and intake silencers that are in good working order.	During construction	City of Sacramento		
MITIGATION MEASURE NOISE-2. During all periods of construction, the City shall appoint a project manager for each project site, and shall post a conspicuous sign on each project site that identifies the project manager and a telephone number for contacting the individual. The project manager shall have the authority to receive and resolve complaints regarding construction noise.	During construction	City of Sacramento		
MITIGATION MEASURE NOISE-3. Back-up generators that supply emergency electrical power to the facility shall be located, to the extent feasible, in a location that takes advantage of noise barriers, such as buildings on the site, that would shield neighboring properties from direct noise transmission and thus serve to reduce the noise at the property line.	Prior to, during, and following construction	City of Sacramento		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
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<p>MITIGATION MEASURE NOISE-4.</p> <p>The following actions shall be taken to reduce impacts to historic structures:</p> <p>(A) To the extent feasible, the historic buildings shall be stabilized and reinforced prior to construction activities adjacent to such buildings.</p> <p>(B) The contractor shall take reasonable precautions to protect historic structures from damage, such as settlement, caused by excavation, trenching, dewatering or other construction activities adjacent to buildings that could affect the integrity of the buildings.</p> <p>(C) Measures shall be taken to reduce or eliminate potential ground settlement of the areas surrounding the historic buildings due to dewatering, excavation or adjacent construction. A pre-excavation settlement-damage survey shall be prepared that shall include, at a minimum, visual inspection of existing vulnerable structures-for cracks and other settlement defects, and establishment of horizontal and vertical control points on the buildings. A monitoring program of surveying such horizontal and vertical control points shall be followed to determine the effects of dewatering, excavation and construction. If it is determined by the project engineer that the existing buildings could be subject to damage, work shall cease until appropriate remedies to prevent damage are identified.</p>	Prior to and during construction	City of Sacramento		

Mitigation Measure	Timing of Implementation	Reporting/ Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
6. TRANSPORTATION & CIRCULATION				
<p>MITIGATION MEASURES TRANS-1</p> <p>Prior to the start of the construction phase at either treatment plant facility, the project applicant shall prepare and submit a Traffic Control Plan to the City of Sacramento, Department of Transportation for review and approval. At a minimum, the plan shall include the following information:</p> <ul style="list-style-type: none"> • The number of truck trips, time, and day of street closures • Time of day of arrival and departure of trucks • Limitations on the size and type of trucks; provision of a staging area with a limitation on the number of trucks that can be waiting • Provision of a truck circulation pattern • Safe and efficient access routes for emergency vehicles • Efficient and convenient transit routes • Manual traffic control when necessary • Proper advance warning and posted signage concerning street closures • Provisions for bicycle and pedestrian safety, especially in the CSUS area 	Prior to and during construction	City of Sacramento		